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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

NICARAGUA

1. The Committee considered the third periodic report of Nicaragua (CCPR/C/NIC/3) at its 2577th and 2578th meetings (CCPR/C/SR.2577 and 2578), held on 17 October 2008, and adopted the following concluding observations at its 2594th meeting (CCPR/C/SR.2594), held on 29 October 2008.

A. Introduction

2. The Committee welcomes the third periodic report of Nicaragua, while observing that the report was submitted more than 15 years late. The report gives detailed information on legislation recently adopted by the State party and on its forthcoming legislative plans. The Committee expresses its thanks for the written responses to the list of issues, and for the responses given orally by the delegation. It also congratulates the State party on its submission of a core document in conformity with the harmonized guidelines on reporting under the international human rights treaties (HRI/CORE/NIC/2008).

B. Positive aspects

3. The Committee welcomes the ratification, by Decree No. 122 of 11 September 2008, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty.

4. The Committee notes the adoption in 2004 of the Organization Act on the Judiciary and accompanying regulations, and the adoption in June 2008 of the Judicial Career Act and accompanying regulations.

5. The Committee applauds the ratification in August 2008 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6. The Committee hails the creation, pressed for by the Supreme Court of Justice in coordination with the Organization of American States (OAS), of the system of judicial facilitators. This is a programme making it easier for citizens, women in particular, to have access to justice.

7. The Committee also welcomes the adoption of the Code of Criminal Procedure aimed at improving the administration of justice.

8. The Committee notes with interest of the establishment by Act No. 212 of 1996 of the Office of the Procurator for the Protection of Human Rights, functioning as a commission of the National Assembly for the promotion, protection and safekeeping of constitutional guarantees. It also welcomes the introduction of special procurators for children and adolescents, for women, for indigenous peoples and ethnic communities, for persons with disabilities, for persons deprived of their liberty and for civic participation.

C. Chief matters of concern and recommendations

9. The Committee is concerned at the absence of specific penalties for trafficking in and the sexual exploitation of women and children, and the fact that women and children are trafficked for sexual exploitation purposes in the State party (arts. 3, 8 and 24).

The State party should step up efforts to combat the trafficking of women and children and, in particular:

- (a) Explicitly make trafficking in and the sexual exploitation of women and children criminal offences;**
- (b) Ensure that punishment commensurate with the gravity of the offences is inflicted upon anyone who exploits women and children for such purposes;**
- (c) Maintain its efforts to make the general public aware of the criminal nature of the sexual exploitation of women and children;**
- (d) Arrange training courses for the competent authorities;**
- (e) Protect and assist the victims of sexual exploitation.**

10. While the Committee welcomes the adoption on 14 February 2008 of the Equal Rights and Opportunities Act, No. 648, which sets the objective of promoting equality between men and women in the enjoyment of civil and political rights, among others, it regrets that the proportion of women in the civil service remains low (arts. 3, 25 and 26).

The State party should meet the targets set in this respect in the Equal Rights and Opportunities Act, taking action in particular to ensure that more women are present at the most senior levels of the civil service.

11. The Committee expresses its concern at the discrimination women face in the workplace, including access to employment and wage differentials (arts. 3 and 26).

The State party should intensify its efforts to combat discrimination against women in employment matters, guaranteeing, inter alia, equal access to employment and equal pay for equal work.

12. While the Committee notes the approval of a standard operating procedure for handling of cases of domestic abuse and sexual aggression, it is concerned at the increase in recent years in killings of women arising from gender violence and domestic and sexual violence in particular. It is also concerned that attackers appear to go unpunished (arts. 3 and 7).

The Committee urges the State party to take immediate steps to put a halt to killings of women and, in particular:

- (a) Conduct investigations and punish their attackers;**
- (b) Allow the victims of gender violence effective access to justice;**
- (c) Provide police protection for victims, and set up shelters where victims may live in dignity;**
- (d) Maintain and promote opportunities for direct participation by women, both nationally and locally, in decision-taking on matters related in particular to violence against women, and ensure that women participate and are represented in civil society;**
- (e) Take steps to prevent and warn against gender violence, such as giving police officers, particularly those in the police units for women, training on women's rights and gender violence.**

The Committee would be grateful to receive detailed information in the next periodic report regarding the progress made in combating gender violence.

13. The Committee notes with concern the general ban on abortion, even in cases of rape, incest and, apparently, pregnancies threatening the life of the mother. It is also concerned that the law authorizing therapeutic abortion in such circumstances was repealed by Parliament in 2006 and that, since the introduction of the ban, there have been various documented cases in which the death of a pregnant woman has been associated with a lack of timely medical intervention to save her life such as would have taken place under the legislation in force before the law was revised. The Committee also notes with concern that the State party has not clarified in writing that medical professionals can follow the Standard Operating Procedures for Dealing with Obstetric Complications without fear of criminal investigation or prosecution by the State party (arts. 6 and 7).

The State party should bring its legislation on abortion into line with the provisions of the Covenant. It should also take steps to help women avoid unwanted pregnancies so that they do not need to resort to illegal or unsafe abortions which may endanger their lives, or seek abortions abroad. The State party should also avoid penalizing medical professionals in the conduct of their professional duties.

