



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/2008/SR.29
7 November 2008

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fortieth session

SUMMARY RECORD OF THE 29th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 4 November 2008, at 10 a.m.

Chairperson: Mr. TEXIER

CONTENTS

CONSIDERATION OF REPORTS:

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

Second, third and fourth periodic reports of Nicaragua

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.08-44914 (E) 061108 071108

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS:

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

Second, third and fourth periodic reports of Nicaragua (E/C.12/NIC/4; E/C.12/NIC/Q/4 and Add.1; HRI/CORE/NIC/2008)

1. At the invitation of the Chairperson, the members of the delegation of Nicaragua took places at the Committee table.
2. Mr. ROBELO RAFFONE (Nicaragua), introducing Nicaragua's combined second, third and fourth periodic reports (E/C.12/NIC/4), emphasized his Government's firm commitment to the promotion and protection of the fundamental human rights and liberties of all Nicaraguans and to its obligations under the various international human rights instruments. The International Agreements Monitoring Unit had been created within the Ministry of Foreign Affairs to prepare the reports for the various treaty bodies, as well as the Inter-Agency Committee on Human Rights, comprising public agencies and civil society. Through those bodies, the Government was able to ensure permanent monitoring of its compliance with each international agreement and with the recommendations of the respective committees.
3. The Government aimed to overcome poverty and to transform Nicaragua through a fairer development model and a more democratic power structure. The extent of extreme poverty and chronic malnutrition was such that the battle could not be won under the current global development model, in which the majority of the world's resources was earmarked for a minority of its population. The fight against poverty was one of the fundamental pillars of national policy, as reflected in such programmes as the Zero Hunger programme, and consultations were currently being held with various social sectors on the Human Development Plan 2008-2012.
4. In the Committee's concluding observations on Nicaragua's initial report adopted in 1993 (E/C.12/1993/14), it had expressed concern at issues relating to the regularization of land ownership and problems of housing, in particular, the lack of respect for ownership of low-income dwellings under Acts Nos. 85 and 86. Since then, the legal framework on property had been extended with the adoption of Act No. 278 of 1997, as described in the section of the periodic report dealing with agrarian reform. Agencies such as the Nicaraguan Territorial Studies Institute (INETER) worked together to resolve property issues. Measures had been taken to speed up the process of reviewing cases under Acts Nos. 85 and 86, and the Department of Property, a decentralized body of the Ministry of Finance, was responsible for tasks such as processing and resolving urban and rural claims of ownership over State assets. In an effort to meet social needs, to increase the level of production of the rural sector and to reduce extreme poverty, the Department of Property, in accordance with new government policies, was in the process of redefining institutional strategies in order to address the needs of all claimants, especially the most vulnerable individuals, which had not been met during the previous 16 years under the neoliberal Government. A total of 30,812 plots of land would thus be assigned in 2008, and the new owners' rights would be fully guaranteed. He outlined the measures that were being taken, including the allocation of land to indigenous peoples. The Department of Property had

succeeded in reinvigorating regularization procedures, and it was hoped that, with a more stable regime, many problems regarding ownership, such as demarcation and other disputes, could now be avoided. Over the previous 20 months, 20,000 title deeds had been issued to owners of land and houses, and the Department of Property had introduced the necessary measures to guarantee security of ownership. A housing policy was being implemented to grant benefits to low-income families for the construction of housing and low-interest loans to medium-income families. Access to decent housing was being guaranteed through a range of actions; for example, a total of 9,337 families with an income of less than US\$ 500 were benefiting from the Multiphase Low-Income Housing Programme.

5. Recalling the Committee's concerns regarding the negative consequences of structural adjustment measures and the privatization of State property for the enjoyment of the economic, social and cultural rights of the Nicaraguan people, particularly the fact that official figures revealed an alarming deterioration in the standard of living and that 70 per cent of Nicaraguans lived below the poverty threshold, he said that, unfortunately, little progress had been made with respect to the reduction of poverty. The figures given in paragraphs 24 and 27 of the periodic report demonstrated the failure of the National Development Plan adopted by previous, neoliberal Governments. The current administration had had to make substantive changes since assuming office in February 2007, and the first draft of the National Plan for Human Development 2008-2012 had been published in April 2008. That Plan was aimed at restoring the economic, social and cultural rights of the Nicaraguan people, overcoming exclusion and realizing the potential for human development of marginalized members of society, ultimately eliminating poverty and extreme hunger. He outlined the basic values of the new model, such as solidarity and redistribution, and its main principles, such as food sovereignty and security, a fair market and fair trade and protection of the environment. Under the Plan, food sovereignty and security would be achieved through a range of programmes by increasing production and imported goods, creating employment, and ensuring sources of funding and fair prices. Although consultations on the Plan were officially still in progress, many programmes, such as one providing school meals, had already begun.

