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[Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#) - *Nicaragua (Ratification: 2010)*

The Committee notes the Government's first report on the application of the Convention received in September 2012. The Government indicates that there is recognition of the indigenous and Afro-Nicaraguan peoples of the Atlantic Coast and of the indigenous peoples of the Pacific, Central and North regions of Nicaragua, and also of their individual and collective fundamental rights. The Miskito, Mayangna and Rama indigenous peoples and the Creole and Garífuna ethnic and Afro-Nicaraguan communities located on the Caribbean Coast account for 10 per cent of the Nicaraguan population. The indigenous peoples descended from the Cacaopera, Chorotega, Xiu and Nahoa in the Pacific (departments of Riva, Masaya, León and Chinandega), Central (departments of Matagalpa and Jinotega) and North regions (departments of Nueva Segovia and Madriz) represent 6.07 per cent of the Nicaraguan population. In the 2005 population and housing census, data were collected on the population which had identified itself as belonging to indigenous or ethnic communities; out of a total national population of 5,142,098 inhabitants, a total of 443,847 people were covered by self-identification, the majority of which belonged to the Miskito people (slightly over 120,000 persons) and the Mestizos of the Caribbean Coast (slightly over 112,000 persons). The Committee notes the existence of the two autonomous regions of the Atlantic Coast, namely the South Atlantic Autonomous Region (RAAS) and the North Atlantic Autonomous Region (RAAN). The Committee considers that the Convention is fundamentally an instrument that favours dialogue and participation, and recalls that Part VIII of the report form states as follows: "Although such action is not required, the Government may find it helpful to consult organizations of indigenous or tribal peoples in the country, through their traditional institutions where they exist, on the measures taken to give effect to the present Convention, and in preparing reports on its application." ***The Committee invites the Government, when preparing its next report, to consult the social partners and indigenous organizations on the measures taken to give effect to the Convention. The Committee also invites the Government to provide a report containing detailed***

replies to the matters covered by the report form and to include full information on the points set out below.

Communication from the International Organisation of Employers (IOE). The Committee recalls that in September 2012 the Office forwarded to the Government the observations from the IOE on the application in law and practice of the requirement of consultation laid down by *Articles 6, 7, 15 and 16 of the Convention*. The IOE raised the following issues: the identification of representative institutions, the definition of indigenous territory and the lack of consensus among indigenous and tribal peoples regarding their internal procedures, and the importance for the Committee to be aware of the consequences of these issues in terms of legal certainty, financial costs and certainty of both public and private investment. The IOE referred to the difficulties, costs and negative impact that the failure by States to comply with the obligation of consultation can have on the projects undertaken by both public and private enterprises. Among other effects, the IOE observed that the erroneous application and interpretation of the requirement of prior consultation can be a legal obstacle and lead to business difficulties, harm the reputation of enterprises and result in financial costs. The IOE also stated that the difficulties to comply with the obligation of consultation may have an impact on the projects that enterprises may wish to carry out with a view to creating a conducive environment for economic and social development, the creation of decent and productive work and the sustainable development of society as a whole. ***The Committee invites the Government to include in its next report any comments that it sees fit to make on the observations made by the IOE.***

Articles 2 and 33 of the Convention. Coordinated and systematic action. Administration. The Committee notes the existence of a Commission for Ethnic Affairs, Autonomous Regimes and Indigenous Communities in the National Assembly and of the Secretariat for Indigenous Affairs within the Executive Authority. Two other entities are responsible for coordination among the autonomous authorities, the authorities of the indigenous peoples and the Executive Authority, the Secretariat for the Development of the Atlantic Coast and the Council for the Development of the Atlantic Coast, both departments being under the authority of the Presidency of the Republic. The administrative bodies of the autonomous regions include the Regional Council, the higher authority of the corresponding autonomous region, within which all ethnic communities of the respective autonomous

region must be represented. The Government sent with its report the “Development Plan for the Caribbean Coast: En route to development” (2009 Development Plan), the “Evaluation Document for the Development Strategy for the Caribbean Coast and Alto Wangki” (2011 Evaluation Document), and the “Development Strategy for the Caribbean Coast and Alto Wangki Bocay” (2012–16 Development Strategy), which resulted from the cooperation between the Caribbean Coast Development Council, the autonomous regions and the territorial government of Alto Wangki Bocay. ***The Committee invites the Government to include in its next report an evaluation of the results of the aforementioned plans and strategies. It also invites the Government to indicate how the participation of the peoples concerned is ensured in the case of the programmes implemented outside the sphere of the autonomous regions (Article 2). Lastly, the Committee requests the Government to indicate what measures have been taken to ensure that the agencies which administer the programmes covered by the Convention have the means necessary for the proper fulfilment of their functions (Article 33(1)).***

