

Summary of the Alternative report on the implementation of the Convention on Economic, Social and Cultural Rights in Nicaragua

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This alternative report¹ presented by *Coordinadora Diriangén* addresses the situation of indigenous people in the central region of Nicaragua and aims to inform the Committee on Elimination of Racial Discrimination about the Nicaraguan obligations in the framework of the ICESCR, which Nicaragua ratified in 1980. This is an English summary of the full-length report, available in Spanish to the committee members.

I. Introduction: past and present situation of indigenous people in Nicaragua

A. Historical background: colonization and independence

Coordinadora Diriangén insists that the peculiarity of the different history and regions of Nicaragua should be taken into account while analysing the situation of indigenous people. The colonization process led by the British in the Atlantic was very different to the one by the Spanish in the Pacific, where they led integrationist policies in order to impose Spanish culture on native groups. Consequently, their legal and political recognition was different in the two regions: in the Pacific, after great resistance, indigenous communities eventually managed to negotiate with the colonial authorities for recognition of their territories and social organization within the legal framework. As a matter of fact, the independence and the creation of the sovereign State of Nicaragua was a product of the indigenous peoples' tenacious struggle in the Pacific, Central and North regions, for independent authorities. Even after the abolition of slavery, the new republican State did not recognise indigenous peoples' fundamental rights and freedoms, depriving them of their land possessions and eliminating their institutions. In 1935, a legal framework regulated the system of property but did not change the deal for indigenous people significantly; the territorial demarcation of their communal property is still characterised by discrimination today.

Since its independence in 1821, the situation for indigenous people has not much improved in Nicaragua: in addition to simply ignoring their existence, the political classes have colluded in their eviction from social life, thus continuing the political denial and racial discrimination of the Spanish colonial era. More alarming is the fact that the oligarchies established the myth of "crossbreeding" ("El Mito de la Nicaragua Mestiza") as ideological support to justify the politics of State racism. In very recent developments (1995), the State of Nicaragua reported to UN mechanisms - with the exception of the Committee on Racial Discrimination - that there are no indigenous communities in the regions of the Pacific, Central and North regions, since they have been fully assimilated.

B. A dramatic development: their forced expulsion from ancient territories

Back in 1993, the Committee was concerned about the effective implementation of the Structural adjustment programme between the Government of Nicaragua and the IMF, the lack of coherence of programmes relating to property regularization for indigenous communities and the forced expulsion of hundreds of indigenous families. *Coordinadora Diriangén* notes that in legal terms the problem was corrected in urban areas by means of Law 309 promulgated in 1999. Nevertheless, in the rural area and particularly indigenous territories, the State has not adopted protection measures and there are numerous cases of forced eviction of indigenous families. The 1980s Agrarian reform even worsened the situation by facilitating the buying of land at derisory prices to (sometimes foreign) beneficiaries, thus creating social instability. Many conflicts based on the politics of agrarian counter-reform badly affected rural indigenous populations to the point of forcing their emigration to Costa Rica and other nearby countries, while other indigenous groups have gathered together to fight powerful local mafias.

II. Evaluation of the implementation of the dispositions of the agreement

Coordinadora Diriangén bases its criticisms of the government's implementation efforts on the Committee's consideration that the State should assure that programmes of structural adjustment should be formulated and applied so that they offer safety to the most vulnerable groups of the society, in order to prevent deterioration of their enjoyment of the economic, social and cultural rights protected by ICESCR.

¹ The scope of the present report particularly refers to the implementation of Articles 1 and 1-2, Articles 2-1 and 2-2, Article 3, Article 5, Articles 11-1 and 2, Article 12-1 and 12-2, Article 13-1, Articles 14 and 15-2, and all articles which are examined from the intercultural perspective, based on the guarantee of non-discrimination recorded in Article 2-2. Please refer to Part II.

A. Articles 1-1 and 1-2 ICESCR, in particular “All peoples may, for their own ends, freely dispose of their natural wealth and resources (...)”.

According to *Coordinadora Diriangén*, indigenous peoples in Nicaragua demand that the State should try to adapt development to the historical and cultural reality of the country in which different ethnic groups and cultures meet. The model of traditional development must be replaced by a model of so-called “ethnic development” (“*etnodesarrollo*”) that is based on ethnic and cultural diversity - in other words incorporating indigenous peoples as part of a rich diversity within a multicultural State.

B. Articles 2-1 and 2-2 ICESCR, in particular “Each State Party (...) undertakes to take steps (...) with a view to achieving progressively the full realization of the rights recognized by all appropriate means, including particularly the adoption of legislative measures” and “undertakes to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind”.

In relation to Article 2-1, *Coordinadora Diriangén* emphasizes that a law initiative of this kind was submitted to the Commission for Ethnic Issues of the Parliament, but was not included in the agenda of the plenary sessions for final discussion and approval. In relation to Article 2-2, *Coordinadora Diriangén* refers to discrimination related to race and ethnic background. In fact, State political initiatives have been characterised by a discriminatory tendency, particularly in matters of property, social organization, culture, education and health. The indigenous peoples’ culture in Nicaragua is being destroyed to impose the domination of a homogenous culture “created artificially and supported by political power”, in particular in the educational and health systems, affecting indigenous languages, traditional medicine, as well as handicrafts and traditional trade practices.