6. Over the period under review, the State party had instituted a series of legislative and institutional changes in order to achieve a true democracy for all Nicaraguans. The fundamental principles of the Constitution, which provided the general legal framework for the judicial system, matched those established in the international human rights instruments. The Constitution expressly recognized the legal status of the Covenant.

7. With respect to the rights of women, the Constitution, the Labour Code and other legislation guaranteed the right to absolute equality between men and women; for example, the Labour Code expressly established the minimum entitlements of working women. Further progress had been made in recent years with the adoption of several acts to reform the Criminal Code in such areas as sexual offences and domestic violence. Those acts had been replaced by the new Criminal Code, which had entered into force in July 2008 and whose second chapter was dedicated to offences against sexual integrity and freedom. He drew attention to the section of the periodic report dealing with the protection of women, which contained information about other legislation that had been adopted to promote the rights of women and to eliminate discrimination on the grounds of sex.

8. With respect to labour rights, Act No. 185 of 1996, the Labour Code, protected the rights of workers and established the duties of employers. Another advance had been the adoption of Act No. 238 of 1996, on the promotion, protection and defence of human rights in the context of HIV/AIDS, as described in paragraph 78 of the periodic report.

9. With respect to the rights of persons with disabilities, progress had been made with the adoption of Acts No. 98 of 1990, No. 119 of 1990 and No. 202 of 1995, as referred to in paragraphs 83, 84 and 87 of the periodic report.

10. Describing other progress in the State party with respect to human rights, he noted its ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in August 2008, the Convention on the Rights of Persons with Disabilities in March 2007 and the Optional Protocol to the International Covenant on Civil and Political Rights, and the signing of the Optional Protocol to the Convention on the Rights of Persons with Disabilities, in October 2008. New domestic legislation such as the Adoption Act, which had created a National Adoption Council, the new Criminal Code of November 2007, which had been amended in June 2008 to safeguard the rights of those employed in domestic service, especially young persons, and the Refugee Protection Act of June 2008 had further contributed to progress. An Office of Indigenous Affairs had been created within the Ministry of Foreign Affairs to coordinate all related issues covered by international agreements.

11. In conclusion, he said that economic, social and cultural rights were enshrined in the Constitution, and his Government was committed to promoting and defending those rights for the Nicaraguan people.

12. The CHAIRPERSON invited Committee members to pose questions relating to general aspects of implementation of the Covenant and to articles 1 to 5. He pointed out to the delegation that, owing to the late submission of the replies to the list of issues, only the original Spanish version had been circulated, and that a number of Committee members had thus unfortunately not been able to consult the State party's replies.

13. Mr. RIEDEL, noting that the State party had maintained that under article 46 of the Constitution, economic, social and cultural rights could be invoked directly in court, asked the delegation to give concrete examples of such cases. It would also be useful for the Committee to hear of cases in which the new legislative measures adopted to combat discrimination had been applied in practice. While welcoming the establishment in April 2006 of a national human rights institution in line with the Paris Principles, he requested the delegation to give details of how that body functioned.

14. Mr. ATANGANA said that the Committee had received information indicating that the judiciary suffered from a lack of independence, was subject to political pressure and was plagued by corruption and a lack of training. What steps had been taken to ensure the effective independence of the judiciary?

15. Mr. PILLAY, noting that the Constitution explicitly recognized, promoted and protected economic, social and cultural rights, asked the delegation to cite the related case law. While the Constitution established that justice emanated from the people, the Committee had heard that public confidence in the Nicaraguan justice system was particularly lacking. Was that because of

a perception that the judiciary was subject to external pressures? Lastly, he asked the delegation to respond to reports that the State party lacked the political will to promote economic, social and cultural rights, as evidenced by the low level of resources earmarked to combat poverty and to provide housing, medical care and education for the population.

16. Mr. SA'DI said the fact that the State party had taken 10 years to submit its periodic report reflected poorly on the priority given to the Covenant. He asked to what extent non-governmental organizations had cooperated in drafting the report. The State party should provide more systematic information on the measures taken to follow up on the Committee's prior recommendations, and should describe how the current world financial crisis was affecting the country's ability to implement economic, social and cultural rights. While the head of delegation had mentioned the new legal and development model adopted by the Government, the Committee would like to hear in what ways that model was linked with the rights covered by the Covenant. Lastly, noting that, according to the State party, the Office of the Human Rights Ombudsman had received over 500 complaints, he requested information as to the action taken in those cases.

