



# Генеральная Ассамблея

Distr.: General  
19 February 2010  
Russian  
Original: English

## Совет по правам человека

Тринадцатая сессия

Пункт 3 повестки дня

**Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие**

### **Доклад Специального докладчика по вопросу о праве на питание Оливера Де Шуттера\* \*\***

Добавление

#### **Миссия в Никарагуа**

##### *Резюме*

В настоящем докладе содержатся выводы и рекомендации Специального докладчика по вопросу о праве на питание по итогам его визита в Никарагуа, состоявшегося с 6 по 12 сентября 2009 года. Цель визита состояла в изучении нынешнего положения в области реализации права на питание в Никарагуа.

Специальный докладчик выражает признательность правительству за стремление обеспечить право на питание, о чем свидетельствует большое количество мер, принимаемых с целью улучшения положения беднейших слоев населения.

Вынесены конкретные рекомендации в отношении необходимости: а) усиления защиты от насильственных выселений; б) оценки последствий торговых соглашений; в) повышения минимальной заработной платы, расширения возможностей трудовых инспекций и регулирования процесса заключения подрядных договоров; д) полноценного выполнения Закона о продовольственной безопасности и безопасности питания и суверенитете в этой области; е) укрепления потенциала Государственного предприятия Никарагуа по производству основных продуктов питания; ф) интеграции принципов прав человека в про-

\* Представляется с опозданием.

\*\* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на испанском языке.

граммы в рамках стратегии *Hambre Cero* ("ликвидация голода"); g) ускорения программы выдачи документов, удостоверяющих право собственности на землю, и активизации усилий по повышению производительности мелких земельных собственников с уделением особого внимания доступу женщин к земле; h) выделения достаточных ресурсов Управлению омбудсмена и специальному уполномоченному по правам коренных народов; i) принятия закона в отношении коренных народов тихоокеанского, центрального и северного регионов и ратификации Конвенции Международной организации труда № 169 (1989) о коренных народах и народах, ведущих племенной образ жизни в независимых странах; и j) возобновления глобальных переговоров с донорским сообществом за "круглым столом".

## Annex

### **Report of the Special Rapporteur on the right to food, Olivier De Schutter, on his mission to Nicaragua (6 to 12 September 2009)**

#### Contents

	<i>Paragraphs</i>	<i>Page.</i>
I. Introduction .....	1–5	4
II. The right to food as a framework for analysis .....	6–8	4
III. Situation of hunger and malnutrition in the country .....	9–12	5
IV. The obligation to respect the right to food .....	13–23	6
A. Forced evictions .....	15–16	6
B. The impact of trade agreements .....	17–23	7
V. The obligation to protect the right to food .....	24–29	8
VI. The obligation to fulfil the right to food .....	30–73	10
A. Framework law .....	31–35	10
B. Strategic plan.....	36–37	11
C. Social, rural development and other relevant programmes .....	38–58	11
D. Agrarian reform .....	59–66	16
E. Recourse mechanisms .....	67–68	18
F. Food aid .....	69–70	18
G. Disaster preparedness and management .....	71–73	18
VII. Non-discrimination .....	74–77	19
VIII. The role of the international community .....	78–82	20
IX. Recommendations .....	83	21

## I. Introduction

1. The Special Rapporteur on the right to food conducted a country visit to Nicaragua from 6 to 12 September 2009. The visit, which was carried out at the invitation of the Government, aimed to assess obstacles to the realization of the right to food in Nicaragua and to identify recommendations that could contribute to removing such obstacles in the future.

2. During his visit to Nicaragua, the Special Rapporteur met with a wide range of dignitaries from all branches of Government. Interlocutors included representatives from various parts of the executive, notably the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Ministry of Agriculture, Cattle Ranching and Forestry (MAGFOR), the Nicaraguan State Enterprise for Staple Foods (ENABAS), Ministry of Health, Ministry of Education (MINED), Ministry of the Family and the Ministry of Development, Industry and Commerce (MIFIC). In addition, the Special Rapporteur had meetings with members of the National Assembly and the Forum of Presidents of Legislative Branches in Central America and the Caribbean (FOPREL), as well as with representatives from the Supreme Court of Justice, the Office of the Human Rights Ombudsman, the Superior Council of Private Enterprise (COSEP), and a wide range of civil society representatives, such as those from the Agriculture and Forestry Round Table, the Interest Group on Food Sovereignty, Security and Nutrition (GISSAN), the Nicaraguan Centre for Human Rights (CENIDH), and organizations representing indigenous peoples and afro descendants. The Special Rapporteur also had exchanges with members of the international community in Nicaragua, including various donor Governments and the United Nations Country Team.

3. As part of the visit the Special Rapporteur also conducted several field trips. These included rural areas around Managua, as well as the provinces of Esteli and Matagalpa.

4. The Special Rapporteur expresses his deep appreciation to the authorities for the quality of their cooperation, and for the frankness of the discussions he was able to have during his visit. In particular, the Special Rapporteur would like to thank the Ministry of Foreign Affairs for the excellent organization of the visit. Throughout his visit, the Special Rapporteur also benefited from the support of the United Nations Country Team, including in particular the Office of the Resident Coordinator and the Food and Agriculture Organization of the United Nations (FAO). He would like to record his appreciation to these institutions.

5. The present report provides an account of the Special Rapporteur's findings and recommendations emanating from the visit. Following an overview of relevant international standards used by the Special Rapporteur as a framework for analysis, the report briefly describes the situation of hunger and malnutrition in Nicaragua, followed by an assessment of a number of key issues from a right to food perspective. The report concludes with a set of recommendations geared towards further action for the full realization of the right to food in Nicaragua.

## II. The right to food as a framework for analysis

6. The assessment conducted by the Special Rapporteur during the visit was grounded in the human right to adequate food as recognized in several international human rights instruments, including inter alia the Universal Declaration of Human

Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

7. The right to adequate food imposes three levels of obligations on States<sup>1</sup>. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfil (facilitate)* means that States must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly.

8. In addition to these obligations, the general principle of non-discrimination requires that special attention is paid to particularly vulnerable groups, which suffer from hunger and malnutrition as a result of marginalization and exploitation. In addition, States are obliged to use the maximum of their available resources, to achieve the progressive realization of the right to food. This report is guided by these obligations.

### III. Situation of hunger and malnutrition in the country

9. Nicaragua with its 5.6 million inhabitants is a low-income country, characterized by chronic poverty, food insecurity and malnutrition. According to a poverty assessment published by the World Bank on the basis of data covering the period between 1998 and 2005, 46 per cent of Nicaraguans lived in poverty in 2005, with a peak of 68 per cent in rural areas and a lower figure of 29 per cent of urban dwellers living in poverty<sup>2</sup>. While overall poverty levels remained fairly stable between 1998 and 2005, extreme poverty dropped from 17 to 15 per cent, the gap between the consumption level of the poor and the poverty line (i.e. the poverty gap) went down from 4.8 to 3.4 per cent, and inequality as measured by the Gini coefficient declined from 0.45 to 0.40.

