



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

**Replies to the list of issues (CCPR/C/NIC/Q/3) to be taken up in connection
with the consideration of the third periodic report of the Government of
NICARAGUA (CCPR/C/NIC/3)***

[6 October 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Introduction

The Government of Reconciliation and National Unity of Nicaragua would like to thank the Human Rights Committee for its consideration of the State party's third periodic report, which gives the Government an important opportunity to inform the Committee of the progress made in relation to civil and political rights in Nicaraguan society.

The Government's priority is to eradicate poverty and reclaim the economic and social rights that were denied during 16 years of neoliberal administrations, by introducing policies and programmes that meet the main demands of the Nicaraguan people. These include the enjoyment of the human rights necessary for life, such as access to the most urgently needed basic services - free health care, food, drinking water and sanitation, education, employment and housing.

Some of the most important programmes are the Zero Hunger and Zero Usury programmes, the programme on sovereignty and food security for life, the human rights education programme, and the "Yes I can" literacy programme. Consultations are currently being held with various social groups on the human development plan for 2009-2012.

Nevertheless, the Government is fully aware that the enforcement and effective exercise of civil and political rights, through active participation and the enjoyment of the necessary guarantees, are also necessary for a nation's development. For this reason, Nicaragua reiterates to the international community its commitment to working to promote, enforce and guarantee human rights, in order to maintain peace, social justice, equality and respect for life.

Nicaragua has been working to ensure more far-reaching enjoyment of civil and political rights by all citizens. To this end, it has continued the process of modernizing the judicial system and the criminal justice system, and has made significant progress in this area, for example by promulgating new codes on criminal law and procedure. The codes introduce specific rules relating to indigenous peoples and people of African descent; these rules draw on international human rights principles and standards, and will be discussed in the replies to specific questions.

The Government of Reconciliation and National Unity has made a great effort, in conjunction with the branches of government and civil society organizations represented on the Inter-institutional Committee on Human Rights, to present the progress made in this area to the Human Rights Committee in its report and replies to the questions raised by this distinguished United Nations body. It lists its achievements, the action being undertaken, and the challenges to be faced in guaranteeing compliance with the norms and standards set out in the International Covenant on Civil and Political Rights.

The Government of Nicaragua would particularly like to thank the United Nations for its cooperation and for its support for the work of the International Agreements Monitoring Unit (USCI), a body undertaking collective efforts in the field of human rights.

Replies to the Committee's questions

1. Please provide information on the current status of the draft decree before the National Assembly concerning the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (paragraph 104 of the report).

In Decree No. 222 of 11 September 2008, the legislature approved the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in line with the Nicaraguan Constitution, which prohibits the death penalty.

2. Please provide examples of any cases in which the Covenant has been directly invoked before the national courts and, if so, with what results.

The rights established in the International Covenant on Civil and Political Rights are directly applicable in the courts in Nicaragua, on the basis of article 46 of the Constitution, which states that in the national territory all persons enjoy the protection of the State and recognition of the rights inherent in the human person, and the full exercise of the rights set out in the Universal Declaration of Human Rights and other international human rights instruments, including the International Covenant on Civil and Political Rights.

In response to the request for examples, four cases are listed below in which the International Covenant on Civil and Political Rights was directly invoked before Nicaraguan courts:

(a) Judgement No. 86 of the Supreme Court of Justice, Criminal Division, of 30 March 2007, criminal cassation appeal against the judgement handed down by the District Criminal Court of Boaco at 2 p.m. on 13 April 2004, sentencing the accused to 16 years' imprisonment. The sentence was upheld by the Criminal Division of the Central Court of Appeal on 20 August 2004.

The appellant argued that, with regard to the requirement that all criminal proceedings be held in public, a number of provisions of the following instruments, among others, had been violated: the Nicaraguan Constitution and Code of Criminal Procedure, the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the International Covenant on Civil and Political Rights (art. 14) and the American Convention on Human Rights. He held that these had been violated insofar as the oral, public proceedings were held in private. The judges of the Criminal Division of the Supreme Court dismissed the criminal cassation appeal.

(b) Judgement No. 96 of the Supreme Court of Justice, Criminal Division, of 16 May 2007, appeal in cassation against judgement No. 49 of 31 March 2005, handed down by the substitute judge of the sixth district trial court of Managua, in which the accused was given prison sentences of five and two-and-a-half years' to be served concurrently, for robbery with violence and attempted robbery with violence.

The contested sentence was appealed on the grounds that the constitutional rights of the defendant had not been respected during the trial, and that substantive provisions of the Code of Criminal Procedure, the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man had been violated, as well as article 14, paragraph 1, of the International Covenant on Civil and Political Rights. The latter states that all persons are equal before the courts and are entitled to a fair and public hearing by a competent, independent and impartial tribunal; these provisions were violated in that the trial court had suspended the oral hearing to order the processing of an appeal pending before it, and had handed down its sentence abruptly. The judges of the Criminal Division upheld the appeal in cassation.

(c) Judgement No. 114 of the Supreme Court of Justice, Criminal Division, of 13 September 2007, appeal for reconsideration of a final and binding judgement handed down by the eighth district criminal court of Managua on 26 September 2003, for complicity in murder. The appellant sought a review of the sentence, publication of a summary of the court's judgement in the media, and financial compensation for a miscarriage of justice of which he was the victim, arguing that his rights under the Constitution, the American Convention on Human Rights, and articles 9, paragraph 5, and 14, paragraph 6, of the International Covenant on Civil and Political Rights had been violated. The court dismissed the appeal for reconsideration.

(d) Judgement No. 93 of the Supreme Court of Justice, Criminal Division, of 13 November 2006, review of leave to appeal against the sentence handed down by the Criminal Division of the Las Segovias Estelí court of appeal on 20 September 2006, in which the appeal in cassation was declared inadmissible. In this appeal, it was argued that the appellate court, in refusing leave to appeal on the basis of discriminatory arguments, had violated article 14, paragraph 5, of the International Covenant on Civil and Political Rights, which states that: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." The Supreme Court upheld the leave to appeal.

3. Please indicate whether steps have been taken to give effect to the Committee's Views regarding communication No. 328/1988 (*Zelaya Blanco v. Nicaragua*).

On 22 September 1994, the Human Rights Committee issued its Views, holding the State party responsible for alleged human rights violations committed by police officers (1979-1989), and urged the State party to grant appropriate compensation to Mr. Zelaya, to carry out an official investigation into the author's allegations of torture and ill-treatment, and to ensure that similar violations could not occur in the future.

In May 2001 and on other occasions, the Government of Nicaragua expressed the view that, for the purposes of compensation, the individual concerned should, by invoking the civil and political rights established in the relevant instruments, submit his claim for compensation to the domestic courts; that it would be very difficult for the investigation to establish the facts because of the passage of time and the changes that had taken place in the country, especially as

the entity in question no longer existed; that, as regards the guarantee that no such situation would ever occur again, Nicaragua was undergoing change and strengthening the administrative and legal framework, and new rules for the police had been introduced, as witnessed by, for example, the establishment of the General Inspectorate of the National Police, the Civil Inspectorate in the Ministry of the Interior (which is responsible for the police), and the Office of the Human Rights Ombudsman; and that human rights were fully enforced.

Mr. Zelaya Blanco did not wish to bring proceedings under Nicaraguan law, arguing that he did not trust the guarantee offered in respect of his rights. The procedure, however, is still open to him should he wish to exercise his rights, as thousands of Nicaraguans have done in exercising theirs. These people have had their cases heard and thousands of them have been compensated.