Article 6. Consultation. Institutions and initiatives. The Committee notes that all municipalities of the country have the obligation to consult the traditional authorities of the indigenous communities, in the context of municipal development programmes. In the autonomous regions there is also the obligation of civic consultation. The 2011 Evaluation Document indicates that eight indigenous and Afro-Nicaraguan territorial governments receive resources from the public investment programme to cover their own administration. ***The Committee invites the Government to supply information on the operation of the consultation procedures. The Committee also invites the Government to indicate the manner in which the participation of the descendants of the Cacaopera, Chorotega, Xiu and Nahoa peoples in decision-making is facilitated.***

Article 7(1) and (2). Development process. Participation. Development plans. The Committee notes the existing bodies for civic participation with regard to the formulation of national and sectoral public policies. In the autonomous regions, the legislation relating to civic participation provides for the setting up of a regional council for economic and social planning with the participation of a delegate from the Council of Elders of each ethnic group in the autonomous region. The powers of the autonomous regions include effective participation in the

formulation and implementation of national development plans and programmes in their regions. The Committee notes that the priorities identified in the 2009 Development Plan, the 2011 Evaluation Document and the 2012–16 Development Strategy include land tenure, food security, cultural revitalization, education, health, access to water, environmental balance and economic dynamism. ***The Committee invites the Government to include information in its next report on the measures taken to ensure the participation of all the peoples concerned in the formulation, implementation and evaluation of the measures and plans that affect them. The Committee also invites the Government to supply information on the activities of the Regional Council for Economic and Social Planning in relation to the matters covered by the Convention.***

Article 7(3). Studies on the impact of development activities. Cooperation of indigenous peoples. The Committee notes the provisions of the environmental legislation concerning the declaration of protected areas and the implementation of scientific studies in protected areas located in indigenous community lands. With regard to their composition, sectoral national councils must include a representative of the autonomous regional governments and a delegate of each of the organizations of indigenous peoples, communities of the Atlantic Coast, and organizations representing women, young people, communities, children and persons with disabilities. ***The Committee invites the Government to include examples in its next report of studies assessing the social, spiritual and cultural impact of development activities on the peoples concerned. The Government is also invited to indicate how the cooperation of the peoples affected by the development activities is secured.***

Article 8. Customary laws. The Committee notes that, under section 18 of the Charter establishing the autonomy of the regions of the Atlantic Coast (Autonomy Charter), the administration of justice in the autonomous regions shall be governed by special regulations that reflect the particular cultural features of the communities of the Atlantic Coast. ***The Committee invites the Government to include information in its next report on any procedures established for resolving conflicts that may arise (Article 8(2)) and to include examples of decisions where account has been taken of the customs or customary laws of the peoples concerned.***

Article 9. Criminal penalties. The Committee notes that, under section 20(2) of the Penal Code, crimes and offences committed by members of the indigenous peoples and ethnic communities of the Atlantic Coast within and among their communities for which the penalty does not exceed five years' imprisonment shall be tried in accordance with customary laws, subject to the provisions of the Constitution of Nicaragua. ***The Committee invites the Government to provide examples of the application in practice of this provision of the Convention throughout the country. The Committee also invites the Government to give examples of customary laws applied in relation to the matters covered by the Convention.***

Article 14. Land. Forms of landholding. The Committee notes that the Constitution of Nicaragua recognizes the right of indigenous peoples to maintain communal forms of land ownership and the enjoyment and use thereof. The Government indicates in its report that the current legislation does not include regulating the system of communal ownership of the indigenous peoples of the Pacific, Central and North regions of the country. The Government adds that there are miscellaneous provisions in various agrarian property laws concerning communal ownership rights for indigenous peoples. The Committee notes that the Constitution also stipulates that the State shall guarantee to the communities of the Atlantic Coast the effectiveness of their forms of communal ownership. Referring to the progress made on the implementation of the "Plan for demarcation and titling with respect to the communal ownership system", the Government indicates in its report that during the 2007–12 period 17 land titles were granted (three in the "special status zone", 11 in the North Atlantic Autonomous Region and three in the South Atlantic Autonomous Region) covering 243 indigenous and Afro-Nicaraguan communities in an area of 29,078.75 km². ***The Committee invites the Government to describe in its next report the forms of landholding practised by the indigenous peoples of the Pacific, Central and North regions of Nicaragua, and the steps that have been taken to identify the lands that they traditionally occupy and to guarantee the effective protection of their rights to these lands. The Committee also invites the Government to continue to provide information on progress made in the demarcation and titling process with respect to lands located in the autonomous regions of the Atlantic Coast.***

Procedures for resolving land claims. The Committee notes the provisions relating to the resolution of land disputes contained in the Act governing communal ownership for the indigenous peoples and ethnic communities of the autonomous regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio and Maíz rivers and its implementing regulations. ***The Committee invites the Government to provide information in its next report on procedures for resolving land claims made by indigenous peoples and to include examples of the operation thereof throughout the country.***