10. In line with this relatively positive downward trend, the same World Bank poverty assessment also concluded that "stunting declined steadily and significantly" between 1998 and 2005<sup>3</sup>. Decreasing from 27.4 per cent in 1998, this nevertheless meant that more than one in five children still suffered from growth retardation in Nicaragua, with a particularly high prevalence of stunting in the rural areas. The highest levels of stunting were found in the Central region, with a prevalence of stunting of 19.1 per cent in the urban areas and 32.2 per cent in the rural areas. In the Atlantic Region, the total prevalence of stunting was 24.5 per cent. In the urban areas of Managua, the incidence of stunting was 17.5 per cent<sup>4</sup>. The assessment concluded that it would "take Nicaragua 22 years to eliminate stunting as a public nutrition problem"<sup>5</sup>.

11. These figures suggest a strong link between stunting and poverty as the Central region and other areas most affected by stunting are home to many of the poorest

<sup>1</sup> Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food (art. 11), para. 15.

<sup>2</sup> World Bank, Nicaragua Poverty Assessment, 30 May 2008, vol. II, p. 1.

<sup>3</sup> Ibid., p. 258.

<sup>4</sup> Ibid., p. 267.

<sup>5</sup> Ibid., p. 258.

municipalities. At the same time malnutrition was still unacceptably high among non-poor households, where, on average, 14.6 per cent of children showed delays in growth. Maternal education was another important determinant of stunting, as children of mothers with no education at all were 1.5 times more likely to be stunted than children whose mothers had primary or secondary education. Ethnicity also showed a slight association with stunting, as children of indigenous families were approximately 20 per cent more likely to be stunted than non-indigenous children.

12. At the time of the visit, these figures still appeared valid. In this regard, FAO has reported that economic access to food has diminished in Nicaragua in the context of the 2006–2008 food crisis and the ongoing economic crisis. Higher prices registered in 2008 included those for rice with a 29 per cent increase in real terms compared to 2007, while the impact of the global food crisis on the price of maize and tortilla was limited. Lower incomes also affected access to food with 19,000 layoffs reported in the maquila sector in early 2009 and reduced employment opportunities in construction, agriculture, mining and export-oriented factories. Remittances are also expected to go down from 13 per cent of GDP in 2008 to 12 per cent in 2009<sup>6</sup>.

#### **IV. The obligation to respect the right to food**

13. The Special Rapporteur was generally impressed by the level of commitment of the Government to the realization of the right to food. A large number of measures have been taken since the current administration took office in order to improve the situation of the poorest segments of the population, and to combat in particular child nutrition and extreme poverty amongst the indigenous population. A non-exhaustive overview of these measures will be presented and discussed below under the obligation to fulfil the right to food.

14. Before turning to these measures, however, this section will first review relevant issues falling under the obligation to respect the right to food. As part of this obligation, Nicaragua must abstain from taking any measure that could result in depriving people of access to their existing means of producing food. In particular, this means that people should not be evicted from the land they depend on for their livelihoods, unless certain conditions are complied with; and trade agreements entered into by the State should not affect the existing enjoyment of the right to adequate food.

##### **A. Forced evictions**

15. The Special Rapporteur is concerned that forced evictions of peasant communities in different parts of the country continue to take place. In most cases, such evictions are executed with the use of State or private security violence. Examples of such cases have been brought to the attention of the Special Rapporteur during the visit.

16. While the Special Rapporteur could not verify all the allegations received in this regard, the cases he was informed about often result from multiple titles being granted on the same piece of land, and are indicative of increasing conflict over land as a result of agrarian reform in the 1980s and redistribution of land following the 1990 Peace Agreements. Evictions resulting from this situation that have been

---

<sup>6</sup> FAO, *The State of Food Insecurity in the World 2009 – Case studies of countries affected by the economic crisis*, pp. 35–37.

brought to the attention of the Special Rapporteur were located in Managua but also in other parts of the country, for instance, in the departments of Matagalpa and Chinandega. Protection against such evictions should be improved, as detailed in the recommendations presented at the end of this report.

## B. The impact of trade agreements

17. In 2005, Nicaragua's National Assembly approved the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA). The agreement entails gradual tariff reductions for American imports and increases of quotas of entry for Nicaraguan export products. It entered into force in 2006.

18. Information on the impact of the agreement on issues of relevance to the enjoyment of the right to adequate food in Nicaragua is relatively scarce and generally limited to international organizations, civil society and scholarly sources. Ex-ante assessments generally predicted a very limited impact on the Nicaraguan economy as tariff levels were already fairly low prior to the agreement<sup>7</sup>. While an increase in exports was foreseen, this was not expected to translate into significantly higher levels of domestic production and employment, while changes in income distribution and poverty were likewise considered marginal<sup>8</sup>. Other analyses stressed the vulnerability of domestic basic grain producers to competition from cheaper agricultural imports from the United States of America. Given the relatively high tariffs in place for basic grains before DR-CAFTA and the low export orientation of this sector, the additional inflow of United States agricultural products expected following the entry into force of the agreement raised concerns as to the potential downward effect of these cheaper grains on prices and hence farmer income<sup>9</sup>.

19. At the time of the visit, these assessments reflected the overall trends registered after the entry into force of DR-CAFTA. Total exports to the United States have steadily increased from US\$ 1.2 billion in 2005 to US\$ 1.7 billion in 2008, an overall increase of 40 per cent<sup>10</sup>. The trade balance remains positive<sup>11</sup>, as the level of imports from the United States stood at US\$ 1.1 billion in 2008. However, imports from the United States have increased at a faster rate than Nicaraguan exports, rising from US\$ 625 million in 2005, an increase of approximately 76 per cent over the three years<sup>12</sup>.

<sup>7</sup> Giulia Colombo, "The effects of DR-CAFTA in Nicaragua: a CGE-microsimulation model for poverty and inequality analysis", Paper prepared for the 16th International Input-Output Conference, Istanbul, 2–7 July 2007, p. 22.

<sup>8</sup> *Ibid.*, pp. 23–25.

<sup>9</sup> Maurizio Bussolo and Yoko Niimi, "Do regional trade pacts benefit the poor? An illustration from the Dominican Republic-Central American Free Trade Agreement in Nicaragua", World Bank Policy Research Working Paper 3850, February 2006, pp. 43–45. See also, for the agricultural sector in the region as a whole, Joseph F. Francois, Luis Rivera and Hugo Rojas-Romagosa, "Economic Perspectives for Central America after CAFTA", CPB discussion paper No. 99, February 2008.

<sup>10</sup> Data from the United States Census Bureau, Foreign Trade Statistics/US imports from Nicaragua 2004–2008.