Although Mr. Zelaya returned to Nicaragua and for a time had the opportunity to exercise political and economic power as head of the Nicaragua Port Authority, his current whereabouts are unfortunately unknown. He is on trial, along with seven other individuals, for corruption and fraud, embezzlement and breach of trust in the custody of public records, basically on suspicion of having illegally appropriated more than 30 million córdobas. This set the administrative process in motion, and the Comptroller General's Office determined there was a criminal case to answer. Of the eight accused, six have sought protection of their rights, but Mr. Zelaya has not exercised his rights under Nicaragua's legal and procedural rules. His current whereabouts are unknown and a warrant has been issued for his arrest; efforts are being made to enforce the warrant with the help of Interpol.

On the question of torture, Nicaragua reiterates that it is not State policy to use it: torture is prohibited by the Constitution and by law. Nicaragua has been strengthening these provisions by adopting new international standards such as the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and by modernizing the judiciary and the Code of Criminal Procedure. Better guarantees have been put in place, torture is a punishable offence, and any statements obtained by torture are unlawful. The legislation on penal matters, Act No. 473, embodies the principles of the International Covenant on Civil and Political Rights, and the police receive training in human rights. All these actions demonstrate the will of the Government to prevent such acts from occurring in Nicaragua.

4. Please provide statistical information on the last three years relating to progress made, if any, through the activities of the Special Procurator for Women with regard to access to, participation in, and equality of working conditions in elected office and civil service posts. What is the proportion of women in positions of responsibility or decision-making positions in the public and private sectors? Please provide current disaggregated statistical data (concluding observations on the second periodic report, paragraph 399, and third periodic report, paragraphs 73 and 76).

Attention is drawn to the adoption on 14 February 2008 of Act No. 648, on equal rights and opportunities, which lays a solid foundation for the exercise of women's rights in many areas and forms.

The Special Procurator for Women, from the Office of the Human Rights Ombudsman, in cooperation with civil society organizations and State institutions, has created and followed up on opportunities for women's participation in the following departments and towns: Jinotega, Pantasma, Cúa, San Rafael del Norte, San José de Bocay, Wiwili, Yalí, Masaya, Managua, San Francisco Libre, Matagalpa, San Ramón, La Dalia, San Isidro, Terrabona, Muy Muy, La Tijera, Ayapal, Ciudad Darío, Waspán and Río Coco.

As for the proportion of women in decision-making positions in the public and private sectors, the Government of Reconciliation and National Unity is running a campaign to promote women's representation in 50 per cent of public positions, and a campaign to publicize the need for and importance of involving women in the political process and elections. Meetings are also being promoted between women leaders brought together in the civil branch of government, to encourage the appointment of women to decision-making positions.

According to preliminary data provided by the Special Procurator for Women, women's participation has risen in recent years, as follows: ministers (4); deputy ministers (6); directors (5); deputy directors (4); presidents (6); vice-presidents (3); deputies (16); assistant attorneys (1); governors (1); deputy governors (1); Supreme Court judges (4); and appeal court judges in Managua (8), Granada (3), León (3), Estelí (5), Bluefields (1), Bilwi (2) and Chontales (1).

In the public administration in the Atlántico Sur autonomous region, women occupy 70 per cent of frontline posts, 35 per cent of elected posts, and 10 per cent of municipal posts. The Atlántico Sur Autonomous Regional Council adopted a parliamentary agenda and policy on gender equality for the region, and also approved the establishment of the Secretariat for Women to ensure that regional policies are implemented.

The Government of Reconciliation and National Unity has issued a protocol for dealing with offences involving domestic abuse and sexual aggression, which is designed to achieve respect for the right to equality established in the Covenant. To meet the challenge of guaranteeing equality, the Government has proposed the following measures:

(a) A mass campaign to publicize the proposal for a law on women's representation in 50 per cent of public positions, and a campaign to publicize the need for and importance of involving women in the political process and elections;

(b) Meetings between women leaders brought together in the civil branch of government, to encourage the appointment of women to decision-making positions.

5. Please provide detailed information on measures to enhance women's access to justice in low-income social groups and in rural areas, and in particular on the pilot project referred to in paragraph 78 of the report, including the expansion of the Programme of Rural Judicial Facilitators and the establishment of service, mediation, information and orientation centres.

Nicaragua is making a great effort to enhance women's access to justice.

The system of judicial facilitators, which is being promoted by the Supreme Court of Justice in cooperation with the Organization of American States, is currently operating in 124 municipalities. It is a programme offering access to justice that targets people living far from a court, particularly women, as the most vulnerable group in Nicaraguan society in this respect. It provides for inter-institutional commissions in the municipalities, which act in cases of rights violations.

The “judicial facilitator”, a local leader, offers services from home, as this makes them more accessible and it is easier for clients to seek help near their home. As the facilitator has their trust, he or she can act as their guide, a mediator or an ex officio adviser, having received training in various areas to help people settle their disputes.

The Office of the Special Procurator for Women, in the Office of the Human Rights Ombudsman, has been working constantly with the Office for Peaceful Settlement of Disputes (of the Supreme Court of Justice), judicial facilitators and the ordinary courts (*whistas*), particularly among communities in the Atlántico Norte and Atlántico Sur autonomous regions on the Caribbean coast, to enhance access to justice by women, especially those living in isolated areas on low incomes.

Likewise, the Special Procurator for Women, in cooperation with the special police units for women, children and the family, has since 2007 been providing training and running campaigns to improve services in the area of access to justice, by educating and raising awareness among staff in the 32 units at the national level. The emphasis is placed on women with some form of disability who suffer from domestic violence. There has been an increase in the number of special units for women, so that they now cover the whole country, and women in Nicaragua today enjoy greater protection and access to justice.

With regard to the mediation and arbitration centres, there are now 13 of these - privately owned and free of charge: 6 in Managua, and 1 each in Bluefields (Atlántico Sur autonomous region), Bonanza (Atlántico Norte autonomous region), Estelí, Jinotega, Chinandega, León and Carazo. The centre in Bonanza belongs to the Nidia White Women’s Association. The centres have been set up to help fulfil various mandates and to promote the use of alternative dispute-settlement methods, as a way of offering access to justice, due process and human rights, especially for people on low incomes. This makes it possible to spread a culture of peace in Nicaraguan society, with an emphasis on women’s rights.

The Office for Peaceful Settlement of Disputes (DIRAC) was established in 1999 by the Supreme Court of Justice to handle mediation and arbitration proceedings, initially in property-related matters, as envisaged in Act No. 278, on urban and agrarian property reform. The office was set up pursuant to an agreement between the Supreme Court of Justice, the Property Administration and the Inter-American Development Bank, signed on 5 October 1999. In May 2005, the manual on the accreditation of mediation and arbitration centres, mediators and international arbitrators, based on Act No. 540 of 25 June 2005, on mediation and arbitration, became applicable.

Since February 2002, the mediation and arbitration centres have been providing judicial mediation, in accordance with article 94 of the Judiciary Organization Act, in all cases dealing with civil, commercial, employment and family matters. With the entry into force of the Code of Criminal Procedure in November 2002, the mediation process was introduced in criminal matters, taking into account the principle of opportuneness established in the Code. The Central American Court of Justice also provides judicial facilitators who act as mediators.

6. Please supply information on: (a) steps taken to eliminate stereotypes which discriminate against women; (b) steps taken to combat trafficking in, and sexual exploitation of, women and girls; (c) whether or not legal provisions on sexual harassment exist.

One of the first legislative measures taken by the Government of Reconciliation and National Unity was to promulgate Act No. 612, amending and supplementing Act No. 290 on the organization, powers and procedures of the Executive. The new law places the Nicaraguan Institute for Women under the stewardship of the Office of the President.

