



Targeted Surveys on application of core labour standards Nicaragua

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Targeted Surveys on application of core labour standards, Nicaragua

This report has been developed to provide a picture of the application of core labour standards in Nicaragua. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

Progress

- Labour inspection and enforcement capacity
- Extension of full labour protections in EPZs
- Tripartite dialogue in EPZs
- Government efforts to combat human trafficking and child labour
- Legal framework on employment discrimination

Challenges

- Erosion of right to freedom of association and collective bargaining in practice
- Prosecution & incarceration of some trade unionists and protesters
- Discrimination on political opinion in public sector
- Lack of support for trafficking victims
- Legal restrictions on the right to strike
- Overall child labour rates
- Lack of data on child labour and sexual harassment

Key context

Nicaragua faces several significant socio-economic challenges that affect the application of core labour standards. These relate to education, generation of sustainable and formal employment, and discrimination against women and racial and ethnic minorities. A reported lack of financial and human resources hampers the government's ability to produce and analyse timely, accurate data on labour market issues such as the prevalence of child labour and employment discrimination. Lack of resources, an alleged lack of political will and a perception that government corruption is widespread are also concerns with respect to the enforcement of labour laws, protection of workers, and effectiveness of labour inspection (Transparency International, 2018).

Despite the many challenges faced by Nicaragua, international observers and national stakeholders report several legislative developments in the past decade that have improved the country's legal framework to address labour-related challenges. Most significant among these legal reforms were the creation of a cadre of labour law judges and creation of the Labour Appeals Tribunal under the Labour and Social Security Procedural Code of 2012, and the passage of the General Law on Workplace Inspections in 2008. In 2016, a new regulation on export processing zones explicitly extended all labour law protections to workers in EPZs. Nicaragua also implemented what is considered to be a progressive anti-trafficking law in 2015. Nicaragua has a functional tripartite legal structure for social dialogue, but reports have emerged in recent years that tripartism has only applied to supporters of the ruling party.

Since April 2018, Nicaragua faced a significant political and social unrest. What initially started as a wave of protests against social security reforms has transformed into a broader movement against the government, led by President Daniel Ortega, which has

been in power since 2007. As of August 2018, between 317 and 448 people were reported to have died, with the government acknowledging 198, and thousands to have been injured as a result of violent clashes between government forces and the protesters (AI, 2018; FT, 2018; AP, 2018; OAS, 2018; Herald, 2018). According to Nicaraguan think tank FUNIDES, the economy could lose between USD 638 million (approx. EUR 544 million) and USD 1.4 billion (approx. EUR 1.2 billion) in 2018 as a result of the conflict, with significant implications for employment and poverty levels. A national dialogue process (supported by international actors such as the EU) was ongoing at the time of writing this report.

Freedom of association and collective bargaining

For the most part, observers and social partners report that the rights to freedom of association, collective industrial action, and collective bargaining are adequately protected by Nicaraguan law. The ILO, national human rights organisations, and union representatives report, however, that enjoyment of the right to freedom of association is generally deteriorating in Nicaragua, with accounts of obstacles to union registration and repercussions against protesting workers. They allege that this is especially the case for trade unions and workers who disagree with the current government (USDoS, 2017; ITUC, 2016; Freedom House, 2018; Mendoza, 2015). Legal restrictions on the right to strike, which have repeatedly been noted as an issue by the ILO CEACR over the years, remain in force. Worker groups and international labour rights organisations have raised concerns regarding violations of workers' right to freedom of association in Nicaragua's export processing zones (EPZs).

Nevertheless, the application of the right to collective bargaining has improved in at least two respects, with the adoption of regulations in 2016 that extend full protection of labour laws to EPZs and the tripartite efforts resulting in the inclusion of gender policies in 57 collective bargaining agreements.

Forced labour

Nicaragua's legal framework on the prohibition and elimination of forced labour is considered largely in line with international standards, making great strides to combat human trafficking with the adoption of a comprehensive anti-human trafficking law in 2015. However, the ILO CEACR has noted that it had not received any information about specific measures taken by the government to implement the new law. This makes it difficult to determine whether the law has had any impact on reducing trafficking in Nicaragua. Funding and support for victim protection programs has also reportedly deteriorated, focusing mostly on female victims of sex trafficking. The ILO has noted possible indicators of forced labour in Nicaraguan agriculture, particularly the sugarcane industry, although it is generally unclear whether the poor conditions prevalent in the sector would constitute forced labour under the conventions.