Article 15. Natural resources. The Committee notes that, under article 102 of the Constitution of Nicaragua, natural resources are part of the national heritage. Section 4(4) of the General Environment Act provides that the State shall recognize and support indigenous peoples and communities, from the autonomous, Pacific and Central regions alike, in their activities for conservation of the environment and sustainable use of natural resources. Section 9 of the Autonomy Charter provides that in the rational exploitation of mining, forestry, fishing and other natural resources of the autonomous regions the rights of ownership relating to communal lands shall be recognized and shall benefit their inhabitants proportionately through agreements between the regional and central governments. ***The Committee invites the Government to indicate what procedures exist to ensure that indigenous peoples can participate in the benefits of the activities referred to in Article 15 of the Convention. The Committee also requests the Government to provide information on the application in practice of the General Environment Act on the matters covered by the Convention.***

Article 16. Relocation. ***The Committee invites the Government to indicate in its next report whether cases of relocation as provided for under Article 16(2) of the Convention have occurred and to indicate the procedures followed in any such cases.***

Article 17. Transmission of land rights. Protection measures. The Committee notes that, under section 11(6) of the Autonomy Charter, the right to communal, collective and individual forms of ownership and the transmission thereof is recognized. ***The Committee invites the Government to indicate in its next report whether there are any restrictions on the right of the peoples concerned to dispose of their lands or otherwise transmit their land***

rights outside their own community. The Government is also invited to indicate what procedures have been established by the peoples concerned in the Pacific, Central and North regions for the transmission of land rights among their own members.

Article 19. National agrarian programmes. The Committee notes that the Urban and Rural Ownership Reform Act recognizes titles granted under agrarian reform to rural properties on the lands of indigenous communities. Under section 103 of the abovementioned Act, natural or legal persons that obtain titles under agrarian reform to rural properties on the lands of indigenous communities must pay a rental payment to the said communities. Under section 3 of the implementing regulations for the Act, the rental payment shall be fixed once the lands of the indigenous communities have been demarcated. ***The Committee invites the Government to send information in its next report on the agrarian programmes in progress and the manner in which lands are allocated and the necessary means granted for the development of lands that indigenous and Afro-Nicaraguan peoples already possess. Please also include practical information on the rental payment paid to indigenous peoples as provided for in the legislation relating to the reform of urban and rural ownership.***

Article 20. Recruitment and conditions of employment. Adequate labour inspection services. The Committee notes that the Act concerning the fair and decent treatment of indigenous and Afro-Nicaraguan peoples recognizes that it is the duty of the State to ensure the effectiveness of labour rights and the protection it affords to the indigenous and Afro-Nicaraguan peoples of the Caribbean Coast and Alto Wangki and the indigenous peoples of the Central, North and Pacific regions of Nicaragua, as regards access to public and private employment with full entitlement to decent work and pay and without any discriminatory treatment regarding conditions of work. ***The Committee invites the Government to indicate the impact of the abovementioned measures in its next report. The Committee also invites the Government to specify what measures have been taken to ensure adequate labour inspection in areas where workers belonging to the indigenous and Afro-Nicaraguan peoples undertake employment.***

Articles 21 and 22. Vocational training. Voluntary participation.

The Committee notes that the responsibilities of the National Technological Institute (INATEC) include the implementation of vocational training programmes aimed at persons over 14 years of age and special population groups. Furthermore, the General Education Act establishes that the Ministry of Education, Culture and Sport (MECD) and INATEC shall coordinate all matters relating to the educational sub-system of the autonomous regions with the respective regional governments. The 2011 Evaluation Document reports that an increase has been observed in the provision of technical training courses in all municipalities of the Caribbean Coast and improvements to the infrastructure have been made. ***The Committee invites the Government to provide information on the special training programmes that have been made available to the indigenous peoples concerned, the impact thereof and how the peoples concerned were consulted (Article 22(2) and (3)). The Government is also invited to indicate whether measures have been taken to enable the peoples concerned to assume responsibility for training programmes (Article 22(3)).***

Article 23. Traditional activities. The Committee notes that the 2009 Development Plan and the 2012–16 Development Strategy recognize that fishing is a fundamental activity, directly linked to the life, culture and customs of the Caribbean. ***The Committee invites the Government to supply more information on the measures taken with the participation of the peoples concerned to apply Article 23 of the Convention.***

Article 24. Social security. The Committee notes that the Ancestral Traditional Medicine Act provides that the State, in consultation with the indigenous and Afro-Nicaraguan peoples and communities, shall create special social security models within the field of ancestral traditional medicine. ***The Committee invites the Government to indicate whether existing social security schemes cover the peoples concerned, with respect both to wage earners among them and others, and, if so, to indicate what measures have been taken to extend such coverage. The Committee also invites the Government to supply information on the application in practice of the Ancestral Traditional Medicine Act.***

