



# International Covenant on Civil and Political Rights

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## Human Rights Committee 136th session

### Summary record of the 3933rd meeting

Held at the Palais Wilson, Geneva, on Wednesday, 19 October 2022, at 3 p.m.

*Chair:* Ms. Pazartzis

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*The meeting was called to order at 3.10 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Fourth periodic report of Nicaragua, considered in the absence of a delegation*  
(CCPR/C/NIC/4)

1. **The Chair** said that the State party's fourth periodic report had been due in 2012 and had been submitted in May 2019. The list of issues in relation to that report had been shared with the State party in November 2019 and had been followed by repeated requests for its responses. The State party had been informed in advance of the dates during the 136th session on which consideration of its report would take place. It had also been advised that the Committee would, if necessary, consider the State party's report in the absence of a delegation. Since no response to any of the communications had been forthcoming from the State party and no delegation had been sent, the Committee would proceed to consider the State party's report in accordance with article 68 of the rules of procedure.
2. The Committee regretted the unfortunate situation that had arisen, which was not conducive to a meaningful review of the State party's report. The Committee wished to remind the State party that ratification of the Covenant entailed the obligation to submit reports on the measures adopted to give effect to Covenant rights and on the progress made in the fulfilment of its obligations under the Covenant. Representatives of the State party were also expected to be present at meetings of the Committee when their reports were being examined.
3. The General Assembly had, in its resolution 68/268, recalled that the full engagement of States parties in interactive dialogues with human rights treaty bodies was a key component of the periodic review process. The Committee regretted the absence of a delegation and wished to reaffirm that it remained open to cooperation, constructive dialogue and engagement in the future.
4. Following the Committee's consideration of the situation in the State party, it would issue its concluding observations based on the fourth periodic report, information from the Office of the United Nations High Commissioner for Human Rights (OHCHR) and from other United Nations bodies, information from civil society and non-governmental organizations and reports from the regional human rights system.
5. **Mr. Gómez Martínez** said that the State party's fourth report referred to the human rights protections embodied in article 46 of the Constitution and other mechanisms for the protection of fundamental rights as reasons why ratification of the first Optional Protocol to the International Covenant on Civil and Political Rights was unnecessary. However, that position did not account for the fact that, under international law, the citizens of a given State had the right to demand that it should comply with treaties to which it was a party. The Committee therefore took the opposite view to that expressed by the State party. If the Constitution and other mechanisms already protected the rights of the individual, there appeared to be no reason why the State would not want its citizens to be able to turn to the Committee in cases where domestic remedies had not been effective.
6. Information on the number of decisions issued regarding habeas corpus, habeas data, *amparo* and constitutional review appeals, along with the number of appeals upheld and the number dismissed, would be appreciated. It would also be helpful to receive statistics on the number of judgments in which the Covenant had been cited and to learn whether judges and prosecutors were provided with training on its content.
7. Since April 2018, the State party appeared to have adopted a policy of non-collaboration with United Nations human rights mechanisms, as it had failed to attend any of the scheduled treaty body reviews in 2021 and 2022, had not complied with most of the recommendations made in the September 2019 report of the United Nations High Commissioner for Human Rights on the situation of human rights in Nicaragua (A/HRC/42/18) and had repudiated the creation of the Group of Human Rights Experts on Nicaragua by the Human Rights Council. It had failed to respond to requests for visits from five special procedure mandate holders, prevented the return to the country of a Nicaraguan

citizen who was a member of the Expert Mechanism on the Rights of Indigenous Peoples, withdrawn from the Organization of American States and expelled the country representative of the International Committee of the Red Cross.

8. The Committee was concerned about the reasons for the downgrading of the accreditation status of the Office of the Human Rights Ombudsman, which had reportedly not opposed legislation under consideration by the National Assembly, in which the governing party held a majority, that ran counter to international human rights law. That situation called the body's independence into question. The Committee would appreciate information on measures taken to guarantee the independence of that Office.