<sup>11</sup> The positive balance decreased between 2006 and 2008 (from US\$ 550.1 million in 2006 to US\$ 10.4 million in 2008). See Ministerio de Fomento, Industria y Comercio, "Resumen ejecutivo sobre el comercio bilateral Nicaragua – Estados Unidos de América en el marco de CAFTA-DR, 2006–2008", March 2009, p. 3.

<sup>12</sup> US Census Bureau, Foreign Trade Statistics/US exports to Nicaragua, 2004–2008.

20. DR-CAFTA does not appear to have had any positive impact on employment. The job losses in the *maquila* sector referred to above are attributable to a range of factors, including the impact of the global economic crisis. They nevertheless confirm a negative trend already reported by civil society organizations in 2007, with jobs created as a result of the opening of new *maquilas* offset by the closure of other factories, resulting in a net loss of jobs<sup>13</sup>.

21. In the view of the Special Rapporteur, market access for a broad range of small and medium producers, in particular in the agricultural sector, will remain limited without adequate technical assistance, access to credit and infrastructure. This also includes support in obtaining relevant licenses and passing inspections in order to be able to export. Such support is all the more important given the rate of growth of imports from the United States and the potential risk of domestic producers being priced out by these cheaper products. The Special Rapporteur was told during the visit, for instance, that rice producers have been faced with dumping of imported rice.

22. Against this background, the Special Rapporteur noted that there still is no government mechanism in place to evaluate the current and future impacts of DR-CAFTA on the enjoyment of the right to food. The Special Rapporteur encourages the Government to conduct such an impact assessment on a regular basis, in particular in light of the recently adopted Law No. 693 on Food and Nutrition Security and Sovereignty (*Ley de Soberanía y Seguridad Alimentaria y Nutricional*), published on 16 July 2009, which specifically calls for the creation of an inclusive and just market that favours national self-sufficiency and respect for cultural diversity in relation to food. Such an assessment should also be conducted in relation to the proposed association agreement between Central America and the European Union (EU), which is currently under negotiation.

23. In the framework of the negotiation of an association agreement between the EU and Central America, the Government of Nicaragua proposed the creation of a common economic and financial credit fund for Central America, with the purpose of rebalancing the asymmetries between the EU and Central America and of ensuring that the Central American countries can effectively reap the benefits from new trade opportunities. The Special Rapporteur welcomes the creation by the parties of a bi-regional working group to study the creation of a finance mechanism.

## V. The obligation to protect the right to food

24. The obligation to protect the right to food requires Nicaragua to ensure appropriate protection against violations of labour rights and other abuses by private businesses, including transnational corporations.

25. The Special Rapporteur notes that the minimum wage is set at a low level of 75 córdobas per day. While this minimum is generally complied with, the level is below the price of the basic food basket, which is estimated at 398 córdobas daily. The gap between the minimum wage and the requirements of the basic food basket is greater in the agricultural sector. The average monthly salary in agriculture, forestry and fisheries was 2,063 córdobas in January 2009, as compared to 8,829 córdobas in the mining sector, 4,225 córdobas in the manufacturing sector, or 6,791 córdobas in

---

<sup>13</sup> The Stop CAFTA Coalition, "DR-CAFTA Year Two: Trends & Impacts", 27 September 2007, available on [www.stopcafta.org](http://www.stopcafta.org).

the trade sector<sup>14</sup>. While acknowledging that this calculation of the agricultural wage does not comprise certain additional goods and services provided by the employer, including food and basic housing, such a salary only covers 16.05 per cent of the basic food basket. This is clearly inadequate. In accordance with the 2008 Law on the Minimum Wage (*Ley de salario mínimo*), the minimum wage should be raised gradually, and be revised on a regular basis in order to reflect the evolution of the price index for basic commodities.

26. In the area of labour rights, the capacity to enforce the Labour Code appears limited. The Special Rapporteur was informed that there are only 105 labour inspectors to cover the formal sector, in which 520,000 workers are registered. The informal sector, which is estimated to absorb 63 per cent of the total number of workers, falls outside of any control system. In this regard, the Special Rapporteur encourages the Government to adopt measures to encourage companies to get formal status, and to increase the number of labour inspectors.

27. Child labour still occurs in rural areas. The Special Rapporteur takes note of a law passed in 2007 prohibiting employment of children below the age of 16. In addition, relevant government initiatives in this area include the programme *Mi Primer Empleo*, which offers training and professional education for children between the ages of 12 and 16.

28. As for the right to unionize, the Government has promoted the registration of new trade unions and more than 100 have registered in the past year. While some collective agreements exist in the area of sugar, peanuts and coffee, concerns remain with regard to payment of wages and social security benefits. The establishment of a national tripartite council to encourage dialogue between Government, employers, and workers' unions in September 2008, as supported by the International Labour Organization (ILO), is a welcome development in this regard. The Special Rapporteur will also follow with interest the discussions surrounding the proposal for a law on subcontracting of labour (*Proyecto de ley reguladora de tercerización y subcontratación*). This is particularly relevant in the agricultural sector, since the outsourcing of recruitment could weaken the compliance of employers with requirements regarding working hours or the payment of benefits.

29. During the visit, the Special Rapporteur met with workers affected by the use of the pesticide Nemagon in the region of Chinandega. Until 1986, these workers were exposed to pesticides which, in most countries, were already prohibited at the time, and which are now prohibited under the 2001 Special Law for the Processing of Legal Actions Filed by People Affected by the Use of Pesticides Made from DBCP<sup>15</sup>. The use of pesticides reportedly caused severe damage to the health of the workers concerned, and led to the contamination of soils and water in the area concerned. The companies responsible have since dissolved the joint venture (Standard Fruit Company) which employed the workers concerned. Lawsuits have been filed both in Nicaragua and in the United States against the companies concerned. The Special Rapporteur notes that, despite court decisions in favour of the plaintiffs, these companies have not paid any compensation to the victims<sup>16</sup>. This case illus-

<sup>14</sup> Data from the Central Bank of Nicaragua provided to the Special Rapporteur during the mission. The data is from January 2009.

<sup>15</sup> Ley Especial para la Tramitación de Juicios Promovidos por las Personas Afectadas por el Uso de Pesticidas Fabricados a Base de DBCP, Official Gazette, 17 January 2001.

<sup>16</sup> In December 2002, a Nicaraguan judge ordered the companies concerned to pay US\$ 490 million in compensation to 583 banana workers and on 5 November 2007 a Los Angeles court requested the companies to pay them US\$ 3.2 million.

trates the need to ensure strict control of foreign companies operating within the country, consistent with the obligation of the State to protect human rights under its jurisdiction, since if violations do take place, post hoc remedies will be particularly difficult for the victims to have access to, given the need to ensure the collaboration of foreign jurisdictions to have any decisions enforced.

## **VI. The obligation to fulfil the right to food**

30. The obligation to fulfil the right to food includes the facilitation of efforts to strengthen people's access to and utilization of resources and means to ensure their livelihood. Nicaragua has designed a framework law on the right to food and adopted a national strategy for the realization of the right to food. Fulfilment of the right to food also involves the effective implementation of a rural development plan and agrarian reform, and the establishment of recourse mechanisms.

