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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Forty-first session

SUMMARY RECORD OF THE 30th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 4 November 2008, at 3 p.m.

Chairperson: Mr. Texier

CONTENTS

CONSIDERATION OF REPORTS

- (a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE
WITH ARTICLES 16 AND 17 OF THE COVENANT (*continued*)

Twelfth to fourteenth periodic reports of Nicaragua (*continued*)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (*continued*)

Twelfth to fourteenth periodic reports of Nicaragua ((E/C.12/NIC/4); Core document (HRI/CORE/NIC/2008); Concluding observations of the Committee on the first periodic report of the State party (E/C.12/1993/14); List of issues to be taken up (E/C.12/NIC/Q/4); Written responses by the Nicaraguan Government to the list of issues to be taken up (E/C.12/NIC/Q/4/Add.1) (*continued*)

1. *At the invitation of the Chairperson, the members of the Nicaraguan delegation resumed their seats at the committee table.*

Articles 1 to 5 of the Covenant (*continued*)

2. Ms. CRUZ CHIRINO (Nicaragua) said that in the 2008-2012 National Plan for Human Development, the Government had officially recognized 20 new territories in which indigenous and Afro-descendant people could exercise their right to legal security. In 2007 the National Reconciliation and Unity Government had overhauled the national human development plan to take better account of international economic trends and to emphasize specific objectives: combating poverty, promoting participate through democracy, guaranteeing free access to education and health care, expanding social coverage and reversing utility privatization in certain sectors. The national plan included a literacy development programme and a programme to combat hunger, entitled “Zero Hunger”. It also paid greater attention to population groups that remained forgotten and marginalized by the public authorities. In 2010, the Government would hold consultations to assess progress made in implementing the national plan, and, if necessary, adjust its course.

3. Mr. CRUZ TORUNO (Nicaragua) said that the free-trade agreement that Central American countries, including Nicaragua, had signed with the United States and the Dominican Republic, aimed to strengthen economic and social development in the region. During the negotiations, Nicaragua had made sure that the agreement helped to better protect worker’s fundamental rights, by creating new jobs and improving living standards among the region’s inhabitants. As the agreement had only entered into force in April 2006, it was hard to evaluate its effects accurately and fully. It was nonetheless worth noting that since Nicaragua’s entry into the free trade zone, national exports had increased by 18%, a number of small and medium-sized enterprises had been created, and investment had been promoted. Furthermore, Nicaragua had negotiated several flexibility clauses, enabling its public-health sector to produce generic medicines and promote universal access to health care.

4. The CHAIRPERSON invited the Nicaraguan delegation to reply specifically to the questions raised by Committee members at the previous meeting. Speaking as a member of the Committee himself, he asked why Nicaragua had not ratified International Labour Organization (ILO) Convention 169 on indigenous and tribal peoples, and the additional protocol to the American Convention on Human Rights dealing with economic, social and cultural rights (the San Juan Protocol).

5. Mr. SADI said he understood that discrimination was an offence under the new Penal Code and he asked whether anyone had yet been convicted for discrimination.

6. Ms. BRAS GOMES wanted to know the effects of the free trade agreement on the exercise of economic, social and cultural rights for Nicaraguan people. She asked what the specific objectives were in the global strategy for gender equality, and referred to information that women's associations were finding it hard to carry out their activities in the country.

7. Ms. MEDAL GARRIDO (Nicaragua) said that the new Penal Code had entered into force only two months earlier, and that there had not yet been any conviction for discrimination. The Nicaraguan delegation would subsequently provide written information on the specific objectives of the global strategy on gender equality, and processes for ratifying ILO Convention 169 and the San Juan Protocol.

Articles 6 to 9 of the Covenant

8. Mr. ZHAN DAODE regretted that the State party's report contained few statistics on poverty, which was Nicaragua's greatest problem. He therefore wanted to know how many people were living below the poverty line and how many were unemployed. In general, he asked what specific efforts were being made by the Government to combat poverty, given its huge social consequences: child labour, illiteracy among the population, violence, etc.

