

NICARAGUA

CCPR A/38/40 (1983)

220. The Committee considered the initial report (CCPR/C/14/Add.2 and 3) submitted by the Government of Nicaragua at its 420th, 421st, 422nd, 428th and 429th meetings, held on 28 and 29 March and on 4 April 1983 (CCPR/C/SR.420, 421, 422, 428 and 429).

221. The report was introduced by the representative of the State party, who gave a detailed account of the historical and geographical factors which had shaped the development of Nicaragua since the time of the Spanish Conquest, and stated that following the triumph of the revolution in 1979, his Government had set national reconstruction and the liberation of man as its main goals; that it was the belief of the Government Junta that human rights and individual liberties were indivisible and that the full realization of civil and political rights was impossible without the full enjoyment of economic, social and cultural rights; that the acts of aggression and the repeated attempts to destabilize the country, which were financed by the United States Government, impeded efforts to achieve the goals set by the Government, constituted the main obstacle to the free exercise of human rights in the country and obliged the Government to declare a state of national emergency, as provided for in the Statute on the Rights and Guarantees of Nicaraguans and in article 4 of the Covenant, in order to safeguard the rights and guarantees of its people and the country's self-defence.

222. He also pointed out that his Government recognized the existence of socio-economic and cultural discrepancies between the population of the Pacific region and the ethnic groups of the Atlantic coast and was endeavouring to serve the interests of the disadvantaged population of the latter region; that, in January 1981, the Government had been forced to transfer 39 primarily Miskito communities to an area where they would be protected from the immediate danger of military aggression and that the Government had been helping people in the new settlements to meet their most urgent needs in various fields of life. His Government assured the Committee that it would end or restrict the state of emergency as soon as the problem of external aggression was resolved.

223. Members of the Committee praised the Government of Nicaragua for sending a high level delegation to represent it before the Committee and for submitting, in time, a full report that provided a comprehensive and informative picture of both the legal and factual economic, social and political context of human rights in the country. They noted with appreciation that soon after overthrowing the dictatorship, the Sandinista revolution had enacted the Statute on the Rights and Guarantees of Nicaraguans, ratified or acceded to several instruments designed to ensure and protect human rights, including the Covenant and the Optional Protocol and had shown great willingness and determination in fulfilling its commitments for the overall reconstruction of the county on the basis of social justice and democracy, despite the great external economic and military pressures and threats aimed at destabilizing the Government and undermining its achievement. In this connection, it was pointed out that the impact of destabilization on the enjoyment of human rights was bound to be negative, resulting as it had in the declaration of a state of emergency in Nicaragua; that it was the right of every people to manage its internal affairs without external interference; that the

continuing outside interference in Nicaragua's affairs violated that right; that international law did not recognize spheres of influence and that its strict observance was fundamental to the internal order of countries. It was obvious that it could only be imagined what favourable results could have been achieved if Nicaragua would not have been forced to protect itself against subversive operations financed and organized from abroad.

224. Noting that although Nicaragua was party to the Optional Protocol, no communications had been submitted to the Committee, one member hoped to receive an assurance that the Government would co-operate with the Committee in dealing with communications as conscientiously as it carried out its reporting obligations under article 40 of the Covenant. In that connection, it was asked what measures had been taken by the Government to make judicial and law enforcement officers aware of the content of the Covenant and to inform the population of the ratification by Nicaragua of the International Covenants on Human Rights and the Optional Protocol. Information was also requested on the National Commission for the Promotion and the Protection of Human Rights, its specific functions, competence and activities and on any independent human rights commissions that were active in the country, such as the Permanent Commission on Human Rights.

225. In relation to article 1 of the Covenant, members requested information on the position of Nicaragua regarding the right of peoples to self-determination and asked why the Government had found it necessary to derogate from this article during the state of emergency and whether there was a basis for thinking that the decision to derogate from the right to self-determination had been taken with particular persons or groups of persons in mind. Information was also requested on whether there were foreign companies still exploiting Nicaragua's resources; on the legal consequences; on the implementation of the Covenant of some of the trials which had taken place, in particular following the nationalization that had been carried out, the agrarian reform and the creation of a mixed economy in the country.

226. As regards article 2 of the Covenant, it was asked whether the provisions of the Covenant had been incorporated into the Nicaraguan legal system; whether the Covenant could be directly invoked in the courts; what the exact meaning was of the provision referred to in the report that the "full applicability" of human rights was guaranteed and what measures had been taken to give it legal effect and also to ensure respect of human rights. Information was also sought on the remedies available, under those circumstances, to all those who believed that their rights under the Covenant had been violated; and on the general provisions with regard to amparo, whether that remedy was available during periods of emergency and what the competent authority was in that respect. Noting that there existed in Nicaragua a strong concentration of executive and legislative powers in the hands of the Government and that the Sandinista Police enjoyed "jurisdictional powers", members asked what the highest authority of Nicaragua was; which laws could be passed independently by the Junta and what happened if the Junta did not accept bills submitted to it by the Council of State; whether the judiciary could decide that a decree was illegal and whether the Junta could override the objections of the judiciary.

227. In respect of article 3 of the Covenant, it was asked how the principle of equality between men and women was put into practice; how many women had positions in the Government, in the Council of State, in the judiciary and in the diplomatic service and what measures the Government had taken to increase awareness among women of their rights. Information was also requested on

the integration of women in development activities and technical co-operation as both participants and beneficiaries on equal terms with men.

228. Members noted with appreciation that, in proclaiming a public emergency, the Government of Nicaragua had complied with the requirements of article 4 of the Covenant, provided assurances that the measures had been implemented “with extreme caution” in an attempt to restrict the fundamental rights of Nicaraguans as little as possible and to guarantee their freedoms. While one member stressed that the Government had thereby fulfilled its obligations under article 4 of the Covenant and did not have to account for its decision to the Committee, another member stated that, in submitting additional information on the subject without being requested to do so, that Government seemed to agree that when a State party invoked its rights under article 4 of the Covenant to derogate from certain provisions, its reporting obligations under article 40 of the Covenant were not suspended. Members asked for more information on the actual difficulties encountered by the Government in implementing the Covenant in view of the state of emergency and on the extent of the derogations in respect of each of the articles affected; whether it could be assumed that the implementation of articles 26 and 27 of the Covenant had been suspended and, if so, what reasons had led the Government to take that decision; to what extent the rights which had not been suspended as well as those which could not be suspended according to article 4, paragraph 2, particularly the right to life, were themselves endangered by the circumstances which had led the Government to take the emergency measures; which articles of the Covenant Nicaragua had most difficulty in implementing and why and what the Committee could do to assist Nicaragua to protect human rights in its territory under those circumstances. In this connection, it was suggested that the Committee should consider adopting a general comment regarding the difficulties facing State parties in the implementation of the Covenant because of external economic and military pressure and interference.