9. **Mr. Santos Pais** said that article 27 of the Nicaraguan Constitution, on prohibited forms of discrimination, made no reference to sexual orientation or gender identity. Nor did there appear to be a general law prohibiting any form of discrimination or a law on hate crimes, as required under the Covenant.

10. In her September 2022 report to the Human Rights Council on the human rights situation in Nicaragua (A/HRC/51/42), the High Commissioner had noted that the recommendations issued in the course of the universal periodic review regarding the rights of lesbian, gay, bisexual, transgender and intersex persons, which had been accepted by the Government of Nicaragua, were aimed at increasing those persons' visibility, eliminating violence and discrimination against them, and securing the release of those detained since the events of 2018. However, information on the outcome of those recommendations had not been forthcoming. The continued lack of official statistics on those issues made it impossible to assess the true extent of the associated problems.

11. The Committee took note of the fact that, according to that same report, and in the first case of its kind, two men had been sentenced in 2021 to life imprisonment for the murder of a transgender woman that had been classified as a hate crime. However, the report went on to say that transgender women deprived of their liberty were being held in men's prisons and subjected to discriminatory and degrading treatment. Accurate information was needed on the number of complaints received of violence against lesbian, gay, bisexual and transgender persons, the investigations carried out and their results, including the sentences imposed on perpetrators and the remedies granted to victims.

12. The indigenous and Afrodescendent population reportedly continued to be victims of structural and institutional discrimination which was manifested in a lack of protection of their rights over their lands and natural resources. Information received by the Committee indicated that infrastructure, logging, mining and cattle ranching projects were being undertaken without the genuine consent of the affected peoples. Most local governments in the territories of indigenous peoples and persons of African descent had reportedly been supplanted by parallel bodies associated with the Sandinista National Liberation Front, and the participation of the Afrodescendent population in government and public institutions at the national level was very limited. The legal requirement that all indigenous peoples and persons of African descent should be represented on the executive committees of regional councils in autonomous regions appeared not to be observed in practice.

13. The State party had apparently not yet complied with the judgment handed down by the Inter-American Court of Human Rights in *YATAMA v. Nicaragua*, which indicated the need for electoral reform. Integrated measures were needed to promote equal opportunities and access to services for persons of African descent and indigenous peoples and to increase their participation in political affairs.

14. The State party had provided information about its efforts to protect women from violence, in particular femicide, in its fourth periodic report. However, it had modified the Comprehensive Act to Combat Violence against Women and developed regulations and policies that ran counter to the aims of the Act, had done away with the specialized courts for hearing cases involving such crimes and had restricted the definition of the crime of femicide to the private sphere. The public policy approach to conflict resolution encouraged impunity by hindering the submission of complaints and emphasizing mediation through family counselling centres, whose involvement actually placed victims at a greater risk of femicide. The absence of public programmes and budgets for the provision of psychosocial support to

survivors and orphaned children and for the establishment of shelters for women victims of violence had also placed women in a more vulnerable position.

15. The State party had also reportedly closed down 176 organizations that had provided assistance to victims of domestic and gender-based violence, confiscated their assets or revoked their legal status. Insufficient official data on femicides obscured the magnitude of the problem, and the number of femicides documented by civil society in 2020 differed greatly from government figures. Comprehensive, transparent records on cases of domestic violence, sexual violence and femicides were therefore essential. Delays in police investigations, a lack of forensic reports, a failure to arrest perpetrators of domestic violence or femicide, the fact that few convictions were handed down and the drawn-out nature of proceedings were also problems that needed to be addressed.

16. Steps should be taken to facilitate the filing of complaints, redefine the role of family counselling centres and prohibit compulsory mediation in cases of domestic violence. All cases of gender-based violence should be investigated and prosecuted, and victims should be duly compensated. Victims and their families should have access to protective services, including public shelters and assistance centres that were properly equipped, staffed and funded. Training on women's rights and gender-based violence should continue to be provided to police officers, prosecutors and judges. The Committee would like to receive statistics on complaints, investigations, prosecutions, convictions and sentences related to cases of gender-based violence, disaggregated by the age and ethnicity or nationality of the victims.