The Government of Reconciliation and National Unity is carrying out mass awareness-raising campaigns to bring home the message that violations of women's rights are violations of human rights, to eliminate stereotypes and to restore women's rights and change practices that have a negative impact on equality. Likewise, steps are being taken to raise awareness and educate women about national and international legal norms that allow them to exercise their rights. National and municipal institutions are involved in this.

Nicaragua has drawn up 12 strategies for the development of gender-sensitive practices aimed at achieving effective and genuine equality between women and men, by creating an enabling environment and removing obstacles, including by:

(a) Making Nicaraguan women aware of citizenship, rights, participation and power in every area of life;

(b) Ensuring that women know the Constitution and the law, so that they can participate fully in direct democracy and exercise their civic rights;

(c) Supporting and helping women leaders to reach the target of 50 per cent representation in State and local government institutions, and on the internal and national electoral lists of political parties and social movements;

(d) Promoting among women the human values that enable families and communities to meet and live together in peace, in accordance with the Principles of Reconciliation and National Unity.

On 14 February 2008, Act No. 648, on equal rights and opportunities, was adopted. Its stated purpose is to “promote equality and equity in the enjoyment of human, civil, political, economic, social and cultural rights between women and men”.¹

In the field of employment, the Nicaraguan Ministry of Labour introduced a guide to inspection in May 2008. The guide is for inspectors visiting firms, and provides for fines for any violations of workers’ rights. It sets out new standards, including on equal rights, to replace the old ones, and contains standards on sexual aggression and harassment, providing for heavy fines, though without impinging on the individual’s right to take the matter to court.

Dealing with and investigating acts of violence, including all kinds of violence against women, are governed by Act No. 228, on the National Police, and Act No. 406, the Code of Criminal Procedure; the Criminal Code (Act No. 641); the Code on Children and Young Persons; Act No. 150, on sexual offences; and Act No. 230, which makes psychological harm punishable by law and establishes protection and safety measures for victims. Article 155 of the new Criminal Code addresses violence against women and establishes the following:

“For anyone who uses any kind of physical or psychological force, violence or intimidation that results in:

- (a) Light injuries, the penalty shall be 1 to 2 years’ imprisonment;
- (b) Serious injuries, the penalty shall be 3 to 7 years’ imprisonment;
- (c) Very serious injuries, the penalty shall be 5 to 12 years’ imprisonment.”

In order to take a comprehensive approach to the problems faced by women and children - including trafficking, sexual exploitation and all kinds of abuse and ill-treatment - and to provide specialized care for them, the Office of the Special Police Unit for Women and Children was set up in June 2006. This was a significant step forward and made it possible to increase the human resources and number of special units (from 25 to 32) and departmental offices, creating posts for female chiefs, giving more responsibilities to female police investigators and training them in areas such as the Holistic Model and the Manual of Police Standards and Procedures. They work with the Public Prosecutor’s Office, the judiciary and the Ministry of the Family, Young Persons and Children. This joint effort is helping to:

- (a) Improve care for victims and access to justice for children, young people and women;
- (b) Develop a strategic plan setting out guidelines on prevention, as well as the creation, promotion and training of a network of volunteer outreach workers for the special units for women and children;

¹ *Official Gazette*, No. 51, 12 March 2008.

(c) Extend coverage of services for the victims of domestic and sexual violence (children and young people) by means of campaigns encouraging victims to report attacks, and by opening new special units in the municipalities of Mateare, Ciudad Sandino de Managua, Diriomo, Palacagúina, La Concepción, Malpaisillo and Mulukuku, and along the Caribbean coast at Laguna de Perlas (Atlántico Sur autonomous region) and Waspam (Atlántico Norte autonomous region).

The data supplied by the special police units for women, for the first quarter of 2008, are as follows:

Persons helped	18 064
Complaints received	7 915
Cases of violence	
Injuries	1 264
Threats	463
Physical harm	174
Psychological harm	158

7. Please provide detailed information on the existence of specific measures which punish violence against women and encourage victims to report acts of violence, and in particular on the effective application of the measures contained in the Act amending and supplementing the Criminal Code to prevent and punish sexual and domestic violence. What steps have been taken to reduce the incidence of violence against women through the police station units for women and children (paragraphs 641 and 642 of the report)?

Nicaragua has made strenuous efforts to make people realize and accept that violence against women is a violation of human rights that has a negative impact on quality of life, particularly that of women. It is a major public health and security problem, and its manifestations constitute offences punishable by law.

Nicaragua's regulatory framework recognizes women's rights. National legislation adopted to reduce violence includes the following laws and decrees: Act No. 150, on sexual offences; Act No. 230, reforming and supplementing the Criminal Code to prevent and punish domestic violence; Act No. 287, the Code on Children and Young Persons; the protocol for dealing with offences involving domestic abuse and sexual aggression; and Ministry of Health Decree No. 67/96, which recognizes domestic violence as a public health problem. All of these demonstrate the efforts being made to eradicate violence against women.

Article 155 of the new Criminal Code adopted on 11 November 2007 defines domestic violence as the use of any kind of physical or psychological force, violence or intimidation against a current or former spouse or life partner, or against a person with whom a stable emotional relationship has or had been formed. It is also an offence to use force or intimidation against one's own children or those of a spouse or partner, except in cases where the right to discipline is exercised, or against a forebear or disabled person with whom one is living or who is subject to the authority, guardianship or custody of one or other of the partners.

On 14 February 2008, Act No. 648, on equal rights and opportunities, was adopted, its stated aim being to "promote equality and equity in the enjoyment of human ... rights".

A special unit has been set up in the Public Prosecutor's Office to deal with domestic violence, corresponding to the existing special units of police investigators.

The National Police have continued to set up offices for the special units for women and children, to deal with cases of domestic and sexual violence. There are now 32 such units operating around the country, and they have helped put the issue of domestic violence firmly on the social and public agenda.

8. Please provide information on the reform of the Criminal Code, which has prohibited therapeutic abortion since 2006. Please also comment on reports that this reform has led to a rise in the number of clandestine abortions and consequently a high maternal mortality rate (paragraphs 127 and 128 of the report).

The amendment to the Criminal Code abolishing therapeutic abortion, a century-old legal concept in Nicaragua, was made following an agreement between the various groups represented in parliament.

Accordingly, Nicaragua now has legislation that ranks among the most favourable to the unborn child on the American continent.

Abortion has not been high on the list of causes of maternal mortality in recent years. The list below gives the figures on the main causes of maternal mortality, in the epidemiological week in 2007:

29	Haemorrhage	59%	(retained placenta in 64% of cases)
15	Gestational hypertension	31%	
02	Pulmonary embolism	4%	
02	Abortion	4%	
01	Sepsis	2%	
49	Total	100%	

The following results are taken from analyses conducted by the Ministry of Health and various social partners:

(a) Some 69 per cent of cases of maternal mortality occur in six centres of the Local Comprehensive Health-care Assistance System (SILAIS) (Matagalpa, Jinotega, Managua, Chontales, Atlántico Sur autonomous region and Atlántico Norte autonomous region), where the deaths usually occur in the municipalities themselves;

(b) In June 2007 there had been a 12 per cent fall in the number of cases of maternal mortality as compared with 2006, which coincided with the implementation of the maternal mortality reduction plan. In 2006, direct obstetric causes were the main cause of maternal mortality. In 2007, there was an increase in deaths from indirect obstetric and non-obstetric causes, which has to be seen in relation to steps taken to increase screening for women whose reproductive health is at risk and to offer family planning services, as well as cross-sectoral efforts to reduce cases of violence;

(c) In 2007, 72 per cent of cases of maternal mortality occurred in rural areas, 72 per cent involved women with little education, and 21 per cent women with no schooling at all. Of all teenage girls who died, 82 per cent were from rural areas, the main causes of death being intoxication/suicide and gestational hypertension;

(d) In 70 per cent (46) of all cases of maternal mortality, the woman had received at least one prenatal check-up, though mostly belatedly. In some SILAIS that have historically had high maternal mortality rates, there is a downward trend (Atlántico Norte autonomous region, Atlántico Sur autonomous region, Chinandega).

