



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/NIC/CO/4
28 November 2008

ENGLISH
Original: SPANISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Forty-first session
Geneva, 3-21 November 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT**

**Concluding observations of the Committee on Economic,
Social and Cultural Rights**

NICARAGUA

1. The Committee on Economic, Social and Cultural Rights considered the second, third and fourth periodic reports of Nicaragua on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/NIC/4) at its 29th, 30th and 31st meetings, held on 4 and 5 November 2008 (E/C.12/2008/SR.29-31), and adopted the following concluding observations at its 54th meeting held on 20 November 2008.

A. Introduction

2. The Committee welcomes the submission of the periodic report by Nicaragua and the efforts made by the State party to comply with the guidelines for the preparation of reports. The Committee notes, however, that the report was submitted more than 10 years late. The State party is nevertheless to be commended on its submission of a common core document in conformity with the harmonized guidelines on reporting under the international human rights treaties (HRI/CORE/NIC/2008).

3. The Committee expresses its appreciation of the dialogue held with the delegation. It regrets, however, the late submission of the written replies to the list of issues, which meant that they could not be translated into the working languages of the Committee. The Committee also regrets that some of the questions put to the delegation were not answered.

B. Positive aspects

4. The Committee notes with satisfaction the legislative and other measures adopted by the State party to promote the enjoyment of economic, social and cultural rights, in particular:

(a) The approval on 14 February 2008 of Act No. 648 on equal rights and opportunities, which lays the foundations for asserting the rights of women in many sectors, and for promoting equality and equity in the enjoyment of economic, social and cultural rights, *inter alia*;

(b) The approval in October 2003 of Act No. 475 on citizen participation, whose objective is to guarantee citizen participation on an equal basis in public affairs and State administration;

(c) The approval in December 1996 of Act No. 238 on the promotion, protection and defence of human rights in the context of HIV/AIDS, which establishes the right to work of persons living with HIV/AIDS and the protection of that right;

(d) The adoption in 1995 of Act No. 202 on prevention, rehabilitation and equal-opportunity measures for persons with disabilities;

(e) The adoption on 28 May 2008 of the Act amending and supplementing Act No. 175 establishing a reserve fund for the payment of pensions for services rendered to the State;

(f) The adoption on 2 June 2008 of the Act amending and supplementing title VII, chapter I, of the Labour Code, whose purpose is to guarantee the rights of persons engaged for domestic service, with emphasis on the rights of adolescent workers and the minimum age for admission to this type of employment for minors;

(g) The approval on 13 December 1995 of Act No. 212, on the Office of the Human Rights Ombudsman and, in 1999, the appointment of the first Human Rights Ombudsman in Nicaragua. In 2006, the Office was granted status A accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights;

(h) The establishment, under Act No. 212, of the Office of the Special Procurator for Women and the approval of Act No. 295 on the promotion, protection and maintenance of breastfeeding and on the regulation of the sale of breastmilk substitutes; and

(i) The approval on 3 June 2008 of Act No. 655 on the protection of refugees.

5. The Committee takes note of the measures adopted to combat poverty as one of the basic pillars of national policy, as reflected in the Zero Hunger, Zero Usury, Food Sovereignty and Security for Life programmes; the Yes I Can - Free from Illiteracy programme; and the implementation of the Human Development Plan 2009-2012.

6. The Committee welcomes the establishment of an Office of Secretary for Indigenous and Afro-descendant Affairs, who has the rank of Deputy Minister and whose main function is to coordinate all matters relating to indigenous peoples.

7. The Committee welcomes the ratification by the State party in 2005 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted by General Assembly resolution 45/158 of 18 December 1990).

8. The Committee welcomes the ratification by the State party in December 2007 of the Convention on the Rights of Persons with Disabilities.

C. Factors and difficulties impeding the implementation of the Covenant

9. The Committee takes note of the socio-economic problems that the State party has been experiencing as a result of natural disasters, which have had an adverse impact on the effective implementation of the provisions of the Covenant.

D. Principal subjects of concern and recommendations

10. The Committee notes with concern that 82 per cent of the population, i.e., more than 4.2 million people, are living below the poverty line and more than 2.1 million Nicaraguans are living in extreme poverty (art. 1, para. 2).