17. **Ms. Kpatcha Tchamdja** said that the Committee was concerned about the State party's failure to act upon the recommendation made in its concluding observations on the State party's third periodic report (CCPR/C/NIC/CO/3) regarding the need to align its laws with the Covenant by lifting its general ban on abortion, which applied even in cases of rape and incest. The Committee was particularly concerned by reports that women had been refused medical assistance because they were pregnant even if that refusal put their life in danger. Information on the number of women who had been prosecuted for having had an abortion would be of interest to the Committee.

18. **Mr. Quezada Cabrera** said that the Committee had received reports of the excessive use of force by law enforcement officers, particularly in connection with the social protests that had begun in April 2018. It had also been informed that armed, pro-government groups known as "shock forces" had attacked demonstrators with the acquiescence of senior government authorities and the police. The Committee would appreciate information on such incidents and on the steps taken to prosecute and punish State agents and members of armed groups who had taken part in them.

19. **Ms. Kpatcha Tchamdja** said that the Committee had received information indicating that the repression of demonstrations in 2018 and 2019 had resulted in a large number of deaths and that, in June and July 2019, many of the people who had reportedly been active participants in the 2018 protests had been murdered or attacked. The Committee was concerned not only about violations of the right to life but also about reports that no police officers or pro-government figures had been convicted for those violations.

20. **Mr. Quezada Cabrera**, drawing attention to paragraph 14 of the Committee's concluding observations on the State party's third periodic report and paragraph 30 of the 2019 report of the United Nations High Commissioner for Human Rights on the situation of human rights in Nicaragua (A/HRC/42/18), said that he would appreciate a response to paragraph 8 of the list of issues (CCPR/C/NIC/Q/4).

21. Concerning paragraph 9 of the list of the issues, the Committee had received additional reports of persons detained in connection with the protests of 2018 and 2019 being subjected to degrading treatment and of their relatives being strip-searched during prison visits. Paragraph 43 of the 2021 report of the High Commissioner on the situation of human rights in Nicaragua (A/HRC/46/21) was of particular relevance in that regard. In view of reports of such detainees being held, sometimes for months on end, in unhygienic conditions in isolation cells without natural light, he would also be grateful for a response to paragraph 10 of the list of issues.

22. **Ms. Bassim**, referring to paragraph 17 of the concluding observations on the State party's third periodic report, said that the Committee continued to be concerned about the situation in El Chipote, La Modelo and La Esperanza prisons, in particular, and about prison conditions in all detention centres in the country, in general. The Committee was deeply concerned by the death of Hugo Torres Jiménez and by reports of restrictions on family visits to detainees, some of whom had felt compelled to go on hunger strikes after being prevented from seeing their children.

23. **Mr. Quezada Cabrera** said that, according to information at the Committee's disposal, the Truth, Justice and Peace Commission lacked independence and had taken a biased view of events that had occurred since April 2018. He invited the State party to comment on the matter and to indicate whether the Commission was still operational.

24. It would also be helpful to receive detailed information on Amnesty Act No. 996, including an explanation of how it was compatible with the Covenant, given the absence of provisions explicitly prohibiting amnesty for serious violations of international human rights law; ambiguities in the Act, such as a lack of clarity in the definitions of "political crimes" and "related common crimes" in article 2, that undermined the right to peaceful protest and the principle of legality; and the lack of clarity in article 3 on non-repetition, which had reportedly placed persons who had been released from prison after the Act's entry into force in double jeopardy. As mentioned in paragraph 12 of the list of issues, the Committee would welcome information on the appeals brought by civil society organizations before the Supreme Court to challenge the constitutionality of the Act.