### **A. Framework law**

31. The Special Rapporteur welcomes the adoption of the Law on Food and Nutrition Security and Sovereignty. Consistent with article 63 of the Constitution, the law clarifies the obligation of the Government to guarantee the right to adequate food and is an important step towards the realization of the right to food.

32. One of the main features of the new law is the creation of a national system for food and nutritional security and sovereignty (SINASSAN) to ensure coordination across different ministries and between national, regional, departmental and municipal levels of government. The proposed system, to be composed of public and private institutions, as well as non-governmental organizations (NGOs) and peasant organizations, will consist of a National Commission on Food and Nutrition Security and Sovereignty (CONASSAN), chaired by the President and responsible for coordination and decision-making at the national level; an executive secretariat (SESSAN) to support the work of the national commission; a technical committee (COTESSAN) to elaborate strategies for approval by CONASSAN to coordinate, monitor and evaluate implementation; regional commissions in the Autonomous Regions of the Northern and Southern Atlantic (CORESSAN); departmental commissions (CODESSAN); and municipal commissions (COMUSSAN).

33. The adoption of a framework law, such as the Law on Food and Nutrition Security and Sovereignty, should ensure that the programmes which are established in order to promote food and nutrition security become more sustainable and permanent, and that the accountability of the Government is improved. Crucially, it should contribute to existing programmes being more transparent and participatory, as well as better coordinated, if they are placed under the framework of this law. In this regard, the Special Rapporteur is encouraged by the fact that the law is the result of a long and extensive consultation process, and is supported by both civil society organizations and the private sector. It is his hope that CONASSAN, which will include one representative from civil society, will allow for effective participation and have real political weight. The Special Rapporteur also welcomes the reinforcement of inter-ministerial coordination, as opposed to the previous fragmented institutional framework governing policies addressing food insecurity.

34. The Special Rapporteur notes that the law provides for the design, implementation and evaluation of a unified information system on food and nutrition security. This should help to address fragmentation in the area of food insecurity and vulner-

ability diagnosis, given the multitude of indicators used until now in the context of various mapping exercises, such as the poverty mapping conducted by the National Development Information Institute (*Instituto Nacional de Información de Desarrollo*, INIDE), the school mapping carried out by MINED, and others by the Ministry of Health, MAGFOR and MIFIC. The Special Rapporteur recommends that a unified system of indicators, targets and benchmarks be developed to monitor compliance with the State obligation to progressively realize the right to food.

35. The Law on Food and Nutrition Security and Sovereignty stipulates that adequate financial resources have to be allocated for the implementation of the national system in the State budget. The Special Rapporteur urges the Government to heed this requirement, as public sector expenditure has until now been insufficient to properly address poverty and ensure food security for the population. Moreover, the State budget is reliant on external sources, in the form of official development assistance and loans, which accounted for 22 per cent of expenditure in 2009<sup>17</sup>. The Special Rapporteur notes that fiscal reform is being considered in the National Assembly in order to increase government revenue, mainly by instituting an income tax on productive activities and income from capital.

## **B. Strategic plan**

36. In May 2009, the Government announced the Policy for Food and Nutritional Security and Sovereignty (*Política Sectorial de Seguridad y Soberanía Alimentaria y Nutricional*). The objective of this policy, which is part of the National Human Development Plan (2008–2012), is to provide adequate services to small, medium and large producers, at all stages of the agrofood chain, in order to stimulate the production of food and increase productivity, while guaranteeing sustainable use of natural resources and prioritizing basic food stuffs.

37. The Special Rapporteur welcomes this comprehensive strategy to fight hunger and malnutrition. The policy incorporates the different dimensions of food security: availability of food, through reinforcement of the national productive capacity; access to food, through social and economic inclusion, provision of food at low prices and food aid; utilization of food, through the development of capacities to acquire, prepare and distribute food in the family; and food quality and safety. Within the framework of the policy, small and medium producers, and women in particular, are seen as key actors in making the rural sector more dynamic.

## **C. Social, rural development and other relevant programmes**

38. The Policy for Food and Nutritional Security and Sovereignty is implemented through a wide range of social programmes. In the view of the Special Rapporteur such programmes should be progressively implemented within the framework of the new Law on Food and Nutrition Security and Sovereignty and redefined following a deliberation within CONASSAN.

### **1. *Hambre Cero***

39. Between 2002 and 2006, Nicaragua implemented a conditional cash transfer programme (*Red de protección social*), which directed funds to female heads of household linked to children's school attendance, medical check-ups at local health

<sup>17</sup> Presupuesto general de la República 2009.

centres and mothers' participation in educational sessions. An evaluation of the first phase of the programme showed positive results, significantly increasing school enrolment and other education indicators, and reducing stunting by 5 percentage points in treatment communities. The programme was nevertheless discontinued by the current administration and there has been no other sustained cash transfer programme in the country since.

40. Instead, Nicaragua's current flagship programme to address hunger and malnutrition is the Zero Hunger Programme (*Hambre Cero*), which was launched in 2007<sup>18</sup>, providing a so-called productive voucher (*bono productivo*) to rural women heading households with at least one *manzana* of land (approximately 0.7 ha). The programme is funded by the Inter-American Development Bank, which is disbursing US\$ 20 million over a period of 5 years, with an amortization period of 40 years. It is also supported by the International Fund for Agricultural Development through its Technical Assistance Fund.

41. The voucher is worth between US\$ 1,500 and 2,000 and grants a cow, a pregnant sow, chickens, building materials, fruit and forest plants, seeds and inputs. Animals are given as capital instead of cash, so as to address the perceived lack of animal protein in food consumption. The programme specifically targets women, as they are seen as better able to manage resources and because they have traditionally maintained agricultural production, while men invested in other activities.

42. The voucher is conditional upon a commitment from the beneficiaries not to sell the animals provided. Beneficiaries are also required to contribute 20 per cent of the value of the voucher to a revolving fund and to join with others in the creation of small cooperatives. The objective is to reach 75,000 households in the country by 2012, providing food for the direct beneficiaries of the programme and producing a surplus to sell in local communities and municipalities. The programme is also expected to have a positive impact on the capacity of rural people to negotiate wages in the agricultural sector, whilst the purchase of animals by the Government also benefits medium and large producers, hence reinforcing the private sector. In addition, raising animals holds the potential of meat production for export. The long-term objective is to diversify production and to increase the export of meat, milk and beans to other parts of the Central and Latin American region.

