

SITUATION OF NICARAGUAN IMMIGRANTS IN COSTA RICA – CERD 2002

Comments and reactions to the “Report with respect to the fulfilment of the obligations of the International Convention for the elimination of all forms of racial discrimination” corresponding to period XVI

The Central American Human Rights Commission (CODEHUCA) is pleased by the fact that the Costa Rican government has presented a report about the progress with respect to their obligations regarding the International Convention for the elimination of all forms of racial discrimination (period 1999-2000).

Costa Rica has traditionally been a country that is receiving immigrants. Thousands of persons seek asylum or refuge in this country as a result of internal problems in their own countries. In the seventies the immigrants mainly came from Argentina and Chile. From the beginning of the eighties, the immigrants came mainly from other Central American countries as a result of the armed conflicts in the region.

Since the middle of the nineties there has been a constant flow of Nicaraguan immigrants into Costa Rica, which is intensified by the economic crisis and the natural disasters in Nicaragua.

In order to help the migrant population to deal with the problems they have to face in Costa Rica, a number of civil organisations set up a National Network of Civil Organisations for Immigrants. This network is composed of:

- La Asociación de Trabajadoras Domésticas (ASTRADOMES);
- El Productor R.L;
- La Comisión para la Defensa de los Derechos Humanos en Centroamérica (CODEHUCA);
- La Comisión Costarricense de Derechos Humanos (CODEHU);
- Pastoral Social Caritas de Costa Rica;
- Defensa de los Niños Internacional (DNI) – Capítulo Costa Rica;
- El Centro Internacional para los Derechos Humanos de los Migrantes (CIDEHUM);
- Consultores y Asesores Internacionales (CAI);
- Servicio Internacional de Paz y Justicia (SEPAJ);
- La Liga Internacional de Mujeres pro Paz y Libertad (LIMPAL); and
- La Asociación de Miskitos Nicaraguenses en Costa Rica (AMIRCOR).

The Costa Rican government mentions in their report only a few organisations, amongst others CODEHU, CODEHUCA, DNI, LIMPAL and ASTRADOMES. According to ASTRADOMES staff, paragraph 406 of the Costa Rican government report is not correct; affiliates of this organisation did not realise concrete projects with the “Secretaria de la Mujer de la Central Sandinista de Trabajadores”.

The report mentions as well that CODEHUCA has acknowledged that according to them there does not exist, as per this moment, any systematic practice of violating the human rights of the migrant population in Costa Rica. However, CODEHUCA has repeatedly indicated that certain officials or authorities with decisive power use this power to make some arbitrary decisions. Whenever CODEHUCA noted any such arbitrary decisions, CODEHUCA reported them to the Costa Rica government.

Because of the above, CODEHUCA has performed certain investigations, which in some way proved evidence for the constant abuses of the migrant population.

Furthermore, the report omits an evaluation of the role of the National Forum about the Migrant Population, established in 1995, whose focal point has been designated to the Ombudsman Human Rights Office. This forum serves to reflect and exchange information; it has the advantage and disadvantage to have government representatives that in some way are dealing with the immigration phenomenon, but do not have any decisive power. Because of this, the results of the activities are general proposals in stead of concrete actions.

The above is due to the fact that the Costa Rican government lacks an integral immigration policy. In many cases, CODEHUCA and other civil society organisations have repeated the importance of a clear integral immigration policy. This policy should recognise the labour needs of Costa Rica and the level of development the country requires to elaborate an integral immigration policy that guarantees the human rights of immigrants.

The lack of this policy results in proposals, like the proposal to change the current Immigration and Naturalisation Law. This proposal is omitted in the report, which has been evaluated in 2000. This proposal was not extensively consulted with the civil society sectors and we know that not even between the government institutions there is consensus about the proposal. The proposal is momentarily under discussion by the Security Commission of the Legislative Assembly.

CODEHUCA considers it important that civil society organisations are consulted before this Law is approved and we also think that this Law should reflect the integral immigration policy of the country, which still has to be elaborated.

The Costa Rican government has responded in different ways to the reported deficiencies; sometimes in a positive way, sometimes in a negative way, but always in a none-structural way. Positive are the distinctive immigration amnesties to regulate the migration population. Negative are the operations performed in the central zone of the country and in the zone close to the Nicaraguan border with the objective to intercept and detain undocumented immigrants. In these operations some officials have committed human rights violations and abuses.

To deal with the massive amount of immigrants the Costa Rican government emitted an immigration amnesty with the objective to have a quantitative register, which granted more judicial security for the immigrant workers. However, the National Network of Civil Organisations for Immigrants, of which CODEHUCA is a member, considers this amnesty as a double-edged sword.

In its report the Costa Rican government evaluates extensively the amnesty (paragraphs 78 - 91). It grants more judicial security to the immigrants, because they are documented and thus with less fear to access judicial or administrative institutions to claim their rights. However, according to the migrant population it has created discrimination against them in certain sectors, especially in agricultural zones. Farmers prefer to hire undocumented immigrants, since they do not pay their labour rights, which has created a competition between the immigrants.

CODEHUCA considers the above to be the result of the low effectiveness of the government and other state institutions, like the Department of Labour, in their investigations of the farmers conduct, who continue to prefer undocumented immigrant workers in stead of those who received immigration amnesty.

In June 2000 the General Immigration and Naturalisation Department had processed approximately 155,000 requests of which more than 97% were Nicaraguan immigrants.

On the other hand, the large number of immigrants urged the authorities to implement emergency means to control the undocumented immigration, like the incorporation of a hostel for undocumented immigrants in San José in November 1999 and the implementation of temporary retention centres in the northern part of the country. These are meant to facilitate the process of rejection as established in Costa Rican legislation. We want to emphasise that the government does not mention these means at all and does not evaluate them either.