229. Commenting on article 6 of the Covenant, members expressed their satisfaction at the abolition of the death penalty in Nicaragua. They noted that deaths had nevertheless occurred and that they were attributed to Government forces and they asked whether the Government had initiated inquiries on those cases and what the results were; what steps it had taken to protect those who might be vulnerable to such abuse by the authorities or to attack by counter-revolutionaries and what measures had been adopted to train the police and security forces with a view to minimizing such risks. Information was also requested on any involuntary disappearances that may have taken place in the country and on the events which had occurred at Leymus in December 1981 which had led to the death of Miskito Indians.

230. With reference to articles 7, 8 and 10 of the Covenant, it was asked whether penalties were made proportionate to offences and what the maximum period was for putting an individual on parole; what the Government’s position was in respect of forced labour; what procedures there were for supervising places of detention and for receiving and investigating complaints filed by detainees; what remedies were available to deal with violations of those articles of the Covenant; what the conditions were at the special detention centres for former members of the National Guard and what the legal status was for counter-revolutionary prisoners in general and, in particular, whether they were considered to be political prisoners and, if so, how many they were, whether their families and lawyers had access to them and in what way their treatment differed from “ordinary prisoners” referred to in the report. It was also asked whether those who, after the revolution, abused their

powers and took the law into their own hands had been prosecuted; whether the Government had taken measures to institute an inquiry following the events which had taken place at Puerto Cabezas and whether the relocation of Miskito prisoners had been intended as a penalty or a rehabilitative measure and what safeguards were applicable to those prisoners in the areas to which they had been transferred.

231. As regards article 9 of the Covenant, it was asked whether the Maintenance of Order and Public Security Act was still in force or whether its application had been suspended during the state of emergency; what measures had been taken to avoid harassment of certain individuals or arbitrarily depriving them of their liberty; how long a person could be detained without trial or held incommunicado and whether the situation was different during the state of emergency; to what extent the right of habeas corpus had been suspended during the state of emergency and whether the Government had used its emergency powers to detain people without trial.

232. In connection with article 12, in conjunction with article 27 of the Covenant, members asked what justification there was for the transfer and relocation of several thousand Miskito Indians; why it had been necessary to move them in such haste; under what conditions the transfer had taken place; in what circumstances they were allowed to leave the camps where they have been resettled and whether any of them had taken that option; whether measures were envisaged to compensate them and reunite families; whether it was the future policy of the Government to authorize them to return to their homes after the state of emergency or whether it would settle them elsewhere.

233. Commenting on article 14 of the Covenant, members asked how the Government guaranteed the impartiality and independence of the judiciary; what had been done to establish the legal profession on a sound basis and what conditions there were for the appointment and dismissal of judges; whether the Special Courts referred to in the report had been established under the state of emergency and, if so, for what purpose and with what powers; whether the military courts which acted by authority of the governing Junta were thus becoming regular courts; whether police magistrates functioned as courts and, if so, what avenues of appeal existed against their decisions and why offenders could not be brought before the ordinary courts; and to what extent the requirements laid down in article 14 of the Covenant were being met by the procedures any such courts might follow. Clarification was requested of a statement in the report that administration of justice in Nicaragua was now based on historical truth rather than on the truth of the evidence; and of the review of penal procedure which had been carried out following proceedings brought by the revolutionaries against members of the National Guard of the Somoza era. Information was also requested on the maximum time that might be taken by administrative and judicial appeal proceedings; on whether the procedural time-limits provided for by the Maintenance of Order and Public Security Act still applied and whether they would continue to apply after the state of emergency; on the date on which the Supreme Court would issue its verdict in the case on the Puerto Cabezas Indians and on the number of trials which were under way in accordance with the law on military criminal procedures and on the nature of offences against public order and the law governing them in general.

234. In relation to article 18 of the Covenant, one member, referring to a quotation in the report, wondered whether it was the business of any Government to draw a distinction between true and sham Christians and to set itself up as preserver of the true thought of Christ. It was also asked

whether it was true that religious figures had been arrested or ordered to reside elsewhere in the country; that some of them had been subjected to physical attacks in the streets and the police had failed to intervene; that religion was systematically exposed to ridicule in Nicaragua; that the educational system in Nicaragua was being restructured in such a way as to prejudice the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions; whether the building housing the synagogue in Managua had been taken away from the Jewish community and why all efforts to recover it had been to no avail. In this connection information was requested on the effects the closing of the Moravian Bible Institute in 1982 had on the Miskitos sense of identity and on the cohesion of their group.

235. Commenting on article 19 of the Covenant, members wondered what the Nicaraguan revolution philosophy was with regard to fundamental freedoms and to what extent those freedoms could be guaranteed when the state of emergency was in force or when national security was threatened. They asked, in particular, whether the formalities, conditions and restrictions which could be imposed on the freedom of expression, as stated in the Fundamental Statute of Nicaragua, had been reviewed in the light of paragraph 3 of article 19 of the Covenant; why prior censorship was imposed on the press; what the number of newspapers in the country was and who owned them; what measures were taken to permit political parties to have access to State television and to express their view-points. Clarification was requested of statements in the report to the effect that freedom of expression could be restricted in the interests of “the national economy”, that freedom of information could not be subjected “to the economic power of any group” and that information that might affect, *inter alia*, “production” was censored. Noting that article 5 of the Covenant recognized that there were limits to political freedoms, one member pointed out that those limits, however, were not intended to be such as to prohibit peaceful expression of views and public debate on public issues and he asked whether the definition of the role of political parties, as appeared in a draft statute, namely that of making constructive criticism and submitting proposals to the public administration, represented a deliberate exclusion of political parties from any real political role.

236. In respect of articles 21, 22 and 25 of the Covenant, it was asked whether opposition parties had found it difficult to hold meetings; which political parties and trade unions had been banned and for what reasons; whether the restrictions envisaged in the Labour Code were compatible with ILO Conventions; why it was found necessary that only one trade union was permitted to function in a given enterprise; whether the social and peoples’ organizations which, since the revolution, had been active in politics could participate in the conduct of public affairs, in particular in the law-making process, for example, by initiating the preparation for new laws; what the criteria were for selecting certain groups for representation on the Council of State; whether any member of the Council was arrested and, if so, whether the organization he represented had ceased to have any legal existence; what the relationship was between the Council and the Government Junta; what the Government’s general concept was of political pluralism and what the main aspects of the bill on the political parties referred to in the report were; to what extent the restrictions imposed by the state of emergency had affected political rights in Nicaragua, including access to public office, as well as the functioning of Municipal Reconstruction Boards and the elections thereto by popular vote; whether the Government still intended to hold elections in 1985 and, if so, what measures had been taken in that connection; whether a new Constitution would be introduced at that stage and whether that Constitution would be subject to democratic approval.

237. Commenting on article 23 of the Covenant, members asked whether there was true equality between men and women, since it was indicted in the report that only the father exercised patria potestas over children and that there appeared to be a difference in treatment between men and women in respect of divorce. It was also asked what the legal matrimonial régime was in Nicaragua.