43. The Special Rapporteur visited a number of communities in different regions of the country, including Timal, Matagalpa and Estelí, where he witnessed first hand the impact of the programme. This programme moves away from a purely charity-based approach towards incentivizing innovation and entrepreneurship. Supply constraints were considerable during the first year of implementation with only 2,000 pigs available for sale and 30,000 needed. Following successive evaluations, the programme has been revised and improved: for example, a new component of the programme, the so-called small garden voucher (*bono economía de patio*), has been launched for people who have only a small garden. The gradual approach of *Hambre Cero* to improving the availability of and access to food at the family level and at the same time promoting the creation of cooperatives to facilitate market access is appropriate. The Special Rapporteur notes, however, that the provision of extension services and accompanying measures would be important to complement the provisions of the voucher. The distribution of productive vouchers should therefore go hand in hand with strengthening the capacity of the MAGFOR technical per-

---

<sup>18</sup> See FIAN, *The Right to Food and the Fight Against Hunger in Nicaragua: the Zero Hunger Programme – one year later*, September 2008.

sonnel. In addition, the transparency and accountability of the programme could be improved, as detailed further below.

## 2. Other social and rural development programmes

44. Other important initiatives include the microcredit *Usura Cero* programme. As part of this programme, women in urban areas have access to loans at preferential interest rates to create and run a business. The provision of such loans is conditional upon the formation of solidarity groups, in which each member acts as a guarantor to the others. In total, 86,826 women, forming 13,021 solidarity groups, have been granted such microcredits since the programme was launched in August 2007, according to information provided by MIFIC.

45. A number of programmes have been launched in schools. These include the School Feeding Programme (*Programa Integral de Nutrición Escolar*, PINE), implemented by the Ministry of Education, which targets kindergartens and primary schools in food insecure regions<sup>19</sup>, the programme for the provision of a glass of milk to school children<sup>20</sup>, and the development of vegetable gardens or orchards in approximately a quarter of the schools in the country.

46. The National Plan for the Eradication of Chronic Child Malnutrition (*Plan Nacional "Hacia la erradicación de la desnutrición crónica infantil"*, HEDCI) for the period 2008–2015 integrates interventions by the Ministry of Health, the Ministry of Family, Adolescence and Childhood, and MAGFOR. Relevant programmes under this heading include the Community Health Programme (*Programa Comunitario de Salud*, PROCOSAN), the National Micronutrients Programme (*Programa Nacional de Micronutrientes*) and the National Breastfeeding Programme (*Programa Nacional de Lactancia Materna*). The Ministry of Health also works to address the adverse impact of bad eating habits, resulting in increased chronic diseases among young people, in particular by regulating advertisements targeting children, and by promoting breastfeeding. The adoption of regulations implementing the 1981 law on breastfeeding would be an important further step in this direction.

47. In the area of rural development, the Sectoral Programme for Inclusive and Productive Rural Development (*Programa Sectorial de Desarrollo Rural Productivo Incluyente*, PRORURAL *Incluyente*) stands out. PRORURAL was initially formulated by the previous Government to cover the period between 2005 and 2009 and later redesigned by the present administration. Based on the new PRORURAL *Incluyente*, three national programmes have been elaborated, which deal with food, agro-industry and forestry. The National Food Programme (*Programa Nacional de Alimentos*, PNA) seeks to increase the production of basic grains, dairy and meat. The National Programme for Rural Agro-Industry (*Programa Nacional de Agroindustria Rural*, PNAIR) seeks to develop new rural enterprises and agrofood chains, through the provision of training, post-harvest activities, and investment in food processing. The National Forestry Programme (*Programa Nacional Forestal*, PNF) seeks to combat deforestation, increase employment in the forestry sector and develop forestry exports<sup>21</sup>.

<sup>19</sup> Actions include the school snack, school kiosks where nutritious and locally purchased food is sold, vegetable gardens and training on food and nutrition security as part of the school curriculum.

<sup>20</sup> Law No. 688 – Ley de Fomento al Sector Lácteo y del Vaso de Leche Escolar.

<sup>21</sup> Resumen actualizado, Plan nacional de desarrollo humano 2009–2011, July 2009, pp 31–35.

### 3. Seed programmes

48. Efforts to increase national production in basic grains rely on the distribution of certified seeds and fertilizers, generally in the form of partially reimbursable loans. The seeds are developed by the Nicaraguan Institute for Agricultural Technology (*Instituto Nicaragüense de Tecnología Agropecuaria*, INTA) and distributed through the Agro-food Seeds Programme (*Programa agroalimentaria de semillas*), which constitutes an extension of the Pound for Pound Programme (*Programa Libra por Libra*) put in place by the previous Government. In addition, the Certified Seeds Programme (*Programa de semilla certificada*) includes the distribution of certified seeds (in the form of a loan with a low interest rate) to small and medium producers of basic foods, together with herbicides and fertilizers.

49. While appreciating the important efforts made in this area, the Special Rapporteur takes note of concerns that the fertilizers and seed packages distributed under the various programmes create dependency, without there being a clear exit strategy. In addition, since certain local varieties of seeds may be better suited to specific agro-ecological environments, the Government could consider buying the seeds that are distributed through public programmes from native seed banks at the community level, which have been created by peasant organizations, notably within the *Campesino a campesino* Programme. Municipal governments could usefully promote the creation of such seed banks, while a national strategy for the production of native seeds, including a list of available native seeds, could also be designed. The approval of new laws on biosafety (*Ley de Bioseguridad*) and biodiversity (*Ley de Biodiversidad*), which are currently under discussion, would also be a significant step forwards in ensuring environmental protection and the conservation of genetic resources.

### 4. Food reserves

50. The Special Rapporteur welcomes the strengthening of the storage capacities of the Nicaraguan State Enterprise for Staple Foods (*Empresa Nicaragüense de Alimentos Básicos*, ENABAS). ENABAS is a State-owned company, which buys basic grains at remunerative prices from producers and sells these grains at prices that are affordable for the poorest segments of the population. ENABAS played an important stabilizing role in the 1980s, before being dismantled in the 1990s. Since 2006, the company has slowly been reactivated and old storage facilities have been repaired and improved.

51. In all countries, the volatility of prices for agricultural commodities is a disincentive to produce, and net food-buying households, including small producers who lack storage facilities, are severely affected by price changes between the harvest season and the lean season. Therefore, the role of a company such as ENABAS, insofar as its interventions on the market could improve the prices paid to the producers and reduce the prices paid by consumers, is in principle welcome. For example, in 2008, ENABAS sold rice at 20 per cent below market prices, beans at 15 per cent below market prices and oil at 12 per cent below market prices through the Food for the People Programme (*Alimentos para el Pueblo*). The objective was to sell 2.1 million quintals of basic products.

52. The food purchased by ENABAS is also included in so-called "institutional packages" distributed among State employees and workers employed in free trade zones. In 2008, more than 10,000 such packages were provided and there are plans to scale this up in the future.

53. In 2009, the objective of ENABAS was to collect and store 1.872 million quintals of basic grains and to establish contracts with 100 producer organizations,

with a particular focus on small- and medium-sized producers, from whom at least 40 per cent of the total amount of basic grains was to be purchased<sup>22</sup>. The basic grains are sold in some 3,800 selling points (*expendios*) established throughout the territory, a number that should increase in the future to reach 5,000. ENABAS also provides agro-industrial services, such as cleaning, drying, storage and fumigation, to private companies for payment. The objective for 2009 was to develop the capacity to process 4 million quintals of grain. The Special Rapporteur would encourage the further development of such services.