The Committee urges the State party to review its overall strategy for the eradication of poverty and to step up its efforts to combat poverty.

11. The Committee expresses its concern at the existence of racial prejudice against indigenous people, especially in the Atlantic Autonomous Regions and in particular against indigenous and Afro-descendant women. The Committee also regrets the many problems affecting indigenous peoples, including serious shortcomings in the health and education services; and the lack of an institutional presence in their territories; and the absence of a consultation process to seek communities' free, prior and informed consent to the exploitation of natural resources in their territories. In this regard, the Committee notes that, more than six years after the Inter-American Court's judgement in the *Awes Tingni* case, that community still does not have title to its property. Furthermore, the territory of Awes Tingni is still exposed to unlawful acts by settlers and loggers (art. 2, para. 2).

The Committee recommends that the State party should:

(a) Effectively guarantee indigenous people's right to education and ensure that it is adapted to their specific needs;

(b) Guarantee access to adequate health services for all indigenous people, especially those living in the Atlantic Autonomous Regions;

(c) Conduct a process of consultations with indigenous peoples before granting concessions for the economic exploitation of the lands where they live, and guarantee that in no case does such exploitation violate the rights recognized in the Covenant;

(d) Continue and finalize the process of delimiting, demarcating and granting title to lands of the Awas Tingni community, prevent and halt unlawful activities by third parties in that territory, and investigate and punish those responsible for such acts.

12. The Committee notes with concern the continuing wage difference between men and women in the State party and the fact that the income of female heads of household is 20 per cent lower than that of male heads of household (arts. 3 and 7 (a)).

The Committee encourages the State party to adopt the necessary measures to ensure equal remuneration for work of equal value, for both men and women. In addition, the State party is requested to provide in its next periodic report updated information on the results of the measures adopted.

13. The Committee expresses its concern at the continuing discrimination against women in political, social and economic spheres in Nicaraguan society, as reflected particularly in the limited involvement of women in the political and economic decision-making processes (art. 3).

The State party should comply with the objectives set forth in the Act on equal opportunities and take effective measures to incorporate the gender perspective in legislation and in administrative policies and programmes, with a view to ensuring equality between men and women, particularly in political and economic decision-making processes.

14. The Committee notes with concern the unemployment in the formal labour market and an increase in the number of people, mostly women, who work in the informal economy without basic labour standards (art. 6).

The Committee urges the State party to step up its efforts to increase opportunities in the formal labour market and to take the necessary measures to ensure that workers in the informal economy enjoy basic labour standards. The Committee also recommends that the State party should increase funding for, and ensure, regularization of the unstructured labour market. The Committee further recommends that the State party should amend its labour legislation in order to combat contractual insecurity, including by reducing the use of temporary contracts and the subcontracting of workers formally employed full-time and whose labour contract has ended.

15. The Committee notes with concern the continuing violations of labour rights in the *maquila* industry, where barely 6 per cent of women workers belong to a trade union. It also notes with great concern the dismissals of workers, including pregnant women, following the closure of *maquiladora* plants in 2007 and the fact that many of them have still not received their wage settlements (arts. 7 and 8).

The Committee encourages the State party to redouble its efforts to guarantee the rights of workers in the *maquila* industry and to take appropriate steps (a) to carry out labour inspections in places where labour rights are not being observed and (b) to effectively prevent the exploitation and abuse of workers, and to punish those responsible. The State party should also guarantee full exercise of the right to freedom of association.

16. The Committee is concerned that the minimum wage is still insufficient to allow workers and their families to enjoy an adequate standard of living (arts. 7 (a) and 11).

The Committee recommends that the State party should ensure that labour laws are effectively applied and that the minimum wage covers 100 per cent of the basic food basket.

17. The Committee notes with concern that, despite being prohibited by law, sexual harassment in the workplace is still widespread (art. 7 (a) (ii)).

The Committee urges the State party to take all necessary measures to implement the Act prohibiting sexual harassment in the workplace. The Committee requests the State party to provide information in its next periodic report on the number and type of complaints presented and the measures taken against those responsible.

18. The Committee notes with concern that, despite the increase in social security coverage over the past three years, some 80 per cent of the economically active population have no access to any form of social security (art. 9).