238. As regards articles 26 and 27 of the Covenant, it was asked what specific measures had been taken by the Government to put an end to discrimination in a multi-racial, multi-ethnic and multi-lingual society like Nicaragua; and what the de facto situation was concerning discrimination against the Miskitos and whether there had been any discrimination against them in the past. Noting that, throughout the report, the expression “ethnic group” was used rather than the words “indigenous population”, one member asked what distinction was made between those two expressions and whether it was the Government’s policy to keep the indigenous population on their territory or to assimilate them. Referring to the forcible displacement of several thousand Miskito Indians from their territory and their homes, members asked what chance they had, deprived of their lands, homes and culture, of overcoming the linguistic problems which must have arisen and re-establishing the self-governing institutions which seemed to mean so much to them; what was being done to improve their situation and resettle them, and whether that group had the right to a special status relating to self-determination.

239. Before giving the floor to the representative of Nicaragua, the Chairman wished to state for the record that, by considering reports submitted by States parties, the Committee promoted a fruitful and necessary dialogue with the delegations of those States that presented their country’s reports in person; that such a dialogue afforded it a better insight into the implementation of the Covenant in the country concerned; that it was neither the purpose nor the function of the Committee, or of its members, to level accusations at State parties and that any such interpretation would be contrary to the spirit in which the Committee and its members worked; and that statements or comments made by members of the Committee on the occasion of the Nicaraguan delegation’s presentation of their country’s report must be viewed in that light and that light alone. In endorsing the comments made by the Chairman, members of the Committee expressed their indignation at an article published in a New York newspaper on 31 March 1983 depicting the Committee as a tribunal and Nicaragua as the accused; stressed that the Committee had simply requested further information from the representatives of Nicaragua while recognizing the current uncertainty created in that country by the threat of foreign intervention; regretted the fact that, in the six years of the Committee’s existence, that was the first time a New York newspaper had seen fit to report on the Committee’s work and that, in so doing, it had published incorrect statements and grossly misinterpreted the Committee’s intentions and procedures.

240. The representative of Nicaragua welcomed the statements made by the Chairman and members of the Committee regarding The New York Times article and wished to place on record that his Government had chosen to be present at the current meeting in exercise of its sovereign right to respond to questions and comments raised in regard to its report (CCPR/C/14/Add.2); that that report had been voluntarily updated by his Government (CCPR/C/14/Add.3), in order to explain situations which might be regarded as deviating from those described in the earlier report; that his Government had, in both cases, supplied the Committee with legal, economic, social and cultural background data on the human rights situation in his country; that his delegation’s presence at the current session of the Committee had been agreed to months previously as a means of establishing a frank dialogue

with the Committee; that his country remained ready to co-operate with the Committee whose valuable views would be used to help enhance the legal and other instruments existing for the promotion of human rights in Nicaragua.

241. Responding to questions raised and comments made by members of the Committee, the representative stated that his Government had taken many steps to familiarize people with the international instruments relating to human rights, in particular the Covenant and its Optional Protocol whose published texts were distributed to military and police personnel, teachers, students and others. He explained the role of the National Commission for the Promotion and Protection of Human Rights, the National Autonomous University of Nicaragua and the Supreme Court of Justice in disseminating, teaching and explaining the provisions of those instruments. In this connection, he pointed out that the National Commission on Human Rights had been established by Decree in 1980 in compliance with the resolutions of the United Nations Commission on Human Rights and of the General Assembly; that it was competent to receive complaints, hear witnesses, investigate arbitrary or illegal acts allegedly committed by civil servants, visit detention centres and report to the Junta regarding any necessary measures to be taken. In addition to other related activities, the National Commission had been involved in the organization, at the regional level under United Nations auspices, of the third United Nations Seminar on recourse procedures and other forms of protection available to victims of racial discrimination. Members of the Commission were appointed for two-year periods, received no remuneration and could not be dismissed during their term of office. He also pointed out that there were also private committees on human rights that freely exercised their activities in the main cities of the country; that one of them had sent representatives to the World Congress on Human Rights held in Costa Rica in 1982.

242. Replying to questions raised under article 2 of the Covenant, the representative stated that the Covenant had been incorporated into Nicaragua's domestic laws and could be invoked directly in administrative and judicial disputes and that, in practice, it was frequently invoked by litigants. He referred to the report under consideration regarding the domestic remedies provided for in Nicaraguan legislation and explained the distinction that existed in his country between violations of the liberty and security of individuals on the one hand, and guarantees and rights of persons against any provision and against any act or omission on the part of a civil servant or authority infringing their rights on the other. He indicated that the Amparo Act stipulated the legal means by which the right to amparo (the right to court protection) was exercised in accordance with the provisions of the Fundamental statute and the Statute on the Rights and Guarantees of Nicaraguans; that appeals were to be brought before the criminal or civil division, as the case may be, of the Court of Appeals in the relevant jurisdiction of the citizen concerned and that anyone could seek recourse to amparo either orally or in writing. He also stated that for the duration of the state of emergency, the Governing Junta, which was responsible politically to the revolutionary movement that had brought it to power, was performing executive and administrative functions and that, during the transitional period, it could enact decrees which enjoyed the force of law; that at no time had it exercised judicial functions; that the Council of State had co-legislative functions with the Junta; that the substance of bills drafted by the Junta and submitted to the Council differed from that of the laws enacted by the Council itself; that the special functions of the Council included the drafting of an electoral bill and a preliminary draft Constitution; that the Junta had always accepted the comments made by the Council on decrees which it had drafted; and that the Junta could make its own authentic interpretation of the law, but in no case it could annul, revoke or amend judicial

decisions.

243. As regards article 3 of the Covenant, the representative stated that equality between men and women in all areas was, in fact, the chief aim of the body of legislation passed by the Government of Nicaragua; that the active participation of women in the political life of the country was an objective to which the Government attached great importance; that women held high posts and that one of them held the rank of minister; that despite the difficulties encountered whenever traditions were changed, great progress had already been made and would continue to be made in that respect in all areas, economic, social or cultural.

244. Replying to questions raised under article 4 of the Covenant, he pointed out that the attacks of counter-revolutionary bands and the foreign aggression to which Nicaragua was being subjected, constituted the sole obstacle to the full exercise of civil and political rights in his country, since it was those attacks which had forced his Government to declare the state of emergency; that instead of listing the rights and guarantees that had been suspended because of the state of emergency, his Government, due to lack of experience, had included in the relevant decree all the provisions of the Covenant except those relating to guarantees which were not subject to suspension; that despite the seriousness of the situation, the guarantees referred to in article 4, paragraph 2, of the Covenant, remained intact and that many civilians, particularly women and children, had been deprived of their right to life due to the attacks of the counter-revolutionaries.