54. The Special Rapporteur notes with great interest the important results already achieved by ENABAS since its re-establishment in 2006. He is, nevertheless, concerned that its market interventions may lack effectiveness in the absence of additional liquidity and storage capacity. Also, the lack of coordination at the regional level, in the framework of the Integration System of Central America (SICA), is a limiting factor. For such interventions to be fully effective, they should be part of a regional common agricultural policy. The Special Rapporteur would encourage an initiative by FOPREL in this regard, which could be combined with the mutualization of food reserves established at national level in the different countries concerned, in order to ensure a more coordinated approach to emergency situations.

55. The Special Rapporteur also calls upon the Government to assess the poverty-reducing impact of the sales of grain through the current system of selling points. In the view of the Special Rapporteur, the effectiveness of ENABAS as a mechanism for increased food security could be maximized if combined with an effort to reach out to the poorest households. The impact of the distribution of basic grains at subsidized prices could be improved if a voucher system were put in place, prioritizing the poorest households in accessing such benefits. A clear definition of the beneficiaries, based on an objective assessment of needs, combined with the provision of adequate information, would also constitute a check against the risk of the diversion of resources for politically motivated or other reasons, or the reselling of subsidized foods on the black market.

## 5. Overall assessment

56. The programmes developed to achieve food security and food sovereignty in the country, particularly those placed under the *Hambre Cero* strategy, have attracted criticism from some interlocutors. The most important source of concern is that the identification of the beneficiaries takes place at the local level, with an important role assigned to the Councils for Citizen Power (*Consejos de poder ciudadano*). This creates a risk of political clientelism and of potential beneficiaries being excluded as a result of their political affiliation. The Special Rapporteur insists on the need to ensure the integration of human rights principles of non-discrimination, transparency, participation and accountability in the design and implementation of relevant support schemes such as *Hambre Cero*, as detailed in the recommendations below.

57. The voucher schemes and other components of the *Hambre Cero* strategy for the most part comply with these principles. It is needs-based, insofar as the mapping of needs across the country is based on the 2001 National Agricultural Census (*Censo nacional agropecuario*), and insofar as the targeting of the poorest households, as identified at community level, has improved since the inception of the programme. It is participatory insofar as it is implemented at community level and requires beneficiaries to form networks of 50 households at a minimum in order to be

<sup>22</sup> Plan Operaciones Institucional de ENABAS, January 2009 available at <http://www.enabas.gov.ni>.

eligible. There have been broad information campaigns and presentations in communities about the programme.

58. Yet, the concerns about political clientelism are real, and the principles of decentralization and participation that characterize the programme increase that risk. It is therefore important that the conditions which beneficiaries must comply with are clearly defined in legislation. Complaints mechanisms should also be established, allowing households who are unjustly denied benefits to have the decision reviewed. The Special Rapporteur encourages the Government to improve transparency in the implementation of the *Hambre Cero* programmes, in order to increase the level of trust in their implementation and in order to make them as inclusive as possible. This would strengthen a strategy that deserves to be made sustainable over time and scaled up.

#### **D. Agrarian reform**

59. Access to land remains an important issue in Nicaragua, with conflicts over land multiplying as a result of its past history. An agrarian reform was carried out in the 1980s, after the adoption in 1981 of a Law on Agrarian Reform (*Ley de Reforma Agraria*) which targeted large estates and idle land for distribution to peasants, cooperatives, producers "guaranteeing its efficient use" and so-called "agrarian reform enterprises". Priority was given in this reform to the combatants of the "War of Liberation". The main flaw of this reform was the lack of systematic titling, which the Government tried to address by passing Law No. 88 on the Protection of Agrarian Property (*Ley de Protección a la Propiedad Agraria*) in 1990.

60. Agrarian reform was later enshrined in chapter II of the 1987 Constitution, where it is described as a "fundamental instrument for the democratization of property and the fair distribution of land". The Constitution further stipulates the elimination of idle land, guarantees for the property of efficient producers, the promotion of agricultural cooperatives and the participation of producers, including peasants and small and medium producers, in agrarian policymaking.

61. Following the Peace Agreements of 1990, plots of land were distributed to some 140,000 former members of the regular army or of the armed opposition groups who were demobilized. In addition, legislation was adopted to recognize and legitimize property rights acquired during the land reform of the 1980s, to establish compensation procedures and to redistribute land held by the State. Among the laws adopted were the *Ley de Estabilidad de la Propiedad* and the *Ley sobre Propiedad Reformada Urbana y Agraria*. Various government agencies have since been in charge of assigning property titles. In 1991, under President Violeta Barrios de Chamorro, the Law on the Nicaraguan Institute of Agrarian Reform (*Ley Orgánica del Instituto Nicaragüense de Reforma Agraria*) was passed, creating a government agency in charge of directing and implementing agrarian reform and rural development policies, which would also undertake a revision of the 1981 Law on Agrarian Reform.

62. In 2003, the Land Administration Project (*Proyecto de Ordenamiento de la Propiedad*, PRODEP) was launched with the stated purpose of fostering agrarian reform by regularizing land rights and supporting peri-urban land titling. With financing from the World Bank, PRODEP is an inter-institutional effort executed mainly by the *Intendencia de la Propiedad*, an agency within the Ministry of Finance and Public Credit; the Supreme Court of Justice through its Public Registry of Real Estate and the Directorate for Alternative Conflict Resolution (DIRAC); the Ministry of the Environment and Natural Resources; MAGFOR; the Nicaraguan Institute of Territo-

rial Studies (INETER); municipal authorities; and NGOs. Under PRODEP, 1,500 km<sup>2</sup> have recently been registered, with a total of 22 per cent of the territory now recorded and 40,000 titles granted across the country. PRODEP, in principle, is scheduled to cease its activities on 30 April 2010.

63. Despite this considerable progress, various concerns remain. For example, the Special Rapporteur was informed that it is not uncommon for titles to the same plot of land to be granted to a range of different people. Furthermore, in the absence of adequate access to credit, landless agricultural labourers find it difficult to acquire land of their own, and as they lease the land they cultivate for terms which can be as short as one harvest cycle, this discourages investment in the land and is a disincentive for responsible management of the soil, including the planting of nitrogen-fixing trees. In addition, the result of past processes is that women have been discriminated against in access to land, since land redistribution has disproportionately benefited men.

64. The Special Rapporteur therefore makes three recommendations that should go beyond existing Presidential Decree No. 70-2006 establishing a general framework for land policies<sup>23</sup>. First, the implementation of the titling programme should be accelerated in order to limit the risk of more conflicts over land in the future. In the process of implementation, priority should be given in access to land to those who use the land as a productive resource, and the process should not lead to any eviction that does not comply with the principles laid out in general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing (art. 11 (1) of the Covenant): forced evictions, and with the Basic Principles and Guidelines on Development-based Evictions and Displacement presented in 2007 by the previous Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living<sup>24</sup>.