C. Article 5 ICESCR, in particular “Nothing in the present Covenant may be interpreted as implying for any State (...) any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein (...)”, bearing in mind that “No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country (...) shall be admitted (...)”.

Coordinadora Diriangén recalls that poverty indicators are much higher in the indigenous territories, which is the result of a policy of neglect of public services. A good example is the health sector, where the State has replaced traditional indigenous medicine with western medicine that caused dependency in the population who cannot gain access to health services without money.

D. Article 11 ICESCR, in particular “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family (...)” and “shall take (...) the measures, including specific programmes, which are needed to improve methods of production, conservation and distribution of food (...) by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources”.

1. Limitation of the exercise of the right of indigenous property

This limitation affects the exercise of the fundamental rights to housing, access to natural resources, traditional medicine and production, and prevents indigenous populations from developing their identity. It is the principal cause of poverty, as well as environmental deterioration. In fact, the Agrarian Reform has permitted the expropriation of indigenous property, despite the constitutional guarantees of Articles 106, 107 and 109. This agricultural policy:

- created a legal anarchy with regard to property, denying indigenous peoples’ collective land rights;
- did not take into account indigenous peoples’ social structures, and only partly benefited indigenous families;
- contributed to environmental degradation, through destruction of the natural resources that are vital for life and sustainable development.

Here are two examples, in which actions of the State have prevented the exercise of indigenous peoples’ hereditary rights:

- **Caso del Remanente La Gallina**: this place is located in the municipality of León in the indigenous territory of Sutiaba. More than 20 families were evicted by force in 2001 by a group called “Demobilized Nicaraguan Resistance Fighters”, which used Agrarian Reform to sell the land to a foreigner of Danish origin. In this case, indigenous families’ right of possession should be respected, and the application of Agrarian Reform to these indigenous lands should be cancelled.
- **Caso El Jobo**: this place is located in the municipality of San Ramón in the indigenous territory of Muimuy. This conflict was initiated in 1907 when the State deprived 42 indigenous families of their land, in order to grant an agrarian title to Colonel Emiliano Herrera, of Colombian nationality. The State Commissariat for Property was willing to compensate the families, but the lands have been sold on to

other persons. In this case, the Commissariat for Property should grant land title to the indigenous families, so that they do not have to emigrate from their native lands.

2. The right of indigenous families to dignified housing is limited by arbitrary restriction of their right to property

This phenomenon has been located in the indigenous territories of Telpaneca, Mozonte and San Lucas, where property registration has been refused to indigenous peoples, arguing that the indigenous peoples' rights are symbolic. Nevertheless, the right of indigenous peoples to live on a registered territory must be acknowledged by the Court.

E. Article 12 ICESCR, in particular "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

Besides the lack of health services in indigenous territories, the State of Nicaragua has neglected Article 2-2 ICESCR, which provides that racial discrimination is prohibited. The actions of the Department of Health (replacing the practice of ancestral indigenous health with the practices of western medicine) has led to the virtual disappearance of healers, midwives and the use of medicinal plants. Despite a paragraph on the regional model of health added to General Law 42 on Health, its implementation needs additional resources that have not been provided.

F. Article 13 ICESCR, in particular "The States Parties to the present Covenant (...) agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups (...)".

No provision has been made for intercultural aspects within education and affirmative action in the educational system, thus violating Article 2-2 ICESCR. No native languages are taught in the educational centres, while bilingual intercultural education has been promoted but faced many obstacles, one of which is the State refusal to invest the resources necessary for full implementation of the system designed for the Autonomous Regions². Furthermore, the inclusion of indigenous history and culture in educational programs is a central demand contained in the proclamation submitted to the Nicaraguan State by the indigenous peoples of the Pacific, Centre and North regions.

III. Conclusions and recommendations

A. Conclusions

To achieve effective application of the rights contained in ICESCR, the Nicaraguan state faces some difficulties that must be overcome:

- the absence of a State policy towards indigenous people;
- the non-existence of a special State institution to attend to their problems;
- incoherent legislation as regards the political constitution and international law;
- the institutional weakness of the indigenous peoples, product of a legislation that limits its organic responsibilities.

The relation between indigenous rights and the Nicaraguan legislation is deficient, since a gap has emerged between the Nicaraguan ordinary and constitutional legislation, as well as with the judicial international order. The legislative system neither guarantees nor protects indigenous rights.

B. Recommendations

It is necessary that the State of Nicaragua:

- adjusts its legislation to the international human rights conventions, and in particular ICESCR, in order to give indigenous communities guarantees of economic and social development and promotion of their identity.
- defines a global policy for indigenous communities, based on multiculturalism recognized in Article 8 of the Constitution of Nicaragua, as well as on ethnic diversity.
- applies the judgments of the Inter-American Court of Human rights in the case of the Awas Tingni community with regard to indigenous peoples' land rights. Natives should be allowed to participate in the municipal elections in such a way as to respect their traditional structures, and not forcing them to organize as a political party.
- establishes an institution in coordination with the indigenous peoples, which would address their social and economic problems as well as implementing the policy of "ethnic development", in line with the demands of indigenous peoples.

² On the Caribbean Coast, the Autonomous Educational Regional System (SEAR) has been designed, but not implemented.