The application of C29 and C105 in Nicaragua appears to be focused on human trafficking – particularly sex trafficking – rather than forced labour or trafficking for the purposes of labour exploitation. With respect to forced labour, reports and attention tend to focus on the exploitation of Nicaraguan nationals in other Central American countries, Mexico, and the United States.

Child labour

Nicaragua's legal framework on child labour is generally considered in line with ILO conventions, with one notable exception regarding the age of compulsory schooling. Notwithstanding the adoption of government programs and policies to eliminate child labour, trade unions, human rights organisations, and other observers generally note that there is no discernible change in the prevalence of child labour in Nicaragua, including the worst forms of child labour. Child labour is reported to be present in quarries, the banana and sugarcane sectors, domestic work and among homeless street children.

In addition to lack of resources for implementing programs and enforcing labour laws, there is a reported lack of resources for gathering and publishing timely data on the extent of child labour and information about the results of enforcement measures. Factors such as mistrust of authorities, cultural acceptance of child labour, deficiencies in the education system, and gaps in birth registration procedures, particularly in rural areas, are also considered factors in the persistence of the practice in Nicaragua.

Discrimination

Nicaragua has been making progress in its efforts to improve the legal framework to eliminate discrimination based on sex, race, religion, and other grounds. The ILO observes, however, that shortcomings remain in the current legal framework, including inadequate legal provisions covering equal pay and sexual harassment.

Discrimination in employment on the basis of sex, sexual orientation, gender identity, race, ethnicity, skin colour, disability, age, or HIV status remain a concern. The ILO has noted, however, an increase in discrimination based on political opinion in the public sector.

Status of ratification and reporting

Nicaragua has ratified all eight ILO fundamental (core) conventions. Of the four ILO governance (priority) conventions, Nicaragua has ratified C122 (Employment Policy) and 144 (Tripartite Consultation). Nicaragua has not ratified C81 (Labour Inspection) and C129 (Labour Inspection in Agriculture). Nicaragua's reporting to the ILO CEACR has been inconsistent. Nicaragua submitted reports on seven of the eight core conventions in 2017, but the country has not submitted a report on C105 (Abolition of Forced Labour) since before 2009. ILO CEACR has again requested an out-of-cycle report on C105 for 2018. While the government expressed its commitment towards complying with its reporting obligations during the 2018 International Labour Conference, it did not acknowledge any delays regarding C105.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2017): Noted with regret that the right to strike is still limited by the compulsory arbitration provision in Articles 389 and 390 of Nicaragua's Labour Code. This is a longstanding issue. Welcomed government initiatives to promote the right to organise, including the promotion of gender equality policies by trade unions.

	C98	(2017): Noted with interest that the government promoted a gender dimension in collective bargaining, and that fifty-seven collective agreements with gender equality clauses were recently signed. Also noted that the Tripartite National Committee on Export Processing Zones (EPZs) negotiated changes to the minimum wage in EPZs.
Forced Labour	C29	(2017): Requested information on the implementation of measures to prevent, investigate, and punish trafficking in persons as well as to protect victims and witnesses. Noted that Nicaragua should continue to build the capacity of law enforcement agencies – including police, the labour inspectorate, public prosecutors, and magistrates.
	C105	<i>No recent comments.</i>
Child labour	C138	(2017): Noted that the age for the completion of compulsory schooling in Nicaragua is still 12 under the 2006 Education Act. (2017): Noted that a special child labour inspection program in coffee harvesting and limestone quarries was established. The ILO CEACR requested information on the results of the program.
	C182	(2017): Noted with interest the adoption of the 2015 Act against Trafficking in Persons. More information on implementation requested. (2017): Called on the govt to continue efforts to protect street children and integrate them into school and training courses.
Discrimination	C100	(2016): Noted that the narrow formulation of the principle of equal pay for women and men is still inconsistent with the Convention.
	C111	(2016): Noted a failure of labour law to address both <i>quid pro quo</i> and hostile working environment sexual harassment. Implementation of national equality policy remains a challenge. Labour inspection guidelines are needed in relation to hiring discrimination based on sexual orientation and other protected grounds.

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