245. With respect to article 6 of the Covenant, the representative admitted that a number of deaths had occurred immediately after the end of the war of liberation which the Government had been unable to investigate fully; that in cases affecting the right to life, the victim's family had been able to obtain compensation through the courts without affecting the punishment imposed on the guilty persons; that although the steps taken to prevent abuses by the military and police personnel had been successful, the Government continued to maintain a vigilant watch and punished all offenders; that there were no cases of arbitrary deprivation of life in which the guilty persons had not been punished; that extreme care was exercised in security operations to avoid endangering human life and that, to that end, all military and police personnel were instructed with regard to the provisions guaranteeing respect for life.

246. Responding to questions posed under articles 7, 8 and 10 of the Covenant, he indicated that sentences of up to 30 years' imprisonment were imposed in cases of murder, homicide with aggravated criminal responsibility or for repeated offences and that such sentences could not, under the circumstances, be characterized as cruel; that domestic legislation fully accorded with the Covenant regarding forced labour; that involving prisoners in productive activities was a penal measure based on a belief in the ennobling character of work for all people; that complaints involving mistreatment could be lodged with the prison authorities, the higher authorities of the penitentiary system, the People's Claims Office of the Ministry of the Interior or the Government Junta and that severe sentences had been passed against a number of military personnel for various offences, including atrocities. He also pointed out that former members of the Somoza National Guard were imprisoned in the Jorge Navarro Rehabilitation Centre and were accorded the same treatment as prisoners in any other penitentiary; that they were separated from other criminals in view of the widespread hatred brought about by the atrocities which they had committed against the general population; that "counter-revolutionary crimes" were clearly defined by the law and that

decisions as to the status of those accused of acts of genocide could be reached only on a case-by-case basis; that due to the lack of space and supply difficulties at Puerto Cabezas, his Government had been confronted with insurmountable problems; that some of the prisoners who had been flown to Managua and against whom no cause for action had been found had subsequently been returned to Puerto Cabezas; and that the Miskito Indians, who had been sentenced had been transferred to a farm near the Capital, where they had been joined by their families and where they could engage in agricultural work and practice their religion and that, once they had completed their sentence, those who wished to do so would be able to return with their families to their homes.

247. In connection with questions raised under article 9 of the Covenant, the representative stated that martial law had not been declared in Nicaragua; that the state of emergency had not resulted in periods of detention that were prolonged or without trial and that there was no repression nor any suspension of legal procedures, particularly as concerned persons held in custody; and that, in order to forestall abuses, the Supreme Court of Justice had issued circulars with a view to ensuring that, as of the date of arrest, the time limits prescribed for judicial procedures were respected. He also explained the machinery for the application of both habeas corpus and amparo against detention and arrest warrants, including the appeal procedure in case of court decisions rejecting the release of persons concerned.

248. As regards article 12, in conjunction with article 27 of the Covenant, the representative stated that the transfer of about 8,500 Nicaraguan citizens of the Miskito origin was in compliance with Nicaragua's obligations under article 6 of the Covenant, since it had been a matter of life or death because of the constant incursions of armed band which had produced many casualties; that his Government had committed itself in writing to guaranteeing and facilitating the voluntary return of those citizens to the banks of the river CoCo by making arrangements for housing, subsistence and the resumption of their production activities; that his Government had undertaken to repair the damage caused to buildings and to re-establish the necessary structures for health, teaching and food, notably by providing agricultural subsidies and machinery, while ensuring the respect for the way of life of its citizens and encouraging the reunification of families with the assistance of the United Nations High Commissioner for Refugees.

249. Commenting on questions posed under article 14 of the Covenant, the representative stated that, given the immediate importance of the judiciary in correcting and preventing injustices, it had been decided to preserve unchanged the traditional structure and functioning of the judiciary; that under the traditional system, the executive, in the present case the Junta, appointed and could dismiss the members of the Supreme Court and of courts of second instances; that the Supreme Court appointed the district and local judges; that all judicial functions were exercised by the judiciary, without prejudice to the jurisdictional powers of administrative organs in contentious cases or cases involving public morality; that since members of the judiciary had been appointed following the triumph of the revolution, only two changes had been made in the membership of the Supreme Court; that were any member of the Junta to dare to ignore a decision of the judiciary, he would be subject to administrative and criminal penalties; that judicial impartiality was achieved by monitoring the legality and correctness of judges' decisions and actions, a task performed by the higher courts, headed by the Supreme Court; that the Supreme Court enjoyed total independence and its decisions were respected by the Government; and that, in order to facilitate access to judicial positions, law students were employed in the administration of justice and, depending on the

experience gained, gradually given greater responsibility. He also informed the Committee that the Police Jurisdictional Functions Act was of a transitional nature; that in cases brought before the Military Courts the accused could choose either military or civilian defence lawyers; that the Special Courts had been dissolved and the ordinary courts were empowered to try cases which had previously fallen within the jurisdiction of the Special Courts; that the Procedural Act of December 1981 had introduced procedures for holding trials in full accordance with the principle of due process; and that the phrase in the report concerning the “truth of the evidence” referred to the mechanical manner in which evidence had been assessed under the former legal system, but that the new system did not allow the personal belief or whim of the examining magistrate to influence that process. He also stated that the decision to revise judgments handed down by the Special Courts fell within the jurisdiction of the Council of State in co-operation with the National Committee for the Promotion and Protection of Human Rights.

250. In connection with comments made under article 18 of the Covenant, the representative explained the development of relations, since the triumph of the revolution, between the Sandinista Government and the clergy of Nicaragua, particularly the Episcopal Conference and the Moravian Bishops and stressed the adherence of his Government to the principles of freedom of conscience and religion manifest in the paper entitled “The Position of the Frente Sandinista de Liberacion Nacional with respect to Religion”. He informed the Committee that currently, in Nicaragua, a large number of churches and religious groups were operating with full religious freedoms; that the freedom to conduct religious education was also guaranteed; that there were 396 centres of pre-school, primary and secondary education belonging to various religious groups out of a total of 511 private schools; that the Association of Clergy of Nicaragua participated in the Council of State; that several religious bodies were involved in the implementation of plans drawn up by the Government to improve the quality of life of the people; that there existed a Catholic radio station and weekly and monthly publications. He also indicated that the Government endeavoured to solve the problems with the Moravian Church generated primarily by some persons of the Moravian faith who were openly engaged in subversive activities; that the Government realized that membership in that Church was a characteristic of some of the ethnic groups of the Atlantic region of the country and that it had maintained an ongoing dialogue with the Moravian Bishops; that the building housing the synagogue of Mangua had been abandoned before assigning it temporarily for social purposes, but that should the owners of the building request that it should again be a place for worship, the Government Junta would evaluate the request in the context of religious freedom.