25. **Mr. Santos Pais**, referring to paragraph 13 of the list of issues, said that doubts remained as to whether Act No. 994 on Comprehensive Care for Victims had been designed for the purpose of establishing accountability or whether it merely entrenched impunity for human rights violations. Indeed, as had been pointed out by the Inter-American Commission on Human Rights, the Act did not guarantee the right to full reparation or the right of access to justice for victims and their families. For example, victims of torture could not make civil claims for redress in the absence of a related criminal conviction or if the perpetrator of the crime had not been identified.

26. **Mr. Gómez Martínez** said that the Committee was interested in learning about the mechanisms in place to prevent the politicization of the National Council on Judicial Administration and the Judicial Service and about the composition of the Judicial Service Committee. Information on any measures in place to ensure its impartiality and on the format of the competitive examinations that it organized would be appreciated.

27. The trials of individuals arrested in the context of the general election of November 2021 had reportedly begun behind closed doors in February 2022 in the detention centre where the defendants had been held and had culminated in the sentencing of 50 individuals to prison terms of up to 13 years. The State party's comments on those reports would be welcome, as would information on the role played by the Public Prosecution Service in the aforementioned trials.

28. According to information at the Committee's disposal, judges were appointed based on their political affiliation, and politically sensitive cases, including criminal proceedings concerning acts of public protest, were assigned to a small, select group of judges. Moreover, it appeared that there were irregularities in the recording of information on human rights violations committed during public protests and that the burden of proof often fell on alleged victims rather than the State authorities.

29. **Mr. Santos Pais** said that there were credible allegations that the State party's authorities manipulated the criminal justice system to harass and retaliate against human rights defenders, who were often prosecuted using fabricated evidence on vaguely defined criminal charges.

30. It had been reported that criminal proceedings were often deliberately delayed, that due process was not observed during arrests, that detainees had difficulties in notifying others of their arrest and in gaining prompt access to a lawyer, that interrogations took place in the absence of legal counsel and involved beatings, threats and sleep deprivation, that detainees

lacked access to an independent medical examination and that the writ of habeas corpus was ineffective.

31. Pursuant to Act No. 1060 amending and adding to the Code of Criminal Procedure of 5 February 2021, persons could be detained for up to 90 days without the authorities having to file charges. The Committee had also received reports of irregularities in police arrest records, breaks in the chain of custody, abuse of pretrial detention, cases sent to trial based on provisional criminal charges differing from those in the indictment, a failure on the part of prosecutors to hand over evidence to defence counsel, the intimidation of defence witnesses in cases involving political prisoners and non-compliance with judicial release orders.

32. Documented violations of due process in criminal proceedings against journalists, human rights defenders, social and campesino leaders, and government opponents included violations of the presumption of innocence, the right of defence, equality of arms, the requirement for hearings to be public and the principle of the natural judge.

33. **Ms. Kpatcha Tchamdja** said that she wished to receive responses to the questions posed in paragraphs 16 and 17 of the list of issues and to reports of a wave of arbitrary arrests in the run-up to the November 2021 election. The Committee was also concerned by reports of children and adolescents being sexually abused in detention, internally displaced, separated from their families, forcibly disappeared or even murdered.

34. **Ms. Bassim** said that it would be helpful to receive responses to the concerns raised in paragraphs 18 and 19 of the list of issues. In addition, she would welcome a response to reports that writs of habeas corpus were never initiated ex officio and, in the light of reports of prison overcrowding, statistics on the total number of detainees in the State party and an indication of whether there were plans to establish separate juvenile correctional institutions.

35. **Mr. Gómez Martínez** said that the Committee had been informed that Act No. 872 of 2014, which dealt, among other things, with the issuance of police permits for demonstrations, was being implemented in a manner that restricted the right to peaceful assembly, since persons opposed to government policies or actions were systematically denied the right to hold protests, and persons who sought to participate in them were arrested. The Committee was also concerned about the very fact that a permit had to be obtained for public gatherings.