9. Please comment on information made available to the Committee according to which there have been a disturbing number of extrajudicial executions of street children and young people. Please provide information on the investigation of such cases and proceedings against those responsible. What steps have been taken to provide reparation for injury suffered by the victims and their families?

The Government of Reconciliation and National Unity reiterates that the practice of extrajudicial executions, of children and young people or anyone else, does not exist in Nicaragua. Indeed, children and young people are a priority of government policy.

Nicaragua has one of the lowest rates of juvenile violence in Central America. Murders are committed on the street in the course of ordinary crime, as in any other country, but again Nicaragua's record is not one of the worst in this respect. Individuals who do commit crimes, whether they are civilians or State officials, are subject to the procedures established by law, which include access to justice and to the resources necessary to guarantee the rights of all parties, and no extrajudicial investigation procedures are applied.

Nicaragua and its institutions for dealing with violence and crime, such as the National Police, promote respect for life. The Government has set up special bodies to implement policies, programmes and plans for the benefit of children, young people and women. It provides in-service training for the police and armed forces to ensure full observance of human rights and the legal order. It has strengthened institutional arrangements relating to internal matters, supervision and monitoring, by establishing mechanisms to ensure strict enforcement of the rules and punishment when these are broken, and by promoting respect for human rights.

In 2002, a situation was brought to the attention of the United Nations in an attempt to implicate Nicaragua, wrongly, in the commission of extrajudicial executions. In March 2006 the United Nations decided not to pursue consideration of the complaint. In fact, one of those making accusations was himself involved in appalling violations of the human rights of children in another country, which raises questions about his true motives. The Government of Nicaragua regrets that there are those who would try to use the human rights bodies, dedicated to such a noble cause, for their own ends.

The events in Nicaragua referred to at that time were acts of violence classed as ordinary offences and reported in the media. The cases were taken up by the relevant authorities in accordance with the procedures established by law, as Nicaraguan legislation provides legal remedies for any act that is against the law or violates human rights, as the Working Group was informed in some detail. Nicaragua undertook at the time to work to advance the rights of children and young people; this it has been doing, and it reiterates its commitment to do so in the future.

10. Please provide information on the persons affected by the pesticide Nemagon. What are the results of the implementation of Act No. 364 concerning compensation for the persons affected? What is the current state of progress made by the Committee responsible for following up the case of the persons affected by Nemagon through its support action (paragraphs 106, 107 and 110 of the report)?

The role of the Government under Act No. 364 is to offer moral and legal support to the thousands of victims, in seeking to identify and punish those responsible for the harm they have suffered.

At the request of those affected by Nemagon, the Inter-Institutional Commission is working to prevent the repeal of Act No. 364, the special act on the processing of actions brought by persons affected by the use of pesticides manufactured from dibromochloropropane (DBCP). It is pressing the Attorney-General of the Republic, as the legal representative of the State, to comply with article 13 of the Act, which stipulates that the State must guarantee legal assistance, in both domestic or foreign courts, for anyone affected who cannot afford to pay for professional legal assistance to uphold their rights in court.

The lawyers representing those affected by Nemagon point out that Act No. 364 has been successful in speeding up judicial proceedings in claims for damages, having established a special procedure for this purpose. In the absence of such a procedure, those affected would have to go through the ordinary civil courts, which would be a far longer process with less chance of a successful outcome.

The Ministry of Health, through the public hospital system, provided care for 1,750 people admitted to hospital in 2006.

Out of a total of about 30,000 people who were affected, 21,000 are represented by law firms, and some of the others have joined together in various types of association that are independent of the law firms.

Those affected by Nemagon can be divided into the following groups:

- (a) The “group of eight”, consisting of organizations represented by Nicaraguan or North American law firms and covering approximately 13,500 victims;
- (b) The Victorino Espinales group, representing over 3,000 former workers;
- (c) The group of 4,000 former workers represented by the law firm Ojeda, Gutiérrez, Espinoza y Asociados;
- (d) The group represented by the North American law firm Provost Umprey, whose records show it representing some 2,500 former workers, which has had two judgements in its favour (Nos. 214 and 215) handed down by Judge Socorro Toruño in the Chinandega civil court.

Some positive, though not definitive, results have already been achieved, for example in the Téllez case, in which there are 13 plaintiffs. This was one of the first cases with a favourable outcome, for five of the plaintiffs; in November 2007 they were awarded \$3.9 million for pain and suffering and physical injuries, and a similar amount in punitive and exemplary damages. The case is currently being appealed by the transnational corporations concerned.

One of the other actions concerns the Mejía case, in which there are 15 plaintiffs. This has been in progress, at the evidentiary stage, since 14 July 2008. The testimony of the victims is reportedly being presented - this is the most sensitive part of the proceedings.

In March 2007, at the request of the victims and in accordance with the agreements signed by the governing board of the National Assembly and the victims, the Committee on Evaluation and Follow-up, consisting of a representative of each group in the National Assembly, was reactivated to follow up on the issue and monitor compliance with the above-mentioned agreements.

11. In the light of the data provided in paragraph 223 of the report concerning violations committed by the National Police (abuse of authority, excessive force and searches without a warrant), please provide statistical data for the last three years on reported incidents of torture and ill-treatment of detainees, disaggregated by age, gender and ethnic origin of victims, the number of convictions and the types of sanctions imposed on the perpetrators of such acts. What specific measures have been taken to prohibit these practices and to compensate the victims? Does national legislation ban the use in judicial proceedings of statements obtained through torture or ill-treatment (paragraphs 221-227 of the report, and especially paragraph 225)?

Torture and cruel, inhuman or degrading procedures, punishment or treatment are prohibited in Nicaragua under article 36 of the Constitution, and are an offence punishable by law. Articles 15 and 16 of the Code of Criminal Procedure provide that the facts can be proven by any kind of evidence, provided it is lawful; statements obtained using torture or ill-treatment, in violation of the Constitution, are not considered lawful.

On 26 August 2008, in reaffirming the prohibition of torture, the legislature approved the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed on 14 March 2007, Nicaragua being a party to the Convention.

The Department of Internal Affairs of the National Police received a total of 363 complaints of violations of human rights in 2007 (for abuse of authority, excessive use of force and searches without a warrant). Of these, 37.5 per cent proved justified, while 62.5 per cent were found to be unfounded. Complaints were made against 712 police officers, of whom 221 were punished.

Torture is an isolated event, but when it does occur, immediate steps are taken to investigate and punish the perpetrators (ranging from removal from a post or assignment to other duties to dismissal), without prejudice to proceedings before the judicial authorities.

There were 56 complaints related to searches without a warrant, 15 of which proved justified, and the following measures were taken: additional working hours imposed (1); restricted to police premises (13). There were 227 complaints of excessive use of force, 95 of which proved justified, and 155 police officers were punished, as follows: dismissed from the police force (10); additional working hours imposed (35); restricted to police premises (103); other measures (7).

Alternative preventive measures have been taken, such as human rights training for officials from all institutions, in cooperation with the Office of the Human Rights Ombudsman, to ensure respect for the rights of persons deprived of their liberty and persons in holding centres for migrants and aliens.