251. With respect to article 19 of the Covenant, the representative explained the principles of the respect for freedom of expression in the light of the provisions of the General Act on Social Communications Media. He admitted, however, that the circumstances that had resulted in the declaration of the state of emergency had affected the exercise of that freedom and led the Government to take restrictive measures relating to the information and communications media; that censorship was being applied only to information liable to jeopardize domestic security, defence and production and, in any case, it was not applied to all publications or to information broadcast by radio or television; that the freedom to criticize Government actions had barely been affected, that the Government considered it necessary to correct the errors and possible abuses in which high officials had been involved and that such criticism was encouraged on a weekly television programme and also in the daily press; that sanctions imposed on newspapers could be appealed by publishers to either the office of the Ministry of the Interior responsible for the media or the

Supreme Court. In this connection, he stated that, given the complex nature of news and the overriding influence of the market place, those responsible for the dissemination of information must bear in mind the socio-economic conditions in the country and the continent, the interests of the disadvantaged groups and the true enjoyment of freedom of expression; and that because of the economic aggression which the country was currently subjected to, it was also necessary to regulate any information which might affect production or generate panic and shortage of supplies. He also pointed out that there were three daily newspapers owned respectively by the Frente Sandinista de Liberacion Nacional, a worker's co-operative and private citizens; that of 48 radio stations, 31 were private; of the 48 news services, 44 were private; that both television stations were State-owned and that in order to guarantee the participation of the public in the media, debates were aired in which civil servants and opposition leaders participated and that plans existed to give air space to political parties, without exception, as part of the process leading to the elections in 1995.

252. Replying to questions raised under articles 21, 22 and 25 of the Covenant, the representative stated that the state of emergency had neither restricted the right of political parties freely to hold their regular meetings nor the freedom of association in any way; that 32 organizations, among them employer's associations and professional and religious organizations, had been granted legal status; that all Nicaraguans whose rights had not been suspended by law, and all political parties and organizations, participated in the country's administration and political management, and that access to public office would continue to be open to all citizens on an equal basis; and that the Council of State was currently debating the system governing political parties, with the full participation of such parties. He pointed out that the Council of State consisted of 51 members, appointed by political, popular, trade union, social and religious organizations; that the procedure for electing members of the Council were determined purely by the organizations which they represented; that the members of the Council enjoyed immunities which they could renounce or which the Council could withdraw and that they were answerable politically only to their peers and organizations during the period of their immunity and to the courts when their immunity was withdrawn or renounced. Nicaragua's municipal authorities continued to be elected at public meetings, in which all the inhabitants of the municipality concerned participated. Preparations were under way for opening the election campaign in 1984 and for holding the elections, as pledged, in 1985 on the basis of political reconstruction and pluralism, but that there was as yet no constitutional provision on the system of government and there were no electoral laws or electoral rolls.

253. In connection with questions posed under article 23 of the Covenant, the representative stated that parents had equal rights in all that concerned their children; that the provisions stipulating that the consequences of the commission of adultery, one of the causes of divorce, should differ, depending on whether the husband or the wife was involved, were no longer applied, now that the Covenant had been incorporated into domestic law and the Statute on the Rights and Guarantees of Nicaraguans had been enacted and that discriminatory treatment had therefore been abolished. He also explained the legal matrimonial régime and pointed out that each spouse was the owner of his or her personal property and could freely dispose of it, whether it had been acquired before or after marriage, that joint ownership did not exist, nor did the system whereby the property of the woman was administered by the husband.

254. Commenting on questions raised under articles 26 and 27 of the Covenant, the representative stated that a major document on the history of the different ethnic groups during the colonial and

neo-colonial periods would be translated into the working languages of the United Nations and could serve as a basis for an in-depth examination of the issue and that, to a large extent, the document provided answers to the questions raised by members of the Committee concerning the Miskito Indians.

CCPR A/45/40 (1990)

388. The Committee considered the second periodic report of Nicaragua (CCPR/C/42/Add.8) at its 975th to 978th meetings, held on 4 and 5 April 1990 (CCPR/C/SR.975-SR.978).

389. The report was introduced by the representative of the State party, who drew the Committee's attention to a number of developments demonstrating the importance attached by his Government to the promotion of human rights that had occurred following the assumption of power by the Government Junta for National Reconstruction. In this connection, he noted, *inter alia*, that political pluralism had been strengthened through the presidential and legislative elections held in 1984 and the adoption of the new Constitution in 1987; that under article 46 of the Constitution all persons enjoyed the protection and full exercise of the rights set forth in international human rights instruments, including the Covenant; and that the Maintenance of Order and Public Security Act, as well as the decree which had set up the anti-Somoza people's tribunals, had been repealed, resulting in the release from prison of some 4,000 former members of the National Guard. The principle of political pluralism had also been strengthened by the adoption of the Electoral Act of 24 August 1988.

390. Additionally, the representative noted that the General Act on Social Communication Media had created favourable conditions for the holding of elections in 1990. The elections of February 1990, the outcome of which had been unfavourable to the party currently in power, had taken place in the presence of more than 2,000 observers and had been the cleanest in the history of Nicaragua. The peaceful and orderly transfer of power on 25 April 1990 would be carried out pursuant to the agreements that had recently been signed and would be guaranteed under the legal framework established by the Constitution.

Constitutional and legal framework within which the Covenant is implemented

391. With regard to that issue, members of the Committee wished to know what the legal status of the Covenant was in domestic legislation; whether there had been any instances where the provisions of the Covenant had been directly invoked before the courts and, if so, with what results; what remedies were available if a domestic law ran counter to international obligations; whether there had been any instances where provisions of a law, decree or administrative act had been challenged as unconstitutional on the ground that they impaired the substance of a right provided for under the Covenant; whether the National Commission for the Promotion and Protection of Human Rights had had occasion to investigate or denounce abuses or human rights violations and to take corrective action; and what the impact of the new legislation regulating the remedies of amparo and habeas corpus and the declaration of unconstitutionality had been an earlier legislation such as the Amparo Act of 21 May 1980. Additionally, members wished to know the extent to which public opinion had been taken into account in drafting the new Constitution; how the Amparo Act applied to the lodging of complaints in the courts; how the independence of the National Commission for the Promotion and Protection of Human Rights from executive control, and the tenure of the Commission's members were guaranteed; and how its powers to implement specific remedies compared with those of other judicial or legislative bodies. Members also sought information concerning the impact of the civil war and outside intervention on the human rights guaranteed under the Covenant; activities

relating to the promotion of greater awareness of the provisions of the Covenant and the Optional Protocol; and efforts to disseminate such information among law-enforcement officers and the indigenous communities of the Atlantic Coast region.

392. In connection with the transitional period that was now in course, and with specific reference to the Amnesty Act, members wished to know what offences were covered by the Amnesty Act and for what time period; how public opinion had responded to that Act's adoption; whether both political and non-political crimes, and offences committed either by the contras or the Sandinista People's army, were covered; and how victims of offences constituting a violation of the Covenant would be compensated. Clarification was also requested of the extent of the privilege of immunity and of the circumstances under which it could be granted.