The Committee urges the State party to intensify its efforts to expand social security coverage for all workers. The Committee encourages the State party to ensure the application of minimum compulsory contributions to obtain social security benefits and to include unemployment insurance in the new social security scheme. It recommends that the State party should ratify the International Labour Organization (ILO) Social Security (Minimum Standards) Convention, 1952 (No. 102).

19. The Committee notes with concern that the State party does not have a social security system that establishes accessible and appropriate mechanisms to guarantee access by all workers, including those in the informal sector, to the benefits a social security system should provide, especially with regard to retirement and maternity. The Committee further notes with concern that social coverage is 26.98 per cent in urban areas and as low as 7.4 per cent in rural areas (art. 9).

The Committee recommends that the State party should undertake an evaluation of its social security system with a view to establishing the necessary mechanisms to guarantee broad social coverage that ensures appropriate benefits, especially retirement and maternity benefits, to all workers, including those in the informal sector.

20. The Committee notes with concern the increase in the number of murders of women (femicides) in recent years (art. 10).

The Committee urges the State party to take immediate and effective measures to put an end to murders of women and in particular to investigate and punish the perpetrators.

21. The Committee notes with concern the problem of gender violence, and particularly domestic violence, although it takes note of article 195 of the new Criminal Code, which defines domestic violence as a criminal offence (art. 10).

The Committee urges the State party to take immediate steps:

- (a) To allow victims of gender violence effective access to justice;**
- (b) To provide police protection for victims and to create hostels providing decent accommodation;**
- (c) To maintain and promote forums for direct participation by women in decision-making at the local and national levels, particularly in respect of violence against women, and to ensure their participation and representation by civil society; and**
- (d) To take preventive and awareness-raising measures on gender violence, such as training on women's rights and gender violence for police officers, especially those in police units for women.**

In this regard, the Committee would be grateful to receive, in the next periodic report, detailed information on the progress made in combating gender violence.

22. The Committee notes with concern that only 13.85 per cent of the population are entitled to the universal old-age pension (art. 10).

The Committee encourages the State party to adopt a welfare programme enabling elderly persons to live a decent life.

23. With regard to food security, the Committee is concerned that people in the Pacific, central and autonomous regions face serious food shortages and are in a highly vulnerable situation. Furthermore, the Committee notes with concern the lack of effective implementation and sustainability of the Zero Hunger programme (art. 11).

The Committee recommends that the State party should take the necessary measures to guarantee the effective implementation and sustainability of the Zero Hunger programme, particularly in the Pacific, central and autonomous regions, and comply with the provisions on non-discrimination in the Covenant and the Constitution. Furthermore, it should ensure that food vouchers are genuinely allocated to the poorest populations who have no resources of their own. The Committee also urges the State party to adopt the food sovereignty and security bill.

24. The Committee is concerned at the major housing shortage and the fact that more than two thirds of Nicaraguans live in overcrowded housing, despite the existence of specific programmes such as the National Housing Plan 2005-2025 (art. 11).

The Committee urges the State party to take all appropriate measures to solve the problem of homelessness, provide access to credit and housing subsidies for low-income families and marginalized and disadvantaged groups, and improve the supply of water and sanitation services to existing dwellings.

25. The Committee notes with concern that 45 per cent of Managua's population live in unplanned settlements, with no legal security of tenure and thus at permanent risk of forced eviction. The Committee is also concerned at the major housing shortage and the fact that more than two thirds of Nicaraguans live in overcrowded housing, despite the existence of specific programmes such as the National Housing Plan 2005-2025 (art. 11).

The Committee draws the State party's attention to its general comments Nos. 4 (1991), on the right to adequate housing (Covenant, art. 11, para. 1), and 7, on the right to adequate housing: forced evictions (Covenant, art. 11, para. 1), and asks the State party to allocate sufficient resources to the implementation of programmes aimed at granting security of tenure and accessible dwellings, including access to credit and housing subsidies for low-income families and marginalized and disadvantaged groups. The Committee also asks the State party to improve the supply of water and sanitation services to existing dwellings.

26. The Committee notes with concern the general prohibition on abortion in articles 143 to 145 of the Criminal Code, including in cases of rape, incest and presumed life-threatening pregnancy. Furthermore, it is concerned that the Act that authorized therapeutic abortion in such circumstances was repealed by parliament in 2006 and that, since the adoption of this prohibition, various cases have been documented in which the death of a pregnant woman was associated with lack of appropriate medical intervention intended to save her life, which would have been provided under the legislation in force before the law was changed (art. 10, para. 2).