Furthermore, in an effort to avoid violations, there is an office for the execution and monitoring of penalties for juveniles, which works together with an interdisciplinary team.

12. Please provide information on the measures taken to improve the poor conditions in prisons (inadequate or obsolete infrastructure, limited budget for food, and insanitary conditions) and to remedy the problems of overcrowding and riots in detention centres (paragraphs 296-303 of the report).

On-site visits are made to the country's prisons in order to check the conditions for inmates. It is true that prisoners, mainly those in Bluefields, live in poor conditions in terms of drinking water, waste water, food and hygiene, owing to inadequate infrastructure and excessive overcrowding, which allows disease and riots to break out.

The Government of Reconciliation and National Unity has taken steps to increase the budget and to improve conditions and hence the quality of the infrastructure. The list below gives details of projects under way in 2008. Most of them have been or will be carried out with funding from the National Treasury. The police station in Puerto Cabezas is being renovated; the holding cells are being renovated and fitted out at the same time.

Projects under way in 2008

Renovation of Tipitapa prison

Construction of a roof over the visitors' entrance, and passage from Building No. 2 to the family visitors' room

Continued work on the renovation of corridors and cells

Construction of Estelí prison

Construction of family visitors' room

Construction of Chinandega prison

Renovation of medium- and low-voltage electrical system

Renovation of sleeping quarters for women inmates (phase 2)

Renovation of youth wing (donation)

Construction of Granada prison

Construction of youth wing

Proposal for construction of prisons

Construction of women's prison

Construction of Bluefields prison

Construction of Bilwi prison

Construction of national model prison for prisoners awaiting trial, Managua

Proposal for renovation of prisons

Renovation of Tipitapa prison

Renovation of Chinandega prison

Renovation of Estelí prison

Renovation of Granada prison

Renovation of Matagalpa prison

Renovation of Juigalpa prison

Proposal for women's and youth wings in existing prisons

Construction of a special wing for women in Matagalpa

Construction of a special wing for women in Juigalpa

Construction of a special youth wing in Estelí

Extension of the youth wing in Tipitapa

Hygiene

Renovation of the water supply and sanitation system in the country's prisons, to get a clear picture of the problem

13. Please clarify whether the State party has taken measures to limit the duration of pretrial detention and prevent the numbers of unconvicted prisoners from becoming excessive. Please also provide information on living conditions in the pretrial detention cells (paragraph 270 of the report).

Since 2007 the large number of unconvicted prisoners has been reduced. One of the main reasons for this is that pretrial detention is becoming a preventive measure of last resort, as a legal norm guaranteeing the human rights of the accused.

Pretrial detention is regulated in Nicaragua by the Criminal Code and the Code of Criminal Procedure. The Code of Criminal Procedure, in its articles 173-179, provides that only a judge may order pretrial detention, and only in cases where there is evidence and a risk that the accused will flee or obstruct the course of justice. The judge may also substitute house arrest for pretrial detention in certain cases. Pretrial detention may never last longer than the penalty imposed by the court and will be deducted from the penalty imposed.

Nicaragua has taken measures to limit the duration of pretrial detention, specifically by promulgating Act No. 406, the Code of Criminal Procedure, in December 2006.

If no verdict or sentence is handed down within three months of the preliminary hearing of the accused detainee (which must take place within 48 hours of arrest), the judge must order their immediate release and continuation of the procedure. If the above deadlines for the criminal procedure expire in the absence of an accused detainee, and no verdict or sentence has been handed down, the criminal action will be terminated and the case dismissed by the judge, although “the accused may relinquish this right by expressly requesting an extension of this period”.

Living conditions in the pretrial cells of the National Police have been greatly improved, now that the facilities have been redecorated. The national statistics for pretrial detention are as follows: end of year, November 2006, 876; end of year, November 2007, 1,337; as at end of June 2008, 1,506.

14. Please provide information on the *donados* of the prison system and the measures that the State party plans to take to solve this problem (paragraphs 293-295 of the report).

The persons deprived of their liberty known as *donados* are individuals who receive no support from their family and say of themselves that they have been “donated to the State”. They rely on the prison system for food, educational activities, social rehabilitation and leisure activities, as well as for basic legal services to help them apply for and obtain the benefits granted by law in certain circumstances, especially once they have served their sentence. These services could be improved, but the main problem is the shortage of officials (public defenders, prison monitoring and enforcement judges) in relation to the number of “donated” prisoners.

Various social and State organizations are working together to resolve this problem; they include the offices of the Special Ombudsman for Persons Deprived of Liberty and the Human Rights Ombudsman, voluntary groups, prisoners’ associations, universities and law firms. In this way, prisoners receive moral and legal support, including in defence of their human rights.

Number of *donados*

End of 2006: 1,110

End of 2007: 1,024

15. Please provide detailed information on steps taken to put into effect the recommendations made by the Working Group on Arbitrary Detention in its report of 9 November 2006 relating to its visit to Nicaragua.

There is no practice of arbitrary detention in Nicaragua, although at times it has occurred as a result of procedural delays. As has been recognized, Nicaragua has been attentive to the Working Group’s recommendations, and is working to improve conditions for prisoners

in Bluefields and Puerto Cabezas. It has continued to modernize and reform the judicial system, paying even more attention to human rights. Accordingly, prisoners are taken before a judge within 48 hours, and, importantly, if no sentence is passed within three months of the initial hearing, the prisoner must be released immediately. The registration system in police stations has also been improved.

Similarly, the detention of migrants is carried out in accordance with the applicable migration laws; migrants are allowed to communicate with their families, their accredited diplomatic representatives are duly notified in accordance with article 72 of Act No. 154, on aliens, and the Human Rights Ombudsman, or representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR), are notified when there is no diplomatic representation, when there is an application for asylum, or when a defence lawyer needs to be appointed. In this respect, attention is drawn to the adoption on 3 June 2008 of the Refugees Protection Act, drafted by an inter-agency commission with the support of UNHCR.

16. Please comment on the compatibility of the articles of the Criminal Code mentioned in paragraphs 322-326 of the report with article 11 of the Covenant in relation to imprisonment for inability to fulfil a contractual obligation.

Article 41 of the Constitution provides that no one shall be imprisoned for debt. However, this principle does not restrict the orders issued by the competent judicial authorities in respect of failure to fulfil maintenance obligations, which take precedence and are compulsory under Nicaraguan law, in accordance with the principle of giving priority to guaranteeing the rights of children and young people, as maintenance covers the concept of sustenance for children and the exercise of their rights.

Nevertheless, it should be clarified that this applies only when judicial proceedings have been instituted for failure to pay maintenance, and that these are criminal, not civil, proceedings, in which it must be proven that the failure was deliberate. In such proceedings, the accused has the opportunity to prove his innocence and is entitled to use all remedies provided for in the proceedings. The new Criminal Code in force since 10 July 2008 provides for a prison sentence of between six months and two years for failure to pay; if it is determined that the failure involved fraud, the penalty is between two and three years' imprisonment.

With regard to the recommendation of the Working Group on Arbitrary Detention that the institution of enforcement by committal should be removed from the civil statute book, it is noted that article 2521 of the Civil Code stipulates that enforcement by committal is applicable to a sequestrator who, when required to return an item or object, does not deliver it within the legal time limit.

Nicaragua considers that there is no quick or easy way to comply with this recommendation, since to change a legal rule that has been in use for over 100 years is a complex procedure. However, some progress has been made, and the issue has been raised for

discussion with the legislature and the judiciary. A bill to apply a moratorium on enforcement by committal for loans with personal guarantees is being considered by the parliamentary committee on justice and legal affairs. The bill was submitted by the Sandinista National Liberation Front (FSLN), which shows that there is a desire to find an immediate solution to the problem, while a profound process of change in civil matters is under way.