393. Replying to the questions raised by members of the Committee, the representative of the State party explained that the Constitution did not contain any provisions concerning the hierarchical relationship between international human rights instruments and Nicaraguan law. Article 46 of the Constitution, which provided that every individual should enjoy in full the rights set forth in such instruments, had to be read in the light of article 182 of the Constitution, according to which any treaties that were contrary to the provisions of the Constitution had no value. Thus, where the Constitution failed to include a specific right the provisions of an international treaty might be applicable and held superior to domestic law, whereas in case of a discrepancy between such an instrument and the Constitution the latter would prevail. In cases where there was an alleged contradiction between an ordinary law and one or more of the provisions of the Covenant that were recognized by the Constitution, constitutional remedies could be pursued under the Amparo Act. The provisions of the Covenant had been invoked before the courts in several cases such as those of Eugene Hasenfus or Mario Alegría, and both individuals had later been pardoned. When a law, decree-law, or decree-regulation directly or indirectly violated rights established under the Covenant, it could be challenged before the courts. In one such case of conflict, the law establishing the jurisdictional functions of the police had been amended in order to remove a penal sentencing function from the police.

394. Under the new Amparo Act adopted in 1988, amparo could be invoked by any natural or juridical person against acts of the Administration that violated or attempted to violate the rights and guarantees established in the Constitution. The remedy of habeas corpus could be brought by the aggrieved party or any citizen at any time, even during a state of emergency, where a person was being illegally deprived of his liberty or threatened with the deprivation of liberty. Appeals regarding the unconstitutionality of any law, decree or regulation could be filed by any citizen, but was only resorted to in exceptional cases. A declaration of unconstitutionality made a law inapplicable but did not necessarily repeal it.

395. The primary purpose of the National Commission for the Promotion and Protection of Human Rights was to investigate and denounce any violation of human rights committed against anyone within the national territory. The Commission could, inter alia correct administrative acts affecting human rights; apply for judicial remedies in the courts; issue writs of habeas corpus in connection with acts affecting an individual's physical integrity; ask for a forensic medical opinion on the health of a prisoner; and recommend pardons and measures such as conditional liberty or parole. It was an independent body composed of 10 impartial experts, who enjoyed an autonomy similar to that

of judges of the Supreme Court. The Commission was also active in promoting greater public awareness of the provisions of the Covenant and the Optional Protocol; played a prominent role in carrying out educational programmes devoted to human rights; and ensured that human rights education was included in the curricula of all educational institutions.

396. Replying to questions relating to the 1990 Amnesty Act, the representative explained that the Tela agreements concluded by the Central American Presidents had established procedures for demobilizing member of the Nicaraguan resistance and guaranteeing their peaceful reintegration into civilian life. Under the agreements, members of the Nicaraguan Resistance who laid down their arms would not be prosecuted for past crimes of a political or military nature. In the interest of national peace and reconciliation, the Sandinista Government had also pardoned former members of Somoza's National Guard, prisoners sentenced for crimes against public policy, and members of the Nicaraguan army who had committed crimes in time of war and conflict. Provisions had nevertheless been made for compensation of the families of victims of human rights violations. Presidents and Vice-Presidents of Nicaragua serving for terms of office after the 1984 elections benefited from the privilege of life-time immunity. However, Nicaraguan legislation provided for a procedure whereby immunity could be suspended.

State of emergency

397. With reference to that issue, members wished to know what control was exercised by the legislative branch over the power accorded to the President to proclaim a state of emergency; what the differences were between a state of emergency and a state of war; and whether there was any legal provision to guarantee that there could be no derogation from the basic rights laid down in article 4, paragraph 2, of the Covenant. In the latter connection, members sought clarification of the circumstances which had justified derogations from articles 10, 26 and 27 of the Covenant. They also wished to know whether a new declaration of a state of emergency had been made in 1989 and, if so, whether the provisions of article 4, paragraph 3, of the Covenant had been complied with.

398. In his reply, the representative said that the modalities for imposing and lifting states of emergency were regulated by articles 185 and 186 of the Constitution as well as by the Emergency Act of 19 October 1988. Article 2 of that Act authorized the President, in case of war or when demanded by national security, economic conditions or a national catastrophe, to suspend the rights and guarantees set forth in the Constitution, except for those established in the articles enumerated in article 186 of the Constitution, for a specific and renewable period. The National Assembly had to be informed of any such action but had no legislative control in the matter. The Act was fully in keeping with article 4 of the Covenant and provided for a number of remedies, such as amparo and habeas corpus to protect the rights and guarantees not suspended by emergency decrees. Individuals could also apply for a review of administrative acts by a superior official within six days. The state of emergency that had been declared in 1982 had been repeatedly extended and the Government had always given due notification of such actions. In the interest of the overall peace of Central America, the Government had recently decided to lift the state of emergency prevailing in the country even though its cause had not been removed.

Non-discrimination and equality of the sexes

399. In connection with that issue, members of the Committee wished to receive detailed information on the effectiveness of programmes of action designed to promote full equality between men and women, including the education and health programmes and the Child Development Centre programme. They also inquired in which respects, other than in the exercise of political rights, the rights of aliens were restricted as compared with those of citizens, and whether non-nationals permanently resident in Nicaragua were subject to restrictions on their choice of profession and place of work.

400. In his reply, the representative of the State party said that the Government had endeavoured to integrate men and women into productive life on an equal footing. The health professions employed more women than men, women could hold public office, classes were co-educational in 90 per cent of primary and secondary schools, and married women were guaranteed independence in matters of nationality pursuant to Decree No. 867 of November 1981. Child Development Centres did not discriminate in any way on grounds of sex. Article 27 of the Constitution provided that aliens enjoyed the same rights as nationals subject to certain restrictions stipulated in domestic public law, but they could not hold public office.

Right to life

401. With regard to that issue, members of the Committee wished to know what rules and regulations governed the use of firearms by the police and security forces; whether there had been any complaints during the reporting period concerning alleged disappearances caused by the police or the security forces or undertaken with their support and, if so, whether such allegations had been investigated by the authorities and with what results; what measures had been taken by the Government in the field of health care, particularly with a view to reducing infant mortality; and how the infant mortality rate among the ethnic groups compared with that of the total population.

402. In his reply, the representative of the State party confirmed that there had been instances of disappearances, predominantly in war zones. Often, when people had joined the contras without the knowledge of their families, they had been reported as missing. Disappearances had also occurred as a result of the fighting between the Sandinista People's Army and the contras and at times it had been difficult to determine who had actually disappeared. Extensive immunization campaigns had been organized against polio, smallpox and measles and efforts had also been made to combat malaria. Children were provided with milk in the schools. The same health care services were available, without discrimination, to Nicaragua's ethnic population but it had been difficult to reach those populations at times because they lived in remote areas and were suspicious of modern medicine.