36. The Committee had wished to engage in a dialogue with the State party about the application of Act No. 1070 to demonstrations by groups that abstained from participating in elections. Such restrictions contravened article 21 of the Covenant and the Committee's general comment No. 37 on the right of peaceful assembly. According to information received by the Committee, the application of the Act to demonstrations organized between 18 April 2018 and 10 June 2019 in the context of the sociopolitical and human rights crisis and from May 2021 prior to the general elections scheduled for November 2021 had led to serious human rights violations, including the right to life.

37. The Committee had been informed that arbitrary restrictions on the freedom of expression of journalists, media personnel and human rights defenders had been imposed between April 2018 and August 2019. For example, Miguel and Lucía Pineda of the "100% Noticias" television channel had been charged with incitement to hatred and terrorism and detained from 21 December 2018 until 11 June 2019. The Committee wished to know what evidence had led to their arrest and whether criminal proceedings had resulted in a conviction or acquittal. Threats and restrictions had reportedly led to the departure from Nicaragua of between 120 and 140 journalists. In addition, three media outlets had been confiscated in 2022, and 23 radio stations and communication companies had been closed down. He hoped to learn more about the composition and guarantees of impartiality of the Nicaraguan Telecommunications and Postal Service Institute, which was responsible for granting licences for telecommunications service providers. According to reliable reports, the manager of *La Prensa* newspaper had been sentenced to 9 years' imprisonment for money laundering, and three journalists had been sentenced to up to 13 years' imprisonment for spreading "fake news". The Committee was also concerned by the fact that criminal proceedings dealing with the murder of journalist Ángel Gahona had been discontinued pursuant to the Amnesty Act.

38. The Special Cybercrime Act of 2020 apparently contained provisions that could be used to control social media. The Committee would appreciate information regarding guarantees under the Act for the right to secrecy of communications enshrined in article 17 of the Covenant. It had been informed that the Government had used social media to discredit, directly or indirectly, all persons who opposed it. Cyberattacks against the persons in question had allegedly remained unpunished. The Committee would appreciate information concerning ideologically motivated disinformation campaigns.

39. **Ms. Kpatcha Tchamdja** said that the Committee was concerned by continuing reports of the intimidation, defamation, illegal detention, torture and ill-treatment of human rights defenders, journalists, students and religious leaders and by the apparent failure to take legal action against alleged perpetrators, including police officers and members of pro-government groups. It was also concerned about the State party's non-compliance with the judgment of the Inter-American Court of Human Rights in the case of *Acosta et al. v. Nicaragua*, particularly with regard to the need to establish protective and investigative procedures on behalf of human rights defenders.

40. The Committee had been informed that the State party had been revoking the legal personality of civil society organizations since late 2018, including at least 66 organizations in 2021 and at least 1,812 organizations in 2022. It was unclear whether those organizations were permitted to present a defence or whether they had the benefit of any legal guarantees. The Committee noted with concern that Act No. 976 and its implementing regulations enabled the State to adopt discretionary measures to restrict organizations' access to international funds. Other laws that impeded the registration and action of civil society organizations included General Act No. 1115 of 2022 on the Regulation and Control of Non-Profit Organizations and Act No. 1040 of 2020 on the Regulation of Foreign Agents.

41. **Mr. Quezada Cabrera** said that the Committee had been informed that the State party used anti-terrorism laws to punish dissidents and journalists. It would therefore appreciate information on the State's interpretation of the provisions concerning the offence of terrorism in the Criminal Code and in Act No. 977 of 2018 and its implementing regulations. He would also welcome information on the compatibility of the Special Cybercrime Act with the right to freedom of expression.

42. **Ms. Bassim** said that the Committee continued to be concerned about racial prejudice among the general public against indigenous peoples and the manifestations of that prejudice in terms of serious shortcomings in health and education services, the fact that such institutions had few or no branches in areas populated by indigenous peoples and the lack of a consultation process to secure free, prior and informed consent regarding natural resource development projects sited on indigenous communities' lands.