For its part, the Office of the Human Rights Ombudsman takes the view that judges can, mainly on the basis of articles 41, 46, 160 and 182 of the Constitution, declare “enforcement by committal” null and void, as the Constitution declares that no one may be deprived of their liberty for failure to fulfil a civil obligation and as article 11 of the Covenant states that “no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation”.

17. How is the independence and impartiality of members of the judiciary guaranteed in practice and, in particular, what are the regulations governing their tenure, dismissal and disciplining? What measures is the State party taking to enforce transparency, impartiality and accountability throughout its public institutions, especially regarding the judiciary and its independence? Please provide information on the numbers of prosecutions of judges and other judicial officials for corruption, if any, together with convictions and the sentences handed down.

The following laws guarantee and regulate the independence, impartiality, tenure, dismissal and disciplining of judicial officials: the Judiciary Organization Act and its regulations (of 1998 and 1999 respectively) and the Judicial Service Act (2004). On 12 June 2008, the Supreme Court of Justice adopted, in its decision No. 51, the Judicial Service Regulations, establishing transparent and precise procedures for all events related to the judicial service.

These recently adopted rules provide the basis for administrative proceedings before the National Council on Judicial Administration and Service, which has technical and operational autonomy. The Council has three standing committees, on administration, judicial service, and the governing body of the judicial service. It has a judicial inspectorate that is directly accessible to parties in the courts.

The Disciplinary Committee has the power to hear, investigate and judge, in first instance, complaints and infringements of the disciplinary code by legal professionals and judicial officials. Its decisions can be submitted to the Court for review.

As for disciplinary sanctions, in accordance with the Judicial Service Act, proceedings are oral, with a view to obtaining quick and objective decisions. In the past five years, sanctions have been imposed as follows: eight judges have been fined, in some cases with a private reprimand; five judges and three appeal court judges have been suspended temporarily; six judges have been dismissed; and six judges have received a private reprimand.

According to the Human Rights Ombudsman, the complaints of infringements have given the general public a negative image of the judicial authorities' performance, and some of the judges punished have not enjoyed due administrative process in the investigations. The Ombudsman has therefore issued recommendations in this connection.

18. Please report on alleged cases of threats towards and attacks on journalists by persons or organizations linked to the State authorities. How many complaints have been recorded? What measures is the State party taking to ensure that journalists can work and express themselves freely, without restrictions, in a safe environment, in accordance with the guarantees set out in article 19 of the Covenant? Please also provide information on the reasons preventing the adoption of the Access to Public Information Bill (paragraph 557 of the report).

Three complaints by journalists against State institutions have been recorded by the Human Rights Ombudsman. They have been investigated and settled in accordance with Act No. 212 and other relevant laws, and recommendations have been made on how to achieve respect for, and the exercise of, the right to freedom of expression and thought.

The Access to Public Information Act (No. 621) was adopted on 16 May 2007 and published in the *Official Gazette*, No. 118, of 22 June 2007. The Act was subsequently regulated by Decree No. 81-2007 of 17 August 2007, which was published in the *Official Gazette*, No. 6, of 9 January 2008.

The Government of Reconciliation and National Unity is currently taking action through government institutions to set up and activate public information offices.

19. Please comment on the information made available to the Committee according to which members of human rights organizations have been physically ill-treated, threatened and defamed by government authorities. What measures have been taken to investigate these cases and punish those responsible?

With no specific case to refer to, the Government of Nicaragua can only say that cases of alleged physical ill-treatment, threats or defamation of members of human rights organizations or any other citizen by government authorities are governed by laws that set out the competent bodies, procedures and remedies for dealing with the complaints or accusations, as the case may be. These enable the State, within the limits of the Nicaraguan justice system, to carry out the relevant investigations and punish anyone found guilty of such acts.

Nicaraguan law respects and protects the rights of all citizens, collectively and individually, including the rights to freedom of association, peaceful assembly and participation on equal terms in public affairs and in the State administration, and the rights to submit petitions, report irregularities and make constructive criticism, as provided for in articles 50-52 of the Constitution.

20. Please provide information and data on the right to strike and the official records of strikes that have been declared legal, as referred to in paragraphs 615 to 618 of the report. Please also provide information on steps taken to prevent the excessive use of force and firearms by the police and military personnel in dispersing demonstrations, as well as their effectiveness in practice (concluding observations on the second periodic report, paragraph 401).

This subject is regulated by the Constitution, which recognizes the right to strike (chap. V, Labour Rights, art. 83), and the Labour Code (chap. III, Collective Rights, sect. 1, Strikes, arts. 244-249), which sets out the requirements for a legal strike.

One of the tasks of the National Police is to grant authorization for large street demonstrations, and to set out the rules to be followed by the organizers; the police are also responsible for intervening to restore order when civic rights, freedom of movement or public or private property are violated or affected.

The principal measure for avoiding the excessive use of force is the application of the rules and regulations on the use of force and firearms by the police and the military, including: the rights set forth in the Constitution; Act No. 228 on the National Police, and its regulations; the Principles of Policing; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and the Code of Conduct for Law Enforcement Officials.

Act No. 228, on the National Police, regulates the use of force and firearms in its article 7, which provides that police officers must:

- Use only the force necessary to prevent immediate and irreparable serious harm
- Use firearms only when there can reasonably be considered to be a serious risk to their own or others' life or physical safety, or to prevent the commission of a particularly serious crime

21. Please indicate whether the Promotion and Protection of Responsible Parenthood Bill has been adopted, and how this bill or law regulates recognition of paternity and the equal rights of children born in and out of wedlock. Please also provide comprehensive information on the way in which the State protects the rights of children born out of wedlock (paragraphs 631-637 of the report).

Act No. 623, on responsible parenthood, was adopted on 17 May and published in the Official Gazette of 26 June 2007. It is regulated by Decree No. 102-2007 of 23 October 2007, published in the *Official Gazette* of 20 November 2007.

The Act is based on the principle of the best interests of the child, and upholds their rights by enforcing the obligations of their parents. No distinction is made between children born in

or out of wedlock, as marriage is just one of the situations in which people have children. Children born out of wedlock are also therefore protected. The rights concerned range from those relating to filiation, identity and maintenance to those relating to leisure and a decent life.

Recognition of paternity has both administrative and judicial aspects. Administratively speaking, a declaration by the mother counts as provisional recognition; the father then has 15 days within which to make his declaration of paternity at the registry office. If he fails to do so, the provisional declaration will be recognized. He may also contest paternity in a family court.

If he denies paternity but refuses to take a DNA test, there will be a presumption of paternity and the provisional declaration will be confirmed. If he denies paternity and agrees to a DNA test, the test will be carried out, and if the result is positive, he will be registered as the father; if it is negative, the child will be registered with the name of the mother only. Either party may take the case to a family court.

The Act also establishes that the Ministry of the Family, Young Persons and Children is authorized to represent the State in initiating administrative proceedings in case of the absence or death of the mother or father. The ministry is now preparing the following: a promotional policy and implementation plan; training courses for the officials and institutions concerned and for technical staff in the ministry's regional offices, including registrars, civil court judges, attorneys, mayors and non-governmental organizations; and a project to provide free DNA testing for people on low incomes.

22. Please provide information and statistical data for the last three years on the sexual exploitation of children. What measures has the State party taken to combat and punish this practice? What role has the National Commission on Violence against Women, Children and Adolescents played in reducing the incidence of sexual violence and offences against children and adolescents aged between 10 and 15 years? What steps has the State taken to prevent violence against children in general (paragraphs 642, 647 and 655 of the report)?