Treatment of prisoners and other detainees

403. With reference to that issue, members of the Committee wished to know whether the legal situation with respect to torture described in the report had been clarified; what the procedures were for receiving and investigating complaints relating to article 7 of the Covenant; whether there had been any such complaints during the reporting period and, if so, whether those allegations had been investigated by the authorities and with what results; what the penalties were for violating the provisions of article 4 of Ministry of Interior Order No. 069-86 of 21 October 1986; whether that

order applied to the use of the so-called “chiquitas”; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with; whether prison regulations and directives were known and accessible to prisoners; and whether there were any political prisoners in Nicaragua and, if so, for what reasons they were being detained. Members also wished to receive further information concerning the alleged failure of the Government to identify and establish lists of prisoners of war; the conditions and duration of solitary confinement, the protection afforded to individuals taken prisoner during the internal armed conflict, the definitions applied to political prisoners and political crimes, the implementation of the Amparo Act; and the prisoner rehabilitation régime.

404. In his reply, the representative explained that the national penitentiary system regulating the treatment of prisoners and other detainees was under the control of the Ministry of the Interior. Physical or mental torture was not acceptable under any circumstances and the dignity and integrity of the person were guaranteed under the Constitution. The procedure for investigating alleged violations of rights under article 7 of the Covenant were set out in the Amparo Act of 1980 and court rulings were enforced. The use of the so-called “chiquitas” had been eliminated in 1989 and the International Committee of the Red Cross, which had visited the alleged sites of secret prisons in 1989, had found no such prisons. The International Red Cross had also carried out a survey of the number of prisoners in the national and regional penitentiaries. There were no political prisoners in Nicaragua and, in order to create a climate of peace, individuals who had been detained for crimes endangering State security had been pardoned during the recent electoral process. The determination of when an individual who had been captured during the period of the armed conflict was rehabilitated and ready to be transferred to an easier treatment régime was made by a team of psychologists and sociologists working directly with the prison population. Under the open-goals system, detainees were free to work in public areas and to spend week-ends with their families. Such prisoners rarely tried to escape.

Liberty and security of the person

405. With reference to that issue, members of the Committee wished to know how soon after arrest a person could contact his lawyer; what was the maximum period of pre-trial detention; what provisions governed release pending trial; what was the authority, under the Sandinista Police Jurisdiction Act, of the police; and, in the absence of a specific provision for compensating victims of unlawful arrest or detention or persons wrongfully convicted or imprisoned, how such compensation could be obtained. They also requested information concerning detention in institutions other than prisons and for reasons other than crimes; provisions for the judicial review of decisions to place mentally ill persons in institutions; and legal provisions relating to preventive detention.

406 In his reply, the representative of the State party said that under the Sandinista Police Jurisdiction Act an accused person had to be allowed to contact a lawyer within 72 hours. Unfortunately, there had been a number of abuses where accused persons had not been permitted to contact a lawyer, but such difficulties were being overcome through the remedy of amparo and the stepped up training of members of the police in law enforcement and legal procedures. After the maximum of five days following an arrest, the police examining magistrate was obliged, within a further 24-hour period, to evaluate the facts and decide whether to release the accused person

immediately or to refer the case to the Government Attorney for further consideration. In the latter case, the Government Attorney had then three days to decide on the merits of the case and whether to institute proceedings. Thus, the maximum period of pre-trial detention was nine days. Release from preventive detention on bail or on personal recognizance was possible under the law.

407. Compensation for unlawful arrest or wrongful imprisonment could be pursued through the courts by procedures established under the Civil Code for human rights violations. Pregnant women, mentally ill persons and persons with chronic illnesses or infectious diseases were placed in institutions other than prisons in accordance with the Code of Criminal Procedure.

Right to a fair trial

408. In connection with that issue, members of the Committee requested information concerning the legal and administrative provisions governing the tenure, dismissal and disciplining of members of the judiciary and how the security of tenure and independence of the judiciary was guaranteed; the jurisdictional differences among the ordinary courts, the Anti-Somoza People's Tribunals and Military Courts; popular participation in the courts; the kind and number of cases that were assigned to the Anti-Somoza's People's Tribunals under Decree No. 1074; the organization and functioning of the Bar in Nicaragua; and the availability of legal assistance to criminal defendants. In addition, members wished to know how military judges were appointed.

409. In his reply, the representative of the State party explained that judges of the Supreme Court were elected from lists submitted by the Executive to the National Assembly. Such lists were drawn up by the President in consultation with members of the legal profession, various political parties and other Government bodies. Appeals Court judges were elected by the Supreme Court. The functions of dissolved bodies such as the Sandinista police, the housing court and the agrarian courts had been given to the judicial branch, and this had strengthened the latter's independence. Nicaragua's only experience with popular participation in the courts had been the Anti-Somoza People's Tribunals, established in 1983 and abolished by Decree No. 296 of 20 January 1988. All the cases pending before those tribunals had been transferred to the ordinary courts. Former members of the National Guard and the contras who were still in custody had been amnestied by an order of 9 February 1990. Military courts dealt only with military personnel or, in exceptional cases, with civilians involved in crimes of a military nature. Persons who had been judged by a military court could appeal to the Supreme Court. There was no organization or professional group that performed the functions of a Bar. Defendants without means could obtain legal advice from an ex officio counsel appointed to assist them.

Freedom of movement and expulsion of aliens

410. With regard to that issue, members of the Committee wished to know what legal provisions governed the expulsion of aliens; whether an appeal against an expulsion order had suspensive effect; and whether the Amnesty Act of 23 February 1985 was still in force. They also wished to receive statistical estimates concerning the number of nationals who had left Nicaragua subsequent to 19 July 1979 and the number that had returned since the enactment of Decree No. 1353 of 4 December 1983 and of Act No. 1 of 23 January 1985.

411. In his reply, the representative of the State party said that under the Migration Act of 4 May 1982 a residence permit could be revoked or denied, without explanation, for offences against public policy or national security or for interfering in the country's internal affairs and in political matters. The Ministry of the Interior could be petitioned to review an expulsion order and, under article 27 of the Constitution, the remedy of amparo could be invoked before the Supreme Court of Justice if an administrative confirmation of expulsion resulted in injury. The Amnesty Act of 23 1985 had been extended several times and had been supplemented by the National Reconciliation Act, adopted on 13 March 1990. A total of 211 persons had been granted amnesty between April 1989 and February 1990. The number of Nicaraguans who had left the country after July 1979 or who returned after December 1983 was not known, but more than 5 million people had travelled to and from Nicaragua for various reasons.

Right to privacy

412. In connection with that issue, members of the Committee inquired as to whether there had been any complaints of abuse of authority by unlawful entry and, if so, whether such cases had been investigated and action taken to punish offenders and to prevent a recurrence of the offence.