The detention centre is located in the premises of the “Quinta Comisaría” in San José. It has a capacity of 80 persons, according to the Chief of the Immigration Police, Allen Calderón. Occasionally, the detained persons have to sleep on the floor.

The centre does not have adequate hygienic conditions; the showers do not have doors and there are only two lavatories. The recreation area is very small, there is no place to eat and there is no direct light.

The interior of the centre smells awfully. Families or friends of the detained persons should provide the necessary personal hygienic products. There is no public phone in the centre and the immigrants are not allowed to use the phone in the office to call their families or friends.

Staff of the Ministry of Health has visited the detention centre few times, because it was informed of the bad hygienic conditions of the centre. The Ministry of Health was supposed to write a report of recommendations, however, the guards are still waiting for this report, which has not arrived yet.

The Ombudsman Human Rights Office noted that occasionally underaged immigrants are detained in the “Quinta Comisaría”, which is a severe violation of the Convention of Child Rights and Costa Rican law.

The report confirms in paragraph 359 the existence of a Migrant Labour Agreement since 1993. However, this agreement has not been applied since the amnesty was approved. The report should mention that.

The report omits the way in which the Costa Rican government intercepts, rejects and detains undocumented immigrants. This aspect has been denounced constantly and should be included in the evaluation. The authorities still continue their operations in the northern part of the country, known as Operations Arenal I and Arenal II. The initial objective of these operations, according to public security authorities, was to improve the security in the northern part of the country and to avoid smuggling of animals, weapons and drugs. However, in reality these operations are converted into operations to intercept and reject undocumented immigrants.

As a result of various tours Mrs Julieta Gómez accompanied by the Consul of Nicaragua in Los Chiles has confirmed a series of irregularities of which the most important are:

1. Many immigrant residents in the northern zone are not allowed to call their families or to go to their home to retrieve their identification or residence papers.
2. It was confirmed that two underaged Costa Ricans with Nicaraguan parents, who lived in the northern part of Costa Rica, were rejected without having informed their parents. In this case the Consul of Nicaragua had to intervene to repatriate them.
3. The operations are also performed in parts of the metropolitan zone, very close to San José. The operations, however, are supposed to only take place in the northern region.
4. Some persons did not have the opportunity to retrieve their personal belongings or their salaries, which resulted in the loss of them.
5. The Nicaraguan immigrants are rejected by boat crossing the river from Los Chiles to San Carlos in Nicaragua at the border of Lake Nicaragua. It was confirmed that these boats do not have life jackets.
6. Many officials that carry out the operations are from San José and they have little sensibility towards the immigrants. The officials from the northern part have more sensibility and when they notice arbitrary cases or are already aware of the specific story of the respective detained persons, they are more likely to let them go.

CODEHUCA has drawn the attention several times to the arbitrary decisions made by some officials, whose actions are protected by impunity.

Because of the above CODEHUCA has the following recommendations to the Costa Rican government:

With respect to structural problems:

1. It is essential that the Costa Rican government will elaborate an integral immigration policy that recognises the needs of Costa Rica and that regulates immigration in accordance with these needs.
2. It is essential that civil society organisations are extensively consulted before the Immigration and Naturalisation Law is approved and that their observations are taken into account to guarantee that the human rights of the immigrants are fully respected.

With respect to the detention centre:

1. The General Immigration Department should incorporate a hostel in the northern part of the country with the same conditions that should apply to the one in San José. The immigrants should also be informed about their rights and legal possibilities.
2. Access to justice should be guaranteed to the undocumented immigrants. The best way to do this is via a defending lawyer.

With respect to the operations in the northern part of the country:

1. All human rights should be respected. An immigrant that can not show his documents should be allowed to retrieve his documents and should not immediately be considered as an undocumented immigrant.
2. The authorities should inform the Consul of Nicaragua in Los Chiles about the operations, which enables this diplomatic body to offer the necessary help to its compatriots.
3. Police officials that assist in these operations should be trained in such a way that they will respect the human rights of the migrant population. The Costa Rican government should build a hostel for undocumented immigrants with all the minimum sanitary requirements to guarantee the minimum rights of the immigrants.
4. For the moment, the Costa Rican government should invest in improving the conditions of the current centre immediately to improve the situation of the detained immigrants.
5. Every immigrant should be informed about his rights and about the legal procedures to follow by means of pamphlets or any other means of information.
6. A public phone should be installed to allow the immigrants to communicate with their family members, friends or lawyers and to facilitate their right to communicate and their access to justice.
7. There are witnesses that confirm that they have seen that police officials performing the operations tore up travel documents, copies of identification or residence documents and even expired documents. Police officials should be instructed not to do this.
3. .
4. The Costa Rican government should guarantee that the rejection is carried out in accordance with international standards and agreements, which are signed and ratified by the Costa Rican government.
5. The Costa Rican should guarantee the physical security of the persons during their rejection process by ensuring that the boat crossing the river Los Chiles to return the immigrants to Nicaragua has life jackets for every person on that boat.

Last but not least, we want to mention the situation of hundreds of Colombians asking for refuge in Costa Rica. Their number is increasing since 2000, but they are not mentioned in the report. The delay in processing these refuge requests, the problems to find work and the large number of refuge requests have surpassed the capacity of the Costa Rican government.

The response given by the High Commissioner of the United Nations in Costa Rica is excellent. However, the Costa Rican government should speed up the process of dealing with these refuge requests to facilitate the integration of these people in the Costa Rican society.