As far as statistical data are concerned, the National Police Special Unit for Women, Children and the Family reports that in 2006 and 2007, in 12 municipalities (Managua, San Juan del Sur, Granada, León, Corinto, Somotillo, Estelí, Somoto, Matagalpa, Sébaco, Bluefields and Bilwi) there were 11 cases of sexual offences linked to commercial exploitation: 5 of corruption of minors and 6 of trafficking in persons. The Department of Public Security reports one case in which an establishment was closed down because a young person was being exploited for commercial sexual purposes.

The Public Prosecutor's Office reports, for the same period and the same municipalities, 15 recorded cases of trafficking in persons. The alleged perpetrators were tried, and six of them were convicted; the cases against the nine others were dismissed for lack of merit or evidence. The Ministry of the Family, Young Persons and Children recorded a total of 159 allegations of sexual offences linked to commercial sexual exploitation, 131 in 2006 and 28 in 2007. Of these, 137 were reported for sex acts in exchange for payment, 20 for trafficking in persons, and 2 for child pornography. In 2008, two cases in which young girls were the victims were reported.

The lack of definitions for some types of commercial sexual exploitation offences has made it difficult to quantify them. This has led to under-reporting by the authorities, while some cases continue to be recorded using the definitions of the old Criminal Code. It is hoped that this problem will gradually be overcome.

One of the most important steps taken by the State party to combat and punish these offences was to promulgate the new Criminal Code in July 2008. The Code modernizes and complements the definition of offences against sexual freedom and sexual integrity, such as rape of a child under the age of 14, sexual exploitation, pornography and paid sexual acts with young persons, the promotion of sex tourism, pimping, and the trafficking of persons for the purposes of slavery, sexual exploitation or adoption. Articles 14 and 16 of the Code stipulate that, under the principle of universality and in accordance with the international instruments ratified by Nicaragua, Nicaraguan criminal laws are applicable to Nicaraguans or foreigners who commit such crimes outside the national territory, provided that the prosecution service has laid charges before the Nicaraguan courts. It should be stressed that when the victim is a minor, the Public Prosecutor's Office is required to initiate criminal proceedings or represent the child in them. This is an important step forward in this area, and is one of the measures taken by the Government to prevent violence.

In August 2001 a public policy to combat the commercial sexual exploitation of children and young persons was adopted, and in February 2004 the inter-agency National Coalition against Trafficking in Persons was set up under the Ministry of the Interior for the purposes of detection, protection, victim rehabilitation and effective punishment of traffickers, and is now being strengthened.

In 2005 the Supreme Court of Justice drew up a protocol for dealing with offences involving domestic abuse and sexual aggression, with a view to standardizing the procedures followed by judicial officials.

Support services and cooperation between the organizations involved have been strengthened in investigations carried out by the Special Unit for Women, Children and the Family. The organizations include the Ministry of the Family, Young Persons and Children, other units of the National Police, and the Gender Violence Unit of the Public Prosecutor's Office, whose job it is to facilitate access to justice by women, children and young people who are the victims of violence, by means of criminal proceedings, and to ensure they receive direct, gender-sensitive and individualized support.

The Government of Reconciliation and National Unity, with the support of friendly Governments and national and international non-governmental organizations, is strengthening the institutional capacities, human resources and technical tools of members of the civil branch of government and of the departmental offices and organizations who have a preventive role and who take care of children and young people at risk or suffering from abuse, sexual exploitation, trafficking or child pornography on the Internet, and to prevent them from becoming victims a second time. Other measures taken to combat and prevent such practices include:

(a) Two big campaigns to raise social awareness, under the slogans "Break the silence: report violence" and "A home is not built on violence: give your family love";

(b) Making it easier for victims to report incidents, with the introduction of hotline 133 (“My family”), which provides information and raises public awareness of the issue;

(c) Coordination in 2008 between the Ministry of the Family, Young Persons and Children and the United Nations Children’s Fund (UNICEF) on a strategy to combat the abuse, sexual exploitation and trafficking of children and young persons in Nicaragua;

(d) Preparation of a manual on how to deal with disappeared persons, commercial sexual exploitation and trafficking in persons;

(e) The mapping of commercial sexual exploitation, to show routes, resources and locations, blind spots, high-risk areas, working methods and victims’ origin, as well as details of where trafficking takes place in the country;

(f) Operational coordination in the Central American region in cases of commercial sexual exploitation.

23. Please provide information on: (a) the measures that are being taken to remedy the marginalization of the indigenous populations of the Atlantic coast regions; (b) statistical data for the last three years on the representation of indigenous peoples in Parliament and their participation in public affairs and economic life; and (c) the process of demarcation of communal land, in particular following the judgement of the Inter-American Court in favour of the Awas Tingni Community.

Since taking office in 2007, the Government of Reconciliation and National Unity has been paying greater attention to indigenous populations, and has been promoting their greater integration and participation in public and economic affairs through the regional autonomy process, and also in public office at the municipal, regional and national levels and in key decision-making areas; greater representation of coastal dwellers in the National Assembly; and the use of locally recruited professionals committed to a region’s development to run the regional offices of government departments. The Government also set up the Caribbean Coast Development Council to promote development in the autonomous regions and indigenous communities, by establishing coordination and communication mechanisms linking the President, the governments of the autonomous regions and leaders of the indigenous communities on the Caribbean coast, as well as a development plan for the Caribbean coast called “The road to the Caribbean”.

Similarly, the Government has drawn up a national human development plan for 2009-2012 as part of its efforts to cut poverty. The plan was drawn up with the help of the regional assemblies of the Caribbean coast, and contains input from the general public on the plans to develop the northern and southern autonomous regions, covering, among other things, health, education, water and sanitation. The autonomous regions are also a priority in the programme on sovereignty and food security, and in the Zero Hunger and Zero Usury programmes.

Work continues on strengthening municipal authorities and supporting municipalities and communities, with the establishment in the regional government of a technical secretariat for municipalities. The bilingual education programme is being strengthened with the implementation of the Regional Autonomous Education System (SEAR), the educational and sporting infrastructure is being overhauled, and financial support is being provided for rural teachers.

At the same time, a number of development projects are being pursued. These concerns, among other things, roads and production infrastructure, electricity, housing, property legalization and the granting of communal land title as follows:

- *December 2007* (5 territories): Mayangna Sauni As; Li Lamni Tasbaika Kum in the Atlántico Norte autonomous region and Miskitu Indian Tasbaika Kum; Kipla Sait Tasbaika and Mayangna Sauni Bu, in upper Río Coco (Wangki), Jinotega; benefiting 35,000 inhabitants; title granted for a delimited area of 5,756.26 km²
- *May 2008*: title granted to the unified territory of Awaltara Luhpia Nani (Unidad de los Hijos e Hijas del Río Grande), indigenous community of Karawala, administrative centre of the Desembocadura del Río Grande municipality, Bluefields (Atlántico Sur autonomous region); benefiting 16 communities with 9,769 inhabitants; covering an area of 241,306.08 hectares, in accordance with Act No. 445

With regard to the State's obligation under article 126 of the Constitution to promote the revival, development and strengthening of national culture, drawing on the creative participation of the people, significant progress has been made - although challenges remain - in the political, administrative and socio-economic spheres in the autonomous regions and in their cultural revival.

One of the most important measures adopted recently by the Government of Reconciliation and National Unity was the establishment of the first indigenous territorial government, with the creation of the special regime for Bocay under Executive Decree No. 2008 of 21 June 2008, which contributes to the creation and consolidation of a new form of territorial public administration.