9. Ms. BRAS GOMES, referring to article 6 of the Covenant, asked the Nicaraguan delegation to inform the Committee of policies implemented to promote employment, and their results — for example those targeting indigenous populations with very high unemployment rates, and initiatives targeting specific groups, microenterprises and small businesses, and self-employed workers. In relation to article 7 of the Covenant, she wanted more information on condition of women, which was apparently quite difficult — unequal pay for equal work, reluctance to employ women because of the possibility of maternity — and the financial and economic situation of women heads of family. Information from various sources referred to very frequent cases of workplace harassment, and suggested the Government was unable to implement measures to combat that practice. It would be useful to have examples of complaints filed and their results. Nicaragua provided many different types of temporary employment contract, and the resultant employment flexibility seemed to affect young women in particular. Ms. Bras Gomes therefore asked whether there were vocational training programmes specifically designed for them. Expressing amazement that the country still did not have any statistics on domestic workers, she wanted to know why, and, for example, whether workers in that category were covered by social security. In relation to article 9 of the Covenant, in its written replies to the list of issues to be taken up, the Nicaraguan Government had stated that the country expected 26.9% of workers in the urban and rural sectors to be covered by social security in 2008. Ms. Bras Gomes asked whether that target had been achieved. Employers apparently were not fully complying with their obligation to contribute to the social security regime. Moreover, as less than 15% of the retired population received pensions, what social assistance measures were provided to the remainder, was there a minimum pension for private-sector workers, as in the public sector? Ms. Bras Gomes also wanted to know whether Nicaragua intended to ratify ILO Convention 102 on social security (minimum standards), and whether it intended in the long run to include unemployment insurance within the social security system.

10. The CHAIRPERSON, speaking as a member of the Committee, noted that in Nicaragua the number of jobs in the informal sector was tending to increase, along with unemployment, forcing Nicaraguans to migrate to neighbouring countries, as

discussed below. He therefore asked whether there were specific programmes in place to combat labour-market flexibility, unfair dismissal and unemployment. In the employment domain, apart from unequal pay between men and women, there were other major inequalities between the sexes in Nicaragua; information from non-governmental organizations suggested that women suffered the consequences of prejudice in relation to pregnancy, maternal breast-feeding, or even problems in relation to working hours to cope with family life; and, as a result, employers perceived disadvantages in hiring women. Despite the existence of legislation and an Employment Code, the reality was often different. Mr. Texier wanted to know what the State was doing, whether there were enough employment inspectors, whether there were cases where women had been laid off for pregnancy; and what the real situation was regarding maquila operations, which were known to generally apply the Labour Code more loosely. He expressed astonishment at the low rate of unionization in the country, which might reflect particularly difficult conditions to form a labour union and possible anti-union discrimination by employers. Lastly, he asked whether the minimum wage (which was only valid for the formal sector of the economy) enabled Nicaragua to fulfil the provisions of article 7 of the Covenant, to ensure a decent living for workers and their families.

The meeting was suspended at 3.55 p.m. and resumed at 4 p.m.

11. Mr. CRUZ TORUNO (Nicaragua), referring to article 6 of the Covenant and equality at work, mentioned that the Ministry of Employment had created the Office for Equality and Non-discrimination to help victims of employment discrimination. He also noted that, in general, all employment support services and programmes had been improved, as described in the Government's written reply to question No. 16 of the list of issues to be taken up. Those services included training for specific groups of workers (young people, the over-45s, women heads of family), without prejudice to actions undertaken by other State bodies, such as the National Technology Institute or the Nicaraguan Institute of Women. Mr. Cruz Toruno referred to various programmes to improve conditions of life for women, and the budgets assigned to them. In relation to employment conditions for domestic workers, he read out the written reply to question No. 18 of the list of issues to be taken up, which mentioned the controls implemented by employment inspectors; and also the written reply to question No. 19 on employment conditions in the agriculture sector, including migrant workers. He then gave details of the conditions used to set the legal minimum wage, which was highly regulated by the law and by the National Minimum Wage Commission. Work in free zones (maquila) was not governed by specific regulations but by general labour legislation, respecting the rule of law, as desired by the current Government. He also insisted that, despite facing numerous obstacles under previous administrations, respect for union freedom was a priority today, as shown by a significant increase in the number of unions in the country. With regard to minimum unemployment, retirement and disability benefits, Mr. Cruz Toruno mentioned the arrangements announced in the Government's written replies, and the provisions adopted in relation to maternal breast-feeding.

12. The CHAIRPERSON pointed out that Committee members were already aware of the written replies submitted by the Nicaraguan Government, and the questions raised had not received a sufficiently precise reply. For example, the Government had reported the minimum wage for domestic workers as 1,500 córdobas; but it would have been much more useful to know the purchasing power of that income, and whether it permitted a decent living.

13. MR. CRUZ TORUNO (Nicaragua) asked Committee members to consider the fact that the report addressed a large number of subjects on which the Nicaraguan delegation, which was not very large, did not possess all of the necessary technical skills.

14. The CHAIRPERSON said that some questions, for example the number of cases of pregnant women dismissed from their jobs, could nonetheless be given a spontaneous response.

15. Ms. BRAS GOMES said that Committee members knew that the Nicaraguan delegation was not very large, and that in cases of doubt it could always say that it would check the information and communicate its reply later.