17. Mr. TIRADO MEJÍA expressed concern at reports that the judiciary lacked independence, and was subject to manipulation, political influence, corruption and nepotism. In respect of discrimination, he asked what measures had been taken by the State party to raise the standard of living of Afro-descendants and indigenous people, in particular those living on the Atlantic coast. According to the Amnesty International report for 2007, Nicaraguan law prohibited homosexual acts even between consenting adults, and the President had stated his intention to dismiss any member of his Government who was homosexual. What was the Government doing to protect homosexuals from such discrimination?

18. Ms. BRAS GOMES asked whether the National Plan for Human Development described by the head of delegation reflected a rights-based approach and, if so, how it would place emphasis on non-discrimination, gender equality and participation. Noting that, in the past, various structural adjustment programmes had diverted resources from the implementation of economic, social and cultural rights to other purposes, including debt servicing, she asked how the accession of Nicaragua to the Central American-Dominican Republic Free Trade Agreement had affected the Government's ability to fund social safety nets. What steps had been taken to fight discrimination, which was still reportedly quite prevalent, for instance against indigenous and Afro-descendant women? The delegation should also give examples of specific goals adopted with a view to overcoming gender stereotypes and facilitating the work of women's advocacy groups.

19. Ms. WILSON said that it would be useful for the delegation to explain the procedures used to grant land titles to the indigenous peoples of the Atlantic coast. Did such peoples have access to a specific administrative body that dealt with land issues? Referring to the Awas-Tingni case dealing with logging rights on indigenous lands, which had been settled by the Inter-American Court of Human Rights, she expressed concern that the Government had reportedly not implemented the Court's decision expeditiously. What follow-up had been given to the decision? Were such concessions still being granted to allow either Nicaraguan or foreign companies to exploit resources on lands claimed by indigenous peoples? While the head of delegation had

mentioned in his opening remarks that a Refugee Protection Act had recently been adopted, she asked whether there was a national bureau to deal with refugee affairs and whether there were any laws or specific rules covering the situation of asylum-seekers.

20. Ms. BONOAN-DANDAN expressed concern at the large proportion of the national budget that was reportedly allotted to debt servicing, and asked how expenditure on debt servicing compared with outlays for social services. What was the per capita spending on social services? The Government, in its replies to the list of issues, had cited a number of laws which had been adopted to provide formal channels to address the grievances of indigenous groups. She asked the delegation to describe what procedures were used to demarcate indigenous lands, and how the right to free, prior and informed consent applied in cases where government logging licences were issued for indigenous communities' lands.

21. Ms. BARAHONA RIERA inquired whether civil society organizations, the Office of the Human Rights Ombudsman or the national human rights body had been consulted in the drafting of the periodic report, and to what extent the Ombudsman's Office enjoyed independence. She asked the delegation to inform the Committee how the special solicitors for women, children and indigenous peoples functioned, and to explain why Nicaragua had not yet ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization (ILO). Lastly, in the light of the heavy debt burden faced by the country, she would like to know what budget resources would be devoted to the implementation of economic, social and cultural rights, and in particular for education and health services, as part of the national development plan.

22. Mr. KOLOSOV, recalling that the Committee would soon begin to deal with individual communications submitted under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and would therefore have to rule on their admissibility, deciding whether all domestic remedies had been exhausted, requested clarification of Nicaragua's legal system in that regard, particularly in view of the difficulties highlighted by various members of the Committee. He asked how deficiencies in the system would be overcome.

23. The CHAIRMAN stressed the need for countries to submit written replies to the Committee in sufficient time to allow for translation.

The meeting was suspended at 11.30 a.m. and resumed at 11.45 a.m.

24. Ms. MEDAL GARRIDO (Nicaragua) explained that Nicaragua had failed to comply with its reporting obligations under various international instruments for some time as a result of the regrettable lack of political will of previous Governments. The current Government had made it a high priority to fulfil such obligations and, with assistance from the United Nations Development Programme and the Office of the High Commissioner for Human Rights, had established the International Agreements Monitoring Unit. It had subsequently established the Inter-Agency Committee on Human Rights, bringing together representatives of various governmental and non-governmental organizations, to ensure consultation with civil society. The Inter-Agency Committee had prepared the country's core document and periodic report, which reflected the views of all sectors, not only of the Government. The Government would continue

to consult the Inter-Agency Committee in the preparation of future reports, informing it of observations and recommendations made by human rights treaty bodies, and would ensure that Nicaragua did not fall behind again in its reporting obligations.