65. Second, in order to avoid the risk of a market-led land reform leading to more concentration of land in the hands of large landowners with a capacity to price smallholders out of the market, it is vital that titling goes hand in hand with improvements to the production capacities of smallholders, something to which improved access to credit could significantly contribute. The establishment of a bank to support production (*Banco de Fomento de la Producción*, PRODUZCAMOS) is therefore welcome. This bank will strengthen and broaden the range of financial services to the rural sector already provided by the Rural Development Fund, and should be adequately equipped to provide loans to farmers.

66. Third, access to land of women should be strengthened. Around 22 per cent of the Nicaraguan population consists of rural women. Although the economic and productive activity of rural women represents an important pillar of the country's economy, they face serious limitations when it comes to accessing resources such as land, water, credit, health, education, and extension services. In addition, 65 per cent of rural women do not own the land that they till<sup>25</sup>. The initiative for creating a special fund for the acquisition of land by productive rural women, promoted by a member of the National Assembly, Alba Palacios, is welcome and deserves wide discussion<sup>26</sup>.

<sup>23</sup> *Official Gazette*, 8 November 2006.

<sup>24</sup> A/HRC/4/18, annex I.

<sup>25</sup> Data provided by the *Coordinadora de Mujeres Rurales por el Derecho a la Propiedad de la Tierra*.

<sup>26</sup> Draft law presented to the National Assembly on 22 November 2007.

## **E. Recourse mechanisms**

67. Nicaragua's legislation provides a foundation for the justiciability of the right to food. In the Constitution, article 46 explicitly stipulates the respect for and the promotion and protection of human rights, as set forth in key international and regional human rights instruments, including the International Covenant on Economic, Social and Cultural Rights. More specifically, article 63 establishes the right of Nicaraguans to be protected against hunger, and the responsibility of the State to ensure the availability and fair distribution of food.

68. The recently adopted Law on Food and Nutrition Security and Sovereignty further strengthens the legal protection of the right to food. Article 35 of the law contemplates an administrative appeal available to those who believe their rights have been infringed. Furthermore, the law calls upon the Office of the Ombudsman (*Procuraduría para la Defensa de los Derechos Humanos*) to designate a special ombudsman to monitor the functioning of the national system for food and nutritional sovereignty and to include information on the progressive realization of the right to food in an annual report to the National Assembly. The Special Rapporteur welcomes the increased role for the Ombudsman in monitoring the status of realization of the right to food. Adequate resources will be important to ensure the effective implementation of this new role. In this regard, the Special Rapporteur expresses concern at information received during the visit that the special ombudsman for indigenous peoples, having been appointed, has until now not received any resources with which to function, thus limiting the responsiveness of the Office of the Ombudsman to the plight of indigenous peoples.

## **F. Food aid**

69. The World Food Programme (WFP) has been present in Nicaragua since 1971 and for the 2008–2010 period has the yearly target of distributing 21,045 metric tons of food aid reaching 225,000 beneficiaries. The WFP Nicaragua country programme has three components: (a) support for improving the nutrition and health of children and pregnant and lactating women; (b) supporting access to education; and (c) enhancing livelihood activities to improve household food security. The second component entails primarily food support for preschools and primary schools. It accounts for 78 per cent of the expected country-wide beneficiaries and 84 per cent of total direct operational costs borne by the WFP in its country programme.

70. The country programme is implemented in partnership with the Government, other United Nations agencies, international donors and civil society. Additionally, WFP guidelines seek to maximize local food procurement, with the target of purchasing 50 per cent of maize and pulses locally, as well as supporting farmers' cooperatives and small traders.

## **G. Disaster preparedness and management**

71. Nicaragua is exposed to natural disasters that seriously affect food security, including hurricanes, flooding, landslides, earthquakes and volcanic activity. Natural disasters are particularly destabilizing for the Autonomous Regions of the North and South Atlantic as they suffer from high food insecurity.

72. The National System for Disaster Prevention, Mitigation and Relief (SINAPRED) is the structure coordinating government action to reduce disaster risks

and to protect the population and its property. SINAPRED works through committees at the national, regional, departmental, municipal and local levels, while it is also linked institutionally to the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPREDENAC). Through CEPREDENAC, Nicaragua is currently implementing the Regional Programme for the Reduction of Vulnerability and Environmental Degradation (PREVDA), funded by the European Union.

73. SINAPRED also administers the National Disaster Fund, with resources from the public budget and external contributions, both national and international. Additionally, the Law on Food and Nutrition Security and Sovereignty provides for the creation of a National Emergency Fund for Food and Nutritional Sovereignty and Security (FONASSAN) to deal with emergency food situations caused by natural disasters, and economic or social crises. The fund is financed through the general budget, with the possibility of receiving external donations, and administered by the Ministry of Finance.

## VII. Non-discrimination

74. Indigenous peoples and people of African descent constitute some of the main vulnerable groups in Nicaragua, which require special attention in accordance with the principle of non-discrimination. The issue of land is of particular importance to these categories, as they depend on land for their livelihoods, whilst land is also a core component of their cultural identity. Law No. 445 (*Ley de Régimen de Propiedad Comunal de los Pueblos Indígenas y Comunidades Étnicas de la Costa Atlántica de Nicaragua*), adopted in 2003, provided for the demarcation of nine indigenous territories, covering in total approximately 10,000 square kilometers. While the demarcation of 13 additional territories is foreseen, the legislative framework should be improved in order for such demarcation to benefit not only the Atlantic regions, but also the Pacific, north and central regions.

75. The Special Rapporteur believes that the process of adoption of the act relating to the indigenous peoples of the Pacific, central and northern regions of Nicaragua should be accelerated<sup>27</sup>. This is all the more important given information received by the Special Rapporteur from representatives of indigenous peoples that their forms of self-government are not necessarily recognized by local mayors, and that their territorial integrity is not always respected.

76. The Special Rapporteur also notes with concern that indigenous communities are particularly vulnerable to the impacts of climate change, as a result of a variety of extreme weather events and changes in rainfall and temperature. Rapid alert systems should be put in place, and support should be given to the indigenous communities to enable them to develop modes of agricultural production that are more resilient to weather-related events.

77. Finally, the Special Rapporteur regrets that, in general, indicators relating to socio-economic development or food security are not disaggregated by ethnicity, so that assessing the situation of indigenous peoples or people of African descent in Nicaragua and devising appropriate policies to improve that situation is made more difficult.

<sup>27</sup> See also the concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/NIC/CO/14, para. 15.