Article 25. Health services. The Committee notes that the progress described by the Government in its report includes the construction of two new primary-care hospitals in Mulukuku and Alamikamba and a field hospital in Waspam and the impetus given to the inter-cultural health model in Alto Wangki Bocay, where the health units of the Amak, San Andrés and Raiti communities have been repaired and renovated. The 2012–16 Development Strategy refers to the process of transfer, transmission and delegation of competencies and duties under the Regional Health Strategy Framework Agreement. The Committee notes that the Ancestral Traditional Medicine Act provides that health services for indigenous and Afro-Nicaraguan peoples who practise ancestral traditional medicine must be implemented in accordance with the cultural values of each people. The General Health Act provides that the autonomous regions may define a health-care model in accordance with their traditions, culture, habits and customs within the framework of Ministry of Health policies, plans, programmes and projects. The autonomous regional councils may establish the health administrations that they consider appropriate for the administration of health services. ***The Committee invites the Government to include up-to-date information in its next report on the implementation of inter-cultural health models and the interaction between health centres or health posts and ancestral traditional medicine. The Committee also invites the Government to include information on existing health services in the regions inhabited by the indigenous and Afro-Nicaraguan peoples. Lastly, the Committee invites the Government to provide information on progress made in the implementation of the Regional Health Strategy Framework Agreement.***

Articles 26 and 27. Education programmes and services. The Committee notes that curriculum development has been undertaken for the three levels of early education in the Miskito, Tawahka Panmáhka, Ulwa and Creole English languages, and that teachers have been trained to cater for more than 3,000 children. The Government also refers in its report to efforts to systematize the professional status and professional development for teachers without formal training at both primary and secondary level; to equip the education system with adequate financial and technical resources; and to increase the budget allocated to education. The autonomous regions have programmes and texts produced in the indigenous and Afro Nicaraguan languages but there is a lack of printing and distribution. ***The Committee invites the Government to include up-to-date information in***

its next report on the number and types of schools and the number of teachers throughout the country, and to indicate how it is ensured that education programmes and services also meet the particular needs of the indigenous peoples in the Pacific, Central and North regions. The Committee also invites the Government to indicate what measures have been taken for the training of members of the peoples concerned and for their involvement in the formulation and implementation of education programmes. The Government is also invited to include information on the measures taken to recognize the right of indigenous peoples to establish their own education institutions, services and facilities.

Articles 28 and 29. Bilingual inter-cultural education.

Educational goals. The Committee notes that the Children and Young Persons' Code provides that children and young persons belonging to indigenous and ethnic communities have the right to inter-cultural education in their mother tongue in their region and that children and young persons belonging to indigenous communities, ethnic or linguistic groups or of indigenous origin are also entitled to receive education in their own language. The Official Use of Languages Act provides that the State shall establish programmes to preserve, save and promote the Miskito, Sumo, Rama, Creole and Garífuna cultures, and also any other indigenous culture that still exists in the country, examining the future feasibility of education in their mother tongue. The Government indicates in its report that it is intended to draw up a plan for the preservation of original languages (Rama, Tuahka, Garífuna and Ulwa) and devise educational materials. ***The Committee invites the Government to include up-to-date information in its next report on the impact of the measures taken in the context of the educational sub-system of the autonomous regions. The Committee also invites the Government to include up-to-date information on the impact of the measures taken to give effect to Articles 28 and 29 of the Convention throughout the country.***

Article 30. Awareness raising. The Government indicates in its report that in early 2010 the Ministry of Labour published the Labour Code in Miskito, distributing 2,000 copies in the North Atlantic and South Atlantic autonomous regions of Nicaragua, particularly in Bilwi, Puerto Cabezas and Bluefields. ***The Committee invites the Government to supply copies of documentary material used to inform the peoples concerned of their rights and obligations.***

Article 31. Eliminating prejudices. *The Committee invites the Government to include detailed information in its next report on the educational measures taken or planned for eliminating any prejudices that may be held against indigenous and Afro-Nicaraguan peoples.*

Article 32. Cross-border cooperation. The Committee notes that the powers of the autonomous regions include that of establishing and promoting traditional exchanges with the nations and peoples of the Caribbean. Moreover, in the context of the implementation of the tourism development programme, the 2012–16 Development Strategy envisages the promotion of strategic alliances involving routes, destinations, tour operators, guides and national tourism tracks, with other countries of the Caribbean, Central and South America and the rest of the world where indigenous peoples, ethnic communities and other communities of African descent are to be found. *The Committee invites the Government to indicate what other measures have been taken to give effect to Article 32 and in particular whether any international agreement to this effect has been concluded.*

[The Government is asked to reply in detail to the present comments in 2015.]