43. The Committee would be grateful for information on the Grand Interoceanic Canal project, the Bio-CLIMA Project and the Tumarín Project and on the measures taken to implement the restructuring phase that had been designed to protect indigenous and Afrodescendent territories. The failure to complete that phase had reportedly led to community violence in response to the invasion and large-scale settlement of those territories by mestizo settlers.

44. It was regrettable that the State party had failed to inform the Committee of steps taken to increase the representation of indigenous peoples, persons of African descent and ethnic communities in the autonomous regions in decision-making positions and their participation in elections. Reports of impediments to participation in communal governments and indigenous territorial governments were of particular concern.

45. **Mr. Santos Pais** said that the lack of information in the State party's report on steps taken to ensure transparency and accountability in the fight against corruption was regrettable. There was reportedly a lack of transparency regarding the use of the general State budget and the effectiveness of interventions by the Office of the Comptroller-General of the Republic. There were also reports of nepotism, corruption and influence peddling at both the central and local levels. In addition, there was a lack of clarity regarding the legal regime governing declarations of assets and income by political and public office holders and public access to that information.

46. The last item in the list of issues had concerned measures for ensuring free and transparent elections, yet it appeared that Act No. 1070 amending Electoral Act 331 had blocked political competition in the 2021 general elections, thereby enabling government supporters to gain permanent access to positions of power. The State had apparently failed to meet the demands of the Nicaraguan opposition for electoral reform and similar demands by civil society monitoring organizations forming part of the Consorcio Panorama Electoral and Electoral Observation Missions of the Organization of American States (OAS). The Committee would be interested in the State party's comments on the fact that the OAS General Assembly had concluded in October 2021 that the elections had not been free, fair or transparent and had lacked democratic legitimacy.

47. The arrests of seven presidential candidates, including three former Sandinista guerillas, was a cause of concern to the Committee, which noted that precautionary measures had been requested by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights for all those persons. The Committee would be interested to hear the State party's comments on the fact that an electoral reform law adopted in May 2021, which paved the way for the hegemony of the governing party, had been described by OAS as a clear setback for the exercise of political rights by Nicaraguans.

48. According to information received by the Committee, the general elections of 7 November 2021 had been held without independent international observers, there had been 2,031 reports of anomalies and political violence throughout the country, the national abstention rate had been estimated at 81.5 per cent and the names of nearly 1,400,000 persons had been removed from the voters list for the 2021–2022 elections. Another cause of concern was that article 173 of the Constitution did not provide for any appeal against the decisions of the Supreme Electoral Council.

49. Act No. 445 appeared to prevent the autonomous regional councils from certifying authorities elected to the communal assemblies if they were deemed to support the opposition. The very high abstention rates among indigenous peoples and persons of African descent resident in the Caribbean coastal regions had been characterized as a form of protest against electoral fraud. The Committee would be interested to learn what steps the Government planned to take in response to the resolution adopted in March 2022 by the Human Rights Council in which it had urged the Government to implement electoral reforms and to ensure free and fair elections overseen by independent international observers.

50. **The Chair** said that it was regrettable that the State party had refrained from engaging in a constructive dialogue with the Committee. It was clear from the information received, especially in connection with the sociopolitical crisis in April 2018 and the November 2021 general elections, that the human rights situation had seriously deteriorated. The Committee was concerned by reports of restrictions on the freedom of expression of journalists, media personnel and human rights defenders, the seizure of passports and various actions that had prompted people to leave the country. It had also received reports of arbitrary arrests and detention, prolonged detentions, a lack of independence on the part of the judiciary and the unwillingness of the State party to engage with international institutions either within or outside the country. In addition, the Amnesty Act adopted in June 2019, which granted retroactive immunity to State agents from April 2018 on, raised a number of serious issues.

*The meeting rose at 5.05 p.m.*