As for political participation, it is worth highlighting the participation of the indigenous population through the Yatama party, which proposed that the municipal elections due to be held in November 2008 be postponed on account of the damage caused by Hurricane Felix, which lashed the region on 4 September 2007. The proposal was endorsed by decision of the Atlántico Norte Autonomous Regional Council, and the Supreme Electoral Council accordingly decided on 4 April 2008 to postpone the elections in three municipalities (Bilwi, Waspam and Prinzapolka) until the last Sunday of April 2009.

Yatama lodged an appeal in relation to participation in public affairs with the Inter-American Court of Human Rights, which found in its favour in 2005, ordering that Nicaragua publish the Court's judgement, pay compensation for material and moral injury, expenses and legal costs, and reform its electoral law. Nicaragua has been complying with this order; on 25 September 2008 the Government of Reconciliation and National Unity, in compliance with the judgement, paid Yatama the sum of US\$ 111,425.

With regard to ethnic representation in public office, there was no indigenous representative in the Governments of 1997-2001 or 2002-2006; only in the last year of the Bolaños administration was an indigenous person appointed deputy minister for foreign affairs.

The election victory of the FSLN-Yatama alliance in 2006 saw an increase in the number of indigenous deputies and deputies of African descent in the National Assembly, which now has five indigenous deputies and two of African descent. The Central American Parliament has three deputies of African descent and one indigenous deputy. The Atlántico Norte autonomous region currently has three regional deputies, and the Atlántico Sur autonomous region has two (see table 1).

Table 1
Number of deputies (excluding alternates) by department and region: comparison of the 2001 and 2006 elections

Autonomous region/department	2001 elections			2006 elections		
	Registered inhabitants	No. of deputies	Inhabitants per deputy	Registered inhabitants	No. of deputies	Inhabitants per deputy
Atlántico Norte autonomous region	137 848	3	45 949	181 435	3	60 478
Atlántico Sur autonomous region	177 149	2	88 574	213 551	2	106 775
Granada	102 435	3	34 145	127 585	3	42 528
Chontales	98 580	3	32 860	117 404	3	39 134
Carazo	99 400	3	33 133	121 084	3	40 361
Masaya	165 215	4	41 303	202 968	4	50 742
Chinandega	236 733	6	43 955	286 380	6	47 730

Source: Report on election monitoring and citizen participation in national elections, CEDEHCA (Centre for Human Rights and Rights of Citizens and Autonomous Groups), 2002 and 2006.

The Government of Reconciliation and National Unity has guaranteed greater representation of indigenous people and people of African descent in government decision-making positions (see table 2).

Table 2

**Ethnic representation in government decision-making positions
(2006 national elections)**

Institution	Position	Representative
Ministry of Foreign Affairs	Deputy Minister-Secretary for Foreign Cooperation	Valdrack Jaentschke (Creole - of African descent)
Ministry of Foreign Affairs	Deputy Minister-Secretary for Indigenous and Afro-descendent Affairs	Joel Antonio Dixon Coban (Mayangna - indigenous)
National Forestry Institute (INAFOR)	Director-General	William Schwartz (Miskito - indigenous)
Nicaraguan Fisheries Institute (INPESCA)	Director-General	Steadman Fagoth (Miskito - indigenous)
Caribbean Coast Development Council	Coordinator	Lumberto Campbell (Creole - of African descent)
Ministry of Agriculture and Forestry	Deputy Minister	Benjamín Dixon (Miskito - indigenous)
Supervisory Authority for Property	Deputy Property Superintendent	Evelyn Taylor (Creole - of African descent)
Ministry of the Environment and Natural Resources	Deputy Minister	Jacobo Charles (Mayangna - indigenous)
Ministry of Finance and Public Credit	Minister	Alberto Guevara (Mestizo - ethnic community)
Ministry of Finance and Public Credit	Secretary-General	Iván Acosta (Mestizo - ethnic community)
Ministry of Foreign Affairs	Director, Africa, Asia and Oceania	David McField (Creole - of African descent)
Nicaraguan Investment Bank	Director, Caribbean Coast Programme	Rendell Fredericks (Creole - of African descent)
Office of the President	National Caribbean Coast Liaison Officer for Educational Matters	Faran Dometz (Miskito - of African descent)
Office of the President	National Caribbean Coast Liaison Officer for Health Matters	Ned Smith (Creole - of African descent)

Source: Report on election monitoring and citizen participation in regional elections, CEDEHCA (Centre for Human Rights and Rights of Citizens and Autonomous Groups), 1998, 2002 and 2006.

The Government of Reconciliation and National Unity has shown its determination to move forward dynamically and effectively in granting communal land title to the Awas Tingni indigenous community and to comply with the judgement of the Inter-American Court. Thanks to this real determination, it has made considerable progress, unlike its predecessors.

In February 2007, the Atlántico Norte Autonomous Regional Council issued decision No. 26-14-02-2007 ratifying the decision by the Demarcation and Territorial Organization Commission, thereby resolving the Francia Sirpi, Santa Clara and La Esperanza (Tasba Raya) question, this being a prerequisite for drawing up and implementing the plan for the measurement and marking of boundaries.

On 9 May 2007, Awas Tingni leaders met with the coordinator of the Caribbean Coast Development Council, submitting a proposal and accepting the decision of the Atlántico Norte Autonomous Regional Council regarding the overlap with the neighbouring communities concerned (Tasba Raya).

From 8 to 10 June 2007, a plan for the marking of the boundaries and measurement of the traverse of the Awas Tingni (Amasau) indigenous territory was drawn up in a participatory and consensual way.

On 1 July 2007, a start was made on the implementation of the plan for the measurement and marking of boundaries of the Awas Tingni community, with the placement of 12 of the 28 boundary markers planned for the whole territory.

On 3 May 2008, at a closed hearing of the Inter-American Court of Human Rights in Costa Rica, an agreement was signed by representatives of the State and the Awas Tingni indigenous community.

The issue was placed on the agenda of the Atlántico Norte Autonomous Regional Council, and was finally considered at sessions of the Council on 1-3 August 2008, when the final decision was adopted on the overlap between the 10 communities of Tasba Raya and Awas Tingni, enabling the successful handover of title to the Awas Tingni community in mid-September.

The dispute concerning the overlap has been settled and the rest of the boundary markers are being put in place so that title to the land can be granted.

24. Please describe any steps taken to disseminate information on the submission of this report and its consideration by the Committee, and in particular on the Committee's concluding observations. Please indicate whether non-governmental organizations were consulted during the preparation of the report and whether they were informed that the report of Nicaragua is to be considered by the Committee.

The Government of Reconciliation and National Unity, as has been pointed out, took steps to ensure that the preparation and presentation of the report of Nicaragua under the International Covenant on Civil and Political Rights was a participatory process and that the report was

disseminated. To do this, organizations from the various branches of Government and from civil society with an interest in the subject worked together in the Inter-Institutional Committee on Human Rights.

Both the report and the replies to the Committee's list of issues were checked and agreed by the Inter-Institutional Committee in workshops attended by civil society organizations and representatives of the State party. This way of working will be maintained during the dissemination and follow-up of the recommendations of the Human Rights Committee. In this process, the cooperation and support of the Office of the United Nations High Commissioner for Human Rights, through the United Nations country office, deserves to be highlighted.

The Ministry of Foreign Affairs is posting this information on its website, to facilitate access to it by civil society organizations, State institutions, university students and the general public.

It should, however, be pointed out that the Nicaraguan Centre for Human Rights (CENIDH), one of the most important human rights non-governmental organizations in the eyes of the Government and a member of the Inter-Institutional Committee, decided not to take part in the process of preparing the replies to the list of issues to be considered, as it felt this would be inappropriate when it was producing its own report.