25. With regard to the rights of indigenous peoples, she noted that article 27 of Nicaragua's Constitution established the equality of all citizens before the law, without discrimination on the grounds of, *inter alia*, race, language or origin. Since 2007, the Government had been working to increase the representation of indigenous peoples in public office and in key parts of the decision-making process, with some success. A council for the development of the Atlantic coast had been created, establishing coordination and cooperation mechanisms between the national Presidency, the two Atlantic coast autonomous regions and the leaders of indigenous communities on the Caribbean coast. A specific development plan for the Caribbean coast had also been drawn up. The recently published Decree No. 19-2008 had established a special development programme to cover some 48 indigenous communities numbering more than 30,000 inhabitants, and work was ongoing to strengthen local government bodies.

26. All poverty eradication programmes placed particular emphasis on the Caribbean coast, which, for a variety of social, economic and geographical reasons, had the highest poverty levels in the country. Health and education programmes paid special attention to the specific nature of the area and its communities, for example by promoting education in indigenous languages in order to preserve ethnic, cultural and linguistic diversity. In addition, a department had been created at vice-ministerial level to deal with matters relating to indigenous peoples and, under the new Criminal Code, discrimination was a criminal offence.

27. Nicaragua's most recent census, conducted in 2005, had yielded figures for the number of people identifying themselves as belonging to indigenous or ethnic groups, demonstrating that such populations were to be found on both the country's coasts, although, for historical reasons, those of the Atlantic coast had retained more features of their original culture than those of the Pacific coast. Nevertheless, the Government recognized the existence of all such groups. The main reason for the delay in approving the new law on indigenous peoples of the Pacific, central and northern regions of Nicaragua was the consultation process still being conducted by the Committee for Ethnic Matters with indigenous groups along the whole Pacific coast. The Committee was also assessing the legal situation of indigenous communities' property in certain areas, to ensure that their heritage was guaranteed.

28. With regard to the allegations that Nicaragua's President had spoken and behaved in a homophobic manner, she pointed out that they did not concern the current President. Under the new Criminal Code, homosexual acts no longer constituted a criminal offence.

29. Turning to the issue of discrimination against women, she drew attention to awareness-raising and training activities for women on the country's Constitution and laws to enable them to exercise their rights, with the aim of achieving real and effective equality of rights and opportunities between women and men. Poverty in Nicaragua disproportionately affected vulnerable groups - children, young people and women - as a result of exclusion and rights violations under previous Governments. The current Government valued the role of women as agents of change and desired to enhance their participation in all areas of political, economic and social development, including by promoting women as leaders. In that regard, she highlighted the importance of the new Equality of Rights and Opportunities Act (No. 648).

30. Gender policy aimed to achieve equality between women and men as a human right, and was applied in all government bodies. It promoted participation of women in the electoral process, both as voters and candidates, and the right to health, sexual and reproductive education. Education programmes were particularly important in ensuring that women were aware of and could exercise their legal rights. All gender programmes were aimed principally at rural women, and rural outreach activities were pursued to ensure that those most in need of education, knowledge and health care were involved in the development process. She outlined various programmes in areas such as food security and microcredit which were intended to empower women and equip them with practical knowledge to manage their own resources.

31. Only through such programmes, with an integral approach that included health and education, could the position of women in Nicaraguan society be altered. Widespread literacy activities for all were under way and had achieved notable success. A family and community health model was being implemented, with doctors from Nicaragua, and friendly countries such as Cuba and Venezuela, providing home visits to women unable to reach medical centres for treatment or preventive care. Childcare institutions had also been reintroduced to facilitate participation by women in the formal economy, and maternity homes provided medical care during pregnancy and childbirth. The Government, working with non-governmental and international organizations, was investing significant resources in measures to prevent the spread of HIV/AIDS, particularly through mother-to-child transmission, and to ensure that women living with HIV did not suffer discrimination, received antiretroviral drugs and could live as normal a life as possible.

32. There had been a significant increase in the participation of women in public life. A draft law was in preparation with the aim of achieving the Government's target of 50 per cent participation by women in all State authorities. A mass campaign was under way to publicize the draft law and promote the participation of women in politics and the electoral process, as an essential element of democracy. Measures were also being taken to facilitate access by women to the legal system, credit, health care, property, housing, training, and other areas. Women were employed at high levels in government and the judiciary, including as ministers in certain departments traditionally regarded as a male preserve, and were represented to varying degrees in parliament and local government. The South Atlantic Autonomous Region had adopted a gender programme and created its own gender department, while the national Government had issued a protocol on domestic violence and sexual aggression and had raised the status of the Nicaraguan Institute for Women. The rights of working women to maternity leave and nursing breaks were enshrined in legislation.