## VIII. The role of the international community

78. The international community has an important role to play in supporting the efforts of Nicaragua in improving food security, particularly in agricultural and rural development. The Special Rapporteur was struck by the quality of the coordination among donors, in particular with the support of the United Nations Resident Coordinator, as well as by the quality of the dialogue between the donor community and the Government at sectoral level, through the organization of round tables in thematic areas linked to the Millennium Development Goals. Yet a series of events, including both the perceived politicization and lack of transparency in the implementation of social programmes, and doubts about the fairness of the municipal elections held in November 2008, have affected the trust between the Nicaraguan Government and the international donor community.

79. In turn, its dependency on foreign aid makes the Nicaraguan Government particularly suspicious of any perceived attempts at undermining the ownership of its national human development strategy, and it sees the imposition of conditionalities in any form as an instrumentalization of aid. The result is that the global round table between the Government and the international donor community has not been convened since March 2008. This is regrettable, and runs against the spirit of the Paris Declaration on Aid Effectiveness and of the Accra Agenda of Action.

80. Each side should take the steps needed to rebuild trust. The global round table should constitute a forum in which the Government could answer the concerns of the donor community, and work towards identifying with them how decentralization and the adoption of a participatory approach in government programmes could be reconciled with the legitimate concerns expressed by donors about transparency. This should be done with full respect for the principle of ownership, and donors should make the best efforts to ensure that their contribution is aligned with the national priorities as defined in the National Human Development Plan 2009, and to improve the predictability of the aid they provide and, hence, the ability of government agencies to plan development.

81. The international community should accept that it has a responsibility not only to provide support to the efforts underway in Nicaragua to improve food security, but also to promote a form of development that is more inclusive and sustainable. This means, for example, not imposing conditions in trade agreements that further reduce the resources of the State, and may result in unfair competition for local producers; and not encouraging or supporting the development of agrofuels, which is currently occurring in conditions that are not sustainable. When assigning funds for rural development and the fight against food insecurity, care should be taken to ensure that the aid provided is channelled towards sustainable methods of agricultural production and is targeted towards the most vulnerable.

82. The Special Rapporteur believes that the coordinated implementation of government policies aimed at improving food security under the framework of the 2009 Law on Food and Nutrition Security and Sovereignty, thus improving transparency, and the provision of remedies for households that are denied access to certain support schemes for which they qualify under the criteria set forth in legislation, would constitute an important step towards rebuilding trust on both sides.

## IX. Recommendations

83. The Special Rapporteur commends the Government for its commitment to the realization of the right to food, which is demonstrated by the large number of measures taken to improve the situation of the poorest segments of the population, and in particular to combat child nutrition and extreme poverty amongst the indigenous population. On the basis of his mission and the information received both prior to the visit and as a result of his visit, he makes the following specific recommendations:

(a) Protection against forced evictions should be improved, and the victims should have remedies against any eviction incompatible with the rule of law or international standards. Nicaragua should take measures which "provide the greatest possible security of tenure to occupiers of houses and land; conform to the [International] Covenant [on Economic, Social and Cultural Rights]; and are designed to control strictly the circumstances under which evictions may be carried out"<sup>28</sup>. Prior to carrying out any evictions, all feasible alternatives should be explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force; legal remedies or procedures should be provided to those who are affected by eviction orders; and all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected<sup>29</sup>. Any eviction not complying with these conditions should be considered a violation of the right to housing and, where it leads to depriving families from their means of producing food, it also is a violation of the right to food;

(b) The Government should assess the impact of trade agreements on a regular basis, in particular in light of the recently adopted Law on Food and Nutrition Security and Sovereignty, in order to ensure that trade liberalization will not fragilize the most marginal farmers. Such an assessment should also be conducted in relation to the proposed association agreement between Central America and the European Union;

(c) In order to ensure access to adequate food for waged workers, Nicaragua should increase the level of the minimum wage, in order to reflect the evolution of the price index for basic commodities. It should improve the capacity of the labour inspectorates to monitor compliance with the Labour Code and it should regulate subcontracting, in order to ensure that it will not result in fragilizing the rights of workers;

(d) The Law on Food and Nutrition Security and Sovereignty should be fully implemented, and the information system on food and nutrition security it provides for strengthened by the adoption of a unified system of indicators, targets and benchmarks to monitor compliance with the State obligation to progressively realize the right to food;

(e) The effectiveness of the Nicaraguan State Enterprise for Staple Foods (ENABAS) in ensuring adequate and stable incomes to farmers and affordable staple foods to consumers would be improved by strengthening further its capacity, as the Government is already doing, and by seeking to reach out to the poorest households. In addition, the ability of ENABAS to limit the volatility

<sup>28</sup> Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing (art. 11 (a) of the Covenant): Forced evictions, para. 9.

<sup>29</sup> Ibid., para. 13.

of prices on the market would be improved by mutualizing its management of food stocks with those of the other countries of the region;

(f) The programmes placed under the *Hambre Cero* strategy could be further improved by integrating the human rights principles of non-discrimination, transparency, participation and accountability. This implies not only developing mechanisms through which the beneficiaries can take part in the design, implementation and evaluation of the programme, as the system of food and nutrition security and sovereignty should allow, but also: (a) basing interventions on a reliable identification of needs; (b) identifying clearly the beneficiaries in legislation, to ensure that any individual or household left out may claim benefits under the schemes through appropriate complaints mechanisms; and (c) improving the provision of information to beneficiaries about their rights under the programmes;

(g) In order to ensure security of tenure and improve access to land, the implementation of the titling programme should be accelerated in order to limit the risk of more conflicts over land in the future. Such titling should go hand in hand with improving the productive capacities of smallholders, in particular by providing them with access to credit on appropriate conditions. Women's access to land should be prioritized, in accordance with article 14 paragraph 2 (g) of the Convention on the Elimination of All Forms of Discrimination against Women;

The Office of the Ombudsman should be provided with the resources needed to effectively monitor the functioning of the national system for food and nutritional sovereignty and the progressive realization of the right to food, as provided in the Law on Food and Nutrition Security and Sovereignty. The special ombudsman for indigenous peoples should also be given the support required to adequately fulfil his/her functions;

(h) Nicaragua should accelerate the process of adoption of the act relating to the indigenous peoples of the Pacific, central and northern regions. It should also ratify ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, which recognizes the special relationship of these peoples with the lands or territories which they occupy or otherwise use, and in particular the collective aspects of this relationship (art. 13). Pending that ratification, as a minimum it should act in conformity with the United Nations Declaration on the Rights of Indigenous Peoples and give legal recognition and protection to these lands, territories and resources, with due respect for the customs, traditions and land tenure systems of the indigenous peoples concerned. It should also put in place a rapid alert system in order to protect indigenous peoples from the impacts of weather-related events, and support them in building the resilience of their food systems against climate change;

(i) No more than any other State can Nicaragua achieve the full realization of the right to food by its own means only. International assistance and cooperation are required. The Government should convene a new global round table with the donor community, and work with them towards identifying how decentralization and the adoption of a participatory approach in government programmes could be reconciled with the legitimate concerns expressed by the donor community about transparency.