



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION**

Fourteenth periodic reports of States parties due in 2005

Addendum

NICARAGUA^{* **}

[21 June 2007]

* This document contains periodic reports 10-14 (consolidated document), which were due on 17 March 2005. For the fifth to ninth periodic reports of the Republic of Nicaragua and the summary records of the sittings at which the Committee considered those reports, see documents CERD/C/277/Add.1 and CERD/C/SR.1110 and 1111.

** The annexes to the present report may be consulted in the files of the Committee secretariat.

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Executive Summary

The State of Nicaragua has adopted a series of legislative measures and decrees designed to give effect to the International Convention on the Elimination of All Forms of Racial Discrimination.

Among the most salient items of legislation promulgated during the period from 1995 to the present, mention should be made of the following: Act concerning the Official Use of the Languages of the Communities of the Atlantic Coast; Regulations pertaining to the Autonomy Statute of the two Regions of the Atlantic Coast of Nicaragua; Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio and Maíz Rivers; Decree creating the Council of the Caribbean Coast; Decree declaring National Garifuna Day (19 November of each year).

Other general laws have also been promulgated over the past 10 years and contain special provisions for the protection of the indigenous people: they include the Citizen Participation Act; the General Education Act; the Code of Children and Adolescents; the General Act on the Environment and Natural Resources; the Act on the Promotion of Integral Development of Youth; and the General Health Act.

Education

In October 1997 the Regional Autonomous Education System (SEAR) was approved and is geared towards comprehensive education of indigenous individuals and ethnic communities. There is also a Bilingual Intercultural Education Programme (PEBI) which facilitates access to various levels of education for the inhabitants of the autonomous regions of Nicaragua's Atlantic Coast.

Health

The Government of Nicaragua submitted the National Health Plan 2004-2015, which contains the general guidelines, specific policies and strategies aimed at bringing about a change in the health situation of the individuals, families and communities of the Nicaraguan Atlantic Coast.

Case of YATAMA and Awas Tingni

The Government of National Reconciliation and Unity, in its desire to promote respect for the rights of the indigenous peoples and ethnic communities, is in the process of complying with rulings in the YATAMA and Awas Tingni case, for which every effort is being made to carry out to the full the orders of the Inter-American Court of Human Rights and to protect the rights of all our country's indigenous peoples, using these processes to promote relations among the Government, the indigenous peoples, the ethnic communities and their local authorities and governments.

Commitments undertaken by the Government

The Government of National Reconciliation and Unity adopted as one of its priorities the promotion of the human rights of the indigenous peoples of Nicaragua and Afro-Nicaraguans by promoting laws, measures and programmes in favour of those peoples.

Accordingly, the Government of National Reconciliation and Unity is endeavouring to reduce the illiteracy rate on the Caribbean Coast through nationwide implementation of the “*Yo, sí puedo*” (Yes, I can) programme in coordination with the Coordination Committee on the Literacy Programme promoted by the Ministry of Education (MINED) with the University of the Autonomous Regions of the Nicaraguan Caribbean Coast (URACCAN) and other local organizations.

It is the interest of the Government of National Reconciliation and Unity to ratify international treaties for promoting human rights, but on condition that they are consistent with the Political Constitution and are of benefit to Nicaraguans. Accordingly the Government of Nicaragua will review the appropriateness of ratifying Convention No. 169 and will conduct the necessary consultations on its content with all State and regional institutions and civil society organizations involved.

From the cultural point of view, specific actions have been initiated, such as support for the Action Plan for Safeguarding the Garifuna Language, Music and Dance in Belize, Guatemala, Honduras and Nicaragua, “A masterpiece of the oral and intangible heritage of mankind” (1 March 2006 to 31 August 2008). The purpose of this Plan is to revive Garifuna culture.

The central Government is also promoting a regional forum in the RAAS to submit to the cooperation community the Regional Development Plan for the RAAN and the RAAS in order to attract investment and social projects on behalf of the municipalities and communities with indigenous and ethnic populations, such as the Miskito, Sumo-Mayagna, Rama, Garifuna, Afro-Nicaraguan and Mestizo groups.

Accordingly, the Government of National Reconciliation and Unity wishes for greater integration of the Atlantic Coast with the Pacific, central and northern regions of Nicaragua, as evidenced by the fact that several of the ministries and institutions of the central government are headed by Afro-Nicaraguans, Miskitos and Mayagnas of both autonomous regions, who have displayed great ability and merit in the fulfilment of their functions.

ACRONYMS AND ABBREVIATIONS

AC	Coastal Alliance
ADPESCA	National Fisheries and Aquaculture Administration
APAN	North Atlantic Fishing Association
APRODIN	Association for the Promotion and Defence of Indigenous Rights in Nicaragua
BICU	Bluefields Indians and Caribbean University
CAMINOS	Assistance, Mediation, Information and Guidance Centres
CEDEHCA	Centre for Human Rights and Rights of Citizens and Autonomous Groups
CENIDH	Nicaraguan Centre for Human Rights
CEPAD	Nicaraguan Council of Protestant Churches
CIDCA	Atlantic Coast Research and Documentation Centre
CISP	Committee for Solidarity with Peoples
CONADETI	National Demarcation and Titling Commission
CONAPINA	National Council for Comprehensive Care and Protection of Children and Adolescents
CRAAN	Atlántico Norte Autonomous Regional Council
CRAAS	Atlántico Sur Autonomous Regional Council
CSE	Supreme Electoral Council
CSJ	Supreme Court of Justice
DGME	Directorate-General for Migration and Aliens
DGOI	Directorate-General for International Organizations
EIB	Bilingual intercultural education
FADCANIC	Foundation for the Autonomy and Development of the Atlantic Coast of Nicaragua
FAO	United Nations Food and Agriculture Organization
FISE	Social Investment and Emergency Fund
FJR	Rural judicial facilitators
FSLN	Sandinista National Liberation Front
GRAAN	Atlántico Norte Autonomous Regional Government
GRAAS	Atlántico Sur Autonomous Regional Government
IDB	Inter-American Development Bank
IDR	Rural Development Institute
ILO	International Labour Organization
INAFOR	National Forestry Institute
INATEC	National Technology Institute