Articles 10 to 12 of the Covenant

16. Mr. PILLAY said that some of the questions already raised by the Committee under article 11, in its concluding observations on Nicaragua's initial report, were still relevant, such as those relating to the shortage of housing, social housing, regulation of real estate, forced evictions, and the problem of the homeless. He wanted to know what specific measures were being taken by the State party to uphold the right to housing as envisaged in article 64 of the Constitution. He also noted that the poverty rate, which had been 70% in 1994, currently affected half of the population, which represented progress. Nonetheless, the fight against poverty did not seem to be working. If that was really the case, Mr. Pillay wanted the Nicaraguan delegation to explain why, and indicate whether the Government had adopted a human-rights-based strategy that took specific account of the principles of non-discrimination and equal treatment; and whether the poor themselves were partners in that strategy. Lastly, the State party had indicated in its report that it did not have statistics on the number of people living in illegal settlements or on people evicted from their housing, and Mr. Pillay asked how those problems were being addressed in the absence of detailed data.

17. Mr. RIEDEL requested further details on the implementation of article 59 of the Constitution, the health-right provisions of which seemed to him to be very good. With regard to the 2002 General Health Act, which specifically aimed to prevent micronutrient deficiencies, particularly among children, pregnant women and the elderly, he noted that laws of that type had had positive effects in other Latin American countries, and he wanted to know how the Nicaraguan authorities were monitoring the law's implementation to ensure that it produced the expected results. Mr. Riedel also asked about the practical results of the 1996 law on the promotion, protection and defence of the human rights of AIDS sufferers, from the standpoint of attitudes toward patients, for example, or the situation in prisons. With regard to mental health problems, on which the report of the State party had admitted a number of shortcomings, Mr. Riedel wanted to know what specific steps had been taken since the publication of that report. As the report contained data on endemic diseases relating to 2001, Mr. Riedel wanted more recent information. He asked for additional clarification on the policies applied on access to drinking water, particularly in rural zones, and on the Lake Managua cleanup project, which should be completed in 2008. He also asked whether the draft law on professions in the health sector had been adopted, and how it would be implemented.

18. Ms. WILSON asked what measures had been taken to deal with the problem of street children and to protect the children concerned, who often became involved in

gangs and lived in a climate of violence. She asked whether the State party had legislation on human trafficking. Noting that the report stated that there were 18 old people's homes in the country, Ms. Wilson asked whether that number was sufficient. Lastly, she considered the abolition of the law authorizing therapeutic abortion to be a retrograde step that created a very worrying and potentially dangerous situation for the health of mothers and young women, and she wanted to know how that decision had been reached.

19. Mr. TIRADO MEJIA asked whether it was true, as indicated in a 2006 report published by the United States State Department, that prostitution was legal in Nicaragua from the age of 14, which would be contrary to the Covenant. Were sexual abuse and prostitution of minors suppressed under criminal law, and were the corresponding crimes specified in the new penal code that had been adopted a few months earlier? Were any rehabilitation measures envisaged for minors who had been victims of sexual abuse and prostitution? Mr. Tirado Mejia also wanted to know whether Nicaragua adhered to the Inter-American Convention on International Traffic in Minors and the Inter-American Convention on International Return of Minors. As regards the abolition of the law on therapeutic abortion, he shared the point of view expressed by Ms. Wilson.

20. Ms. BARAHONA RIERA said that the large number of laws and new programmes, concerning the health system or free education, for example, demonstrated a genuine change of outlook in Nicaragua, but she wanted more precise information on the budgetary resources allocated to those different areas. Reforms of that type meant strengthening institutions, and Ms. Barahona Riera asked whether civil servants had the necessary institutional guarantees regarding their employment and career advancement. She wanted the State party to review its prohibition of therapeutic abortion, at least in cases of incest or rape, since it was a retrograde step in terms of women's rights. Lastly, she requested details on the number of cases of domestic violence actually tried in the courts, and on the resources used to implement education and prevention programmes in relation to sexual and reproductive health.

21. Mr. SADI requested details of the action taken and results obtained by the National Coalition against Human Trafficking, which continued to be a serious problem in Nicaragua. He asked about the effectiveness of the 2002- 2011 National Plan of Action for Children and Adolescents, since the plan did not have sufficient human and financial resources. He noted that, despite the "Zero Hunger" programme to eradicate hunger, one child in every six in Nicaragua suffered from malnutrition according to the United Nations Children's Fund (UNICEF), and he asked for comments on that paradox. He also deplored the abolition of the law on therapeutic abortion. He asked for clarification regarding the coverage of the health system, from which 40% of the population was entirely excluded, and which seemed to benefit the urban population more than rural dwellers.