413. In his reply, the representative said that the home, correspondence and communications of all individuals were inviolable, in principle, under article 26 of the Constitution and homes could not be entered and searched without a written order from a competent judge. However, owing to the special circumstances prevailing in the country that provision had been suspended and, in some exceptional cases, the Sandinista Police had conducted searches without warrants.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

414. With reference to those issues, members of the Committee wished to know whether Decree No. 639 of 1981 also applied to churches, sects or denominations, in addition to "associations" or "organizations"; what regulations governed the registration, operation and control of religious denominations; what measures had been taken to enforce articles 1, 2 and 3 of the General Act on Social Communication Media and its amendments and what had been the outcome of prosecutions under that Act; and whether there were any privately owned radio and television stations and, if not, whether measures had been taken to ensure that dissenting opinions were given a fair opportunity to be heard.

415. Members also wished to know who determined the grounds for revoking the legal personality of a religious association; whether religion was taught in non-denominational schools; how the sharp decrease in the number of Catholic clergy between 1979 and 1986 could be explained; whether persons in the media could be held criminally responsible under provisions of the General Act on Social Communication Media; whether there were any requirements, other than registration, for establishing a radio or television station or founding a newspaper; and whether an independent code of ethics in journalism existed in Nicaragua.

416. Replying to questions raised concerning freedom of religion, the representative of the State party said that religious associations or organizations were regulated by the law of 15 November

1983 (Decree No. 1346) but that responsibility for the central registration of associations was vested in the Ministry of Interior. In national security cases, the power to confer or revoke legal personality rested with the National Assembly. There was complete freedom to provide religious instruction in private and public schools and colleges. In fact, most private schools were run by priests and were heavily subsidized by the Government. The problems affecting religious groups were due to war conditions and not to persecutions.

417. Referring to questions relating to freedom of expression, the representative said that there were 25 private radio stations in the country but that all television stations were State controlled. Opposition parties had been given equitable access to radio and television during the 1990 election campaign. Censorship under the Mass Media Act had been imposed only to a limited degree in instances where the media had incited to violence or undermined national security. In order to allay fears that the Act could be used in a repressive manner during the election campaign, control of the media had been transferred to the Supreme Electoral Council, and that Council had implemented the 1989 Electoral Act in such a way as to maximize access to the media. Both the Mass Media Act and Decree No. 511, which restricted information dealing with internal security matters and national defence, had been superseded by Act No. 78 of 8 March 1990. Nicaragua had no independent code of journalistic ethics.

Freedom of assembly and association

418. With regard to that issue, members of the Committee wished to know what were the main new provisions governing associations as contained in Decree No.1346 and whether that Decree had entered into force; whether public officials and civil servants could form trade unions; what were the expected consequences of the new Labour Code; and what rules applied to non-political demonstrations.

419. In his reply, the representative of the State party said that Decree No. 346 was in force and that more than 130 civil and secular associations had been created subsequent to its adoption. The new Labour Code under discussion was designed to guarantee compliance with the rules of the International Labour Organisation. There were no unions for public officials and civil servants. Public demonstrations for which permits were required were controlled by the Sandinista Police in accordance with the relevant regulations.

Protection of family and children

420. With reference to that issue, members of the Committee wished to receive information on the law and practice relating to the employment of minors.

421. In his reply, the representative noted that the employment of minors was covered under Title IV, Chapter IV of the Constitution and by Decree No.1065. Article 84 of the Constitution prohibited child labour. Appropriate child development programmes had been established.

Right to participate in the conduct of public affairs

422. In connection with that issue, members of the Committee wished to know how equitable access

to public service for members of ethnic, religious or linguistic minorities, and of the various political parties, was ensured; whether members of the armed forces could belong to political parties and participate in political life; and for how long a period and through what circumstances political rights could be forfeited. In his reply, the representative said that the Civil Service Act banned discrimination on grounds of sex, religion or political opinion and was designed to guarantee political pluralism among State employees. There was complete freedom to form political parties and 10 of these had participated in the recent elections. Members of the armed forces could be elected to public office after having renounced their military office and could participate fully in the political life of the country to the extent compatible with their former military activities. Persons found guilty and sentenced for offences against public policy were subject to the suspension of their political and civil rights. Minorities could discuss their problems in the National Assembly in accordance with the Statute of Autonomy.

Rights of persons belonging to minorities

423. With reference to that issue, members of the Committee wished to know what changes had been introduced by the Statute of Autonomy for the Atlantic Coast Region and how the minorities in this region had voted in the elections held on 25 February 1990.

424. In his reply, the representative of the State party said that the procedures for electing political and administrative authorities in the two autonomous regions had been changed so as to guarantee respect for the traditions of the ethnic groups in each region. Economic projects in the areas of fishing, air transport, education and farming as well as programmes for disseminating information in native languages in the press and on radio and television, had been introduced. The exploitation of mining, fisheries and other resources had also been promoted in order to protect the rights of minorities, consolidate the country's political and administrative structure and ensure that there was no discrimination between the Atlantic Coast region and the Pacific Coast region. Special efforts had also been made to ensure that minorities participated fully in the February 1990 elections. The Opposition National Union (UNO) had won most of the minority constituencies in the region but some Sandinista candidates had also been elected.

General observations

425. Members of the Committee expressed their appreciation to the State party for submitting an excellent report, and commended the delegation for its co-operation and competence in replying to the Committee's questions. Members noted with particular satisfaction that the recent legislative review had led to the repeal or amendment of some unsatisfactory provisions relating to the maintenance of law and order and to national security. The enactment of the recent Amparo Act, the abolition of the Anti-Somoza People's Tribunals, the adoption of the 1987 Constitution and, above all, the free and internationally monitored elections in February 1990 and the expected smooth transfer of power to the new Government had all been excellent developments that augured well for the continued consolidation of the democratic process and the improvement of the human rights situation in the country. At the same time, members recalled that there had been derogations from a whole range of rights during several very long states of emergencies and that certain specific questions in that regard, as well as in respect of various constitutional and legal provisions, had not been satisfactorily answered. Members continued to feel special concern about several troublesome

areas, including the powers of the police to inflict punishment of up to six months; insufficient press freedom; inadequate guarantees for ensuring the independence of the judiciary; non-compliance with article 9, paragraph 3, of the Covenant in respect of the length of pre-trial detention; the lack of adequate provisions for compensating victims of human rights violations; and the excessively broad scope of the Amnesty Act of 1990.

426. The representative of the State party thanked the members of the Committee for their keen interest and assured them that their comments would be transmitted both to the current Government and the incoming Government. After the many sacrifices for peace made by the Nicaraguan people peace was now at hand. He was confident that this would create optimum conditions for democratic progress and the protection of human rights.

427. Concluding the consideration of the second periodic report of Nicaragua, the Chairman again thanked the delegation for the constructive manner in which it had conducted its dialogue with the Committee. The favourable developments that had resulted from the recent elections had impressed the entire world. He hoped that issues not fully covered in the second periodic report would be dealt with in the next report which, he trusted, would show continued improvement in the implementation of the Covenant in Nicaragua.