14. The Committee notes with concern that detainees continue to suffer ill-treatment at the hands of the forces of law and order, especially in prisons, but also at the time of their arrest by the police, and that in most cases such conduct goes unpunished (arts. 7 and 10).

- (a) The State party should take immediate, effective steps to end such abuse, remain vigilant, investigate and, where appropriate, bring to trial and punish members of the forces of law and order responsible for ill-treatment, and indemnify the victims.**
- (b) The State party should step up training in human rights for the forces of law and order so that they do not engage in such conduct.**

15. The Committee is concerned that the corporal punishment of children at school is not forbidden by law, and regrets that no

specific information on the subject has been provided (arts. 7 and 24).

National legislation in the State party should ban all corporal punishment of children, at school and in other institutions for children.

16. The Committee is concerned about alleged instances of wrongful arrest occurring, in particular, in connection with public protests (arts. 6, 7 and 9).

The State party should protect the lives and safety of all individuals against excessive use of force by the police. The Committee recommends that it consider reforming the Code of Criminal Procedure, which allows the police to detain people without a warrant, contrary to the provisions of the Constitution.

17. The Committee takes note of the action being taken by the State party to improve conditions in detention, but is concerned at the high levels of overcrowding and poor conditions prevailing at detention centres, especially the lack of hygiene, the shortage of drinking water, the inadequate food budget, the lack of medical care, the shortage of staff, and the failure to keep accused persons and convicted offenders separate (art. 10).

The State party should step up its efforts to improve conditions for all persons deprived of their liberty, complying with all the requirements of the Standard Minimum Rules for the Treatment of Prisoners. It should tackle overcrowding as a matter of priority. It should supply the Committee with figures illustrating the progress made since the approval of this recommendation, especially the effect of specific steps to improve conditions for persons deprived of their liberty.

18. The Committee is concerned about the existence of legal provisions which might de facto allow a person to be imprisoned for failure to meet a contractual obligation (art. 11).

The State party should see to it that its legislation cannot be used to imprison a person for failure to meet a contractual obligation.

19. The Committee notes with concern a growing number of reports alleging systematic persecution and death threats against human rights defenders by individuals, political groupings and bodies connected to the State authorities. It also notes with concern the criminal investigations mounted against defenders of reproductive rights, including the criminal charges pending against the nine women defenders of women's rights involved in the interruption of an abortion conducted on an under-age girl who had been raped, which occurred at a time when therapeutic abortion was still legally permitted. It is likewise concerned at the de facto restrictions on the exercise by human rights organizations of their right to freedom of assembly (arts. 19 and 22).

The Committee recommends that the State party take the necessary action to put a stop to alleged instances of systematic persecution and death threats, particularly against the defenders of women's rights mentioned above, and ensure that those responsible are duly punished. The State party should guarantee organizations of human rights defenders the right to freedom of expression and association in the conduct of their activities.

20. While the Committee notes that the State party has partly complied with the ruling by the Inter-American Court of Human Rights in the YATAMA case, it regrets that it has not undertaken the necessary legislative reform to introduce a simple legal remedy ensuring that indigenous and ethnic communities in the autonomous regions can take effective part in elections with due regard for their traditions, conventions and customs (arts. 25 and 27).

The State party should meet the targets laid down in the Inter-American Court's ruling and, in particular, take steps to bring about the necessary reforms in the Elections Act as recommended by the Court and introduce a simple legal remedy against decisions by the Supreme Electoral Board.

21. The Committee voices concern regarding the existence among the general public of racial prejudice against indigenous peoples, especially in the Autonomous Regions of the Atlantic coast, and the many problems affecting indigenous peoples, including serious shortcomings in health and education services, the fact that institutions have few or no branches in their areas, and the absence of a consultation process to secure free, informed prior consent to the exploitation of natural resources on indigenous communities' lands. The Committee also notes that more than six years after the ruling handed down by the Inter-American Court in the *Awás Tingni* case, the community still has no title of ownership, while the Awás Tingni region continues to be prey to illegal activity by outside settlers and loggers (arts. 26 and 27).

The State party should:

- (a) Effectively guarantee indigenous peoples' right to education, tailored to their specific needs;
- (b) Guarantee access by all indigenous peoples, especially those in the Autonomous Regions of the Atlantic coast, to adequate health services;
- (c) Conduct consultations with indigenous peoples before granting licences for the economic exploitation of the lands where they live, and ensure that such exploitation in no circumstances infringes the rights acknowledged in the Covenant;
- (d) Continue and complete the process of delimiting, demarcating and granting title to the lands of the Awás Tingni community, prevent and check illegal activity by outsiders on those lands, and investigate and punish those responsible for such activity.

22. The Committee requests the State party to publish the third periodic report and these concluding observations, making them

widely available to the general public and to the judicial, legislative and administrative authorities. Printed copies should be distributed to universities, public libraries, the Library of Parliament and other relevant places. The Committee also requests the State party to make the third periodic report and these concluding observations available to civil society and to the non-governmental organizations operating in the country. It would be appropriate to distribute a summary of the report and concluding observations to the indigenous communities in their own languages.

23. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, information on the current situation and on its implementation of the Committee's recommendations given in paragraphs 12, 13, 17 and 19 above.

24. The Committee requests the State party, in its next periodic report due to be submitted by 29 October 2012, to provide information on the remaining recommendations made and on compliance with the Covenant as a whole.