The Committee urges the State party to review its legislation on abortion and to study the possibility of providing for exceptions to the general prohibition on abortion in cases of therapeutic abortion or pregnancies resulting from rape or incest. Furthermore, the State party should adopt measures to assist women in avoiding unwanted pregnancies, so that they do not have to resort to potentially life-threatening illegal or unsafe abortions, or have abortions abroad. Furthermore, the State should avoid penalizing medical professionals in the exercise of their professional responsibilities.

27. The Committee notes with concern the high levels of maternal and infant mortality and the fact that clandestine abortions cause the death of large numbers of women (arts. 10, para. 2 and 12, para. 2 (a)).

The Committee strongly encourages the State party to continue its efforts to reduce maternal and infant mortality and to take the necessary legislative measures to solve the problem of female mortality caused by clandestine abortions, and recommends that the subjects of sex education and family planning methods be discussed openly in the school curriculum, in order to help prevent early pregnancies and the transmission of sexual diseases. It also recommends that the State party should adopt an Act on sexual and reproductive health compatible with the provisions of the Covenant.

28. Although it takes note of the fact that trafficking in persons is defined as a criminal offence in the new Criminal Code, the Committee regrets the existence in the State party of trafficking in women and children for the purpose of sexual exploitation (art. 10, para. 3).

The State party should strengthen measures to combat trafficking in women and children, in particular by:

- (a) Ensuring that penalties commensurate with the seriousness of the case are imposed on persons exploiting women and children for such purposes;**
- (b) Continuing its efforts to raise public awareness of the fact that the sexual exploitation of women and children is a criminal offence;**
- (c) Providing training courses for the competent authorities;**
- (d) Protecting and assisting victims of sexual exploitation.**

29. The Committee is concerned that, despite the State party's efforts in the area of health, such as free access to public health services for vulnerable and marginalized groups, this is still very limited (art. 12, para. 2 (d)).

The Committee recommends that the State party should step up its efforts in the area of health and requests it to adopt a global health policy, including prevention programmes that would allow guaranteed access to universal free primary health care for the poorest populations. The Committee requests the State party to present detailed up-to-date information in its next report, including disaggregated statistical data and indicators to allow progress in this area to be assessed.

30. The Committee is concerned at the high illiteracy rate among indigenous peoples and communities of African descent in particular, and especially in the North Atlantic Autonomous Region, despite the launch of the Plan for an Autonomous Regional Education System for 2003-2013 in the framework of the new General Education Act (art. 13).

The Committee encourages the State party to take short- and medium-term action to implement measures to reduce illiteracy, especially in the North Atlantic Autonomous Region.

31. The Committee encourages the State party to perform a comprehensive evaluation of the impact of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), ratified in October 2005, on the realization of economic, social and cultural rights, especially for those persons and groups who are marginalized or disadvantaged. The Committee also encourages the State party to provide information in its next periodic report on the measures taken to mitigate the negative effects, if any, of the application of CAFTA-DR at the local level, together with disaggregated statistical data, in accordance with the prohibition of discrimination.
32. The Committee recommends that the State party should apply its National Plan and programmes, including the National Development Plan for 2008-2012, and incorporate an appropriate economic, social and cultural rights approach based on gender equality, non-discrimination and effective participation by affected groups. In this regard, it recommends that specific information should be provided in the next periodic report so that the Committee can evaluate the State party's compliance with these obligations.
33. The Committee encourages the State party to pursue its efforts, in coordination with the United Nations system, to design and execute programmes to help reduce poverty and inequality, especially in areas that require priority attention, such as the Caribbean coast.
34. The Committee recommends that the State party should adopt rights-based indicators and benchmarks to monitor the progressive realization of the rights recognized in the Covenant and to that end establish a disaggregated database - notably by region and vulnerable group - that is updated regularly.
35. The Committee recommends that the State party should speed up the process of acceding to the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). It also encourages the State party to continue with its efforts to promote and implement the principles of the United Nations Declaration on the Rights of Indigenous Peoples.
36. The Committee recommends that the State party should ratify the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and the ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118).
37. The Committee requests the State party to submit its fifth periodic report by 30 June 2013.