22. The CHAIRPERSON, speaking as a member of the Committee, asked whether the new draft law on food and nutritional sovereignty and security proposed in November 2007 had been enacted; whether the law guaranteed food and nutritional sovereignty and security, and whether it took account of general observation No. 12 made by the Committee, regarding the right to sufficient nourishment.

Articles 12 to 15 of the Covenant

23. Mr. KERDOUN wanted to know whether the 2008-2012 Human Development Plan included education — primary, secondary and higher — in its various aspects, and whether Nicaragua expected to achieve the goals set for combating illiteracy by the end of the plan's lifetime. He also wanted to know how, given the results of the initial illiteracy eradication campaign in 2007-2008, Nicaragua intended to approach the following campaign (2008-2009). Lastly, Mr. Kerdoun requested information on the percentage of indigenous populations that had access to the education system, with a breakdown by region and education level; and also clarification regarding the budget percentages allocated to education.

24. Ms. WILSON asked the Nicaragua delegation what strategy was currently in place to teach indigenous languages, both generally and, more specifically, in the autonomous regions. She also wanted to know whether new resources had been assigned to bilingual education, since the State party's report had been written.

25. Ms. BARAHONA RIERA, noting that the livelihood of many Nicaraguan families depended on funds remitted to them by their relatives working abroad, asked what measures had been taken by the Government to help those families and prevent them from falling into or back into poverty.

26. Ms. BONOAN-DANDAN asked the Nicaraguan delegation to clearly state whether primary education was free and obligatory for everyone in the country. Referring to the obstacles to the right to education quoted in the State party's report, she asked for explanations of factors such as the cultural level of the family, child labour, and the fact that schools were unfinished. She also requested a precise reply on the amount of social spending per inhabitant. Lastly, she asked how the current Government intended to implement the ambitious plans it had announced, when it had used the resources assigned to achieving the established national goals to servicing the domestic debt.

27. Mr. DASGUPTA deplored several figures — 23.3% illiteracy and 41.2% of students competing primary education — noting that article 121 of the Nicaraguan Constitution, which proclaimed free and compulsory primary education for all, was not being applied. He asked the delegation to specify whether government initiatives launched to support free education targeted primary school (which would mean that that level of education was currently fee-paying), and to give details on what the Government had done to abolish the requirement to wear school uniform (a measure that did not need any financial input, but a simple decree), or on free school textbooks. He asked the delegation to clarify what was meant by "bursar's offices" and the financing envisaged for that; and he enquired whether the school children nutrition initiative involved providing a free meal in primary school.

28. Ms. BRAS GOMES asked whether there was a policy to promote after-school care facilities for children, given that migrants were mostly women, whose children, separated from their mother, tended to roam the streets. She also wanted to hear the Nicaraguan delegation's opinion on the fact that the survival of the country's two regional universities — created to respond to the needs of the local population — was threatened by budget cuts; and the reasons why just 65 children were benefiting from the programme to integrate handicapped children, in the 926 establishments willing to accept them.

29. Mr. KOLOSOV, noting Nicaragua's recent ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, enquired about the fate of the children of migrant families; in particular, how education was organized for them, including the children of seasonal migrants, and the language in which they were taught. He asked whether migrant children benefited from free and compulsory education, and whether they were treated equally in relation to other young Nicaraguans.

30. Mr. MARCHAN ROMERO asked for details on the Nicaraguan Government's cultural policy, broadly defined, and on measures adopted by it to guarantee the protection of cultures, languages and the knowledge of the country's indigenous populations. He also wanted to know how the Citizen Power Councils were operating from the standpoint of cultural life generally.

31. Ms. MEDAL GARRIDO (Nicaragua) reminded the Committee that her country, the 12th poorest country in Latin America, was clearly resource-poor. Believing that poverty was the worst violations of human rights, the Government had made fostering development its top priority. The delegation would subsequently send the Committee the replies to the questions raised that it had been unable to provide in the meeting, as well as the text of chapter 2 of the New Penal Code, which specified the various crimes against minors, specifically rape of a minor under 14 years of age. She also made clear that the programme for street children included five main areas — the right of the child to live in a family, guaranteed conditions of normal life, child development centres, registration in civil registries, handicapped children — and stated that the relevant figures were included in the Government's written replies to the list of points to be taken up.

32. On the issue of young people living in gangs, Ms. Medal Garrido said that an interagency structure had been set up not to place the young people concerned in correction centres but to protect them, save them from the street universe and reintegrate them into society. Resources were clearly limited in that area, but it depended above all on goodwill, and the human factor was most important.

The meeting rose at 5.55 p.m.