33. The Judiciary Organization Act and the Judicial Career Act provided guarantees for the independence, impartiality and fairness of the justice system as well as disciplinary measures and other penalties for judicial misconduct. In June 2008 the Supreme Court had also established specific judicial standards and transparent mechanisms governing all aspects of the legal profession. The national machinery responsible for the administration of justice, including the Commission of Administration, the Commission of the Disciplinary Regime and judicial disciplinary inspectors, were accessible to all parties concerned. The Commission of the Disciplinary Regime was empowered to investigate all cases of judicial wrongdoing. The Government efforts to increase transparency in the legal system had resulted in the improvement of the public's perception of the judiciary.

34. Her Government attached great importance to the ILO Indigenous and Tribal Peoples Convention (No. 169) and had no problem with its principles. The Constitution had provisions to promote the rights of indigenous peoples similar to those set out in the Convention, especially with respect to recruitment and conditions of employment, vocational training, handicrafts and rural industries, and social security and health. Under the Constitution, for example, workers were entitled to decent working conditions and equal pay for equal work without discrimination of any kind. The rights of indigenous peoples were also protected by other domestic laws, in particular Act No. 445 on the system of common property of indigenous peoples and ethnic communities in the autonomous regions of the Atlantic coast and elsewhere. Her Government had ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol. She trusted that the necessary measures would be taken to ratify ILO Convention No. 169 before the submission of Nicaragua's next periodic report.

35. Ms. LOVO HERNÁNDEZ (Nicaragua), referring to the concern raised about security of tenure and property titles, said that the Government had been making efforts to redress the irregularities of property laws deriving from previous Governments. Among the measures taken to regulate property rights and resolve land disputes was the adoption of Act No. 278 on urban and rural property subject to the agrarian reform of 1997. An oversight body, the Commission for the Review of Confiscations, had also been established to review land claims and provide compensation for loss of property seized under the previous Government. Her Government was pursuing a comprehensive policy to provide decent housing to various sectors of the population, including housing improvement and construction projects and low-interest mortgage loans. Other laws on the protection and transfer of land and property were listed in the written responses (E/C.12/NIC/Q/4/Add.1), including legislation on agricultural reform, sales contracts and rental agreements. National institutions such as the Office for Quantification of Compensation were working to resolve problems relating to property rights. She drew attention to the table in the written responses showing government activities to promote security of land tenure between 2006 and 2007. In the previous 20 months alone, 20,000 title deeds had been issued to owners of land and houses.

36. Efforts were also under way to demarcate and provide titles for indigenous lands. The Government had adopted legislation that ensured the right of the indigenous peoples on the Atlantic coast to administer their own lands, in accordance with the decision handed down by the Inter-American Court of Human Rights in the case of the Awas Tingni community. It was also providing information to the Court on developments in that case. The Awas Tingni case had been complicated by the fact that several communities had made competing claims to the resources in question. An amicable solution had been found, however, concerning fishing rights and the use of ancestral lands. She therefore hoped that the case would be fully resolved by December.

37. With regard to the applicability of the Covenant under Nicaraguan law, she said that the rights set forth in the Covenant could be directly invoked in the courts of Nicaragua under article 46 of the Constitution, which referred to the Covenant as well as to other instruments such as the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man and the International Covenant on Civil and Political Rights. Furthermore, Nicaragua continued to incorporate other human rights instruments into its legal system. She also cited the reference in the written replies to the provision of the new Criminal Code that gave

members of indigenous peoples and ethnic communities of the Atlantic coast the option of being tried under customary law for offences that carried penalties not exceeding five years in prison.

38. In accordance with the constitutional reforms of 1995, an independent national human rights institution had been established that operated in accordance with the Paris Principles. That institution was responsible for the promotion and protection of human rights under the Constitution, ordinary laws and the international and regional instruments to which Nicaragua was a party and covered the protection of all rights, including economic, social and cultural rights.

39. The Government had established a committee in 2004 and entered into discussions with State institutions and civil society organizations to help to draft legislation on asylum matters. It had also enjoyed the support of the Office of the United Nations High Commissioner for Refugees. The discussions had resulted in one of the world's most modern asylum laws, incorporating the major relevant international instruments. Concerning domestic remedies for asylum-seekers, local and district courts held the initial hearings. The decisions of first instance could be challenged in courts of appeal. Those decisions could then be appealed to the Supreme Court, whose judgements were final.

The meeting rose at 1 p.m.