ACRONYMS AND ABBREVIATIONS (*continued*)

INC	Nicaraguan Cultural Institute
INETER	Nicaraguan Institute for Territorial Studies
INIDE	National Development Information Institute
INSS	Nicaraguan Social Security Institute
INVUR	Nicaraguan Institute for Urban and Rural Housing
JENH	Youth Setting New Horizons
LOPJ	Organic Act on the Judiciary
MAGFOR	Ministry of Agriculture and Forestry
MARENA	Ministry of the Environment and Natural Resources
MINED	Ministry of Education
MINREX	Ministry of External Relations
MINSA	Ministry of Health
MITRAB	Ministry of Labour
NACARA	Nicaragua Adjustment and Central American Relief Act
OAS	Organization of American States
ODACAN	Office for Development for the Autonomy of the Atlantic Coast of Nicaragua
PAHO	Pan American Health Organization
PAMUC	Coastal Unity Movement Party
PARLACEN	Central American Parliament
PDDH	Office of the Human Rights Ombudsman
PEBI	Bilingual Intercultural Education Programme
PGR	Office of the Attorney-General of the Republic
PIM	Multi-ethnic Indigenous Party
PLC	Liberal Constitutionalist Party
PN	National Police
PREDHA	Regional Programme for Education in Human Rights and Rights of Autonomous Groups
PRODEP	Land Administration Project
RAAN	Atlántico Norte Autonomous Region
RAAS	Atlántico Sur Autonomous Region
SEAR	Regional Autonomous Education System
SEPCA	Presidential Secretariat for Atlantic Coast Affairs
SIBURAAN	Union of Divers of the Atlántico Norte Autonomous Region
SIDA	Swedish International Development Cooperation Agency

ACRONYMS AND ABBREVIATIONS (*continued*)

SILAIS	Local Comprehensive Health-care Assistance System
SINTRAMARSI	Union of Marine and Related Workers
SOLCARSA	Sol del Caribe S.A
TPS	Temporary Protected Status
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
URACCAN	University of the Autonomous Regions of the Caribbean Coast of Nicaragua
USCI	Unit for the Monitoring of International Conventions
WFP	World Food Programme
WHO	World Health Organization
YATAMA	Yapti Tasba Masraka Nanih Alatakanka

I. INTRODUCTION

1. Nicaragua, as a Member State of the United Nations, has ratified the human rights covenants and conventions obliging them to take legislative, administrative and judicial measures for the application of the above, which form part of domestic legislation under the Constitution.
2. Nicaragua ratified the International Convention on the Elimination of All Forms of Racial Discrimination by Decree No. 17 of 3 December 1977.¹ Through this international instrument the State of Nicaragua undertook to adopt measures whereby the population would respect, promote and encourage universal and effective respect for the human rights and fundamental freedoms laid down in the Political Constitution, without discrimination on grounds of race, sex, language or religion.
3. The Government of Nicaragua, through the Unit for Monitoring International Conventions (USCI), the Directorate-General for International Organizations (DGOI) and the Ministry of External Relations (MINREX), has prepared this report with the collaboration of the Inter-agency Committee made up of institutions, central government ministries and non-governmental organizations (NGOs) that promote human rights, while at the same time covering topics directly linked to the International Convention on the Elimination of All Forms of Racial Discrimination.
4. The institutions, ministries and bodies that participated in the preparation of and consultation on the report are as follows: INSS; the Presidential Secretariat for Atlantic Coast Affairs; MINED; INIDE; MINSA; INVUR; MITRAB; Commission for Ethnic Affairs and Autonomous Regimes of the National Assembly; the Property Administration; CIDCA-UCA; URACCAN; GRAAS; CRAAS; GRAAN; CRAAN; CEDEHCA; Office of the Procurator for the Rights of Indigenous Peoples and Ethnic Communities; PGR; INC; UNHCR; CONAPINA; CALPI; DGME, IPADE; MP and CSJ.
5. The Government of Nicaragua has the honour to submit to the distinguished members of the Committee on the Elimination of Racial Discrimination the tenth to fourteenth consolidated reports covering the period 1997-2006, pursuant to the application of the International Convention on the Elimination of All Forms of Racial Discrimination, as established in article 9, paragraph 1, of the Convention.

II. ETHNIC COMPOSITION OF THE POPULATION

6. With the promulgation of the Autonomy Statute of the Autonomous Atlantic Coast Regions of Nicaragua (Act No. 28), the Atlantic Coast was divided into two autonomous regions, one in the north and the other in the south, comprising a total area of 45.77 % of the national territory (59,673.6 km²).
7. The Atlántico Norte Autonomous Region (RAAN) is located in the north-western part of Nicaragua and comprises the largest territorial area of the Caribbean Coast. It is bordered on the north by the Republic of Honduras, on the west by the departments of Jinotega and Matagalpa, on the south by the RAAS and on the east by the Caribbean Sea. It covers a total area of

¹ Published in *La Gaceta*, Nos. 286 and 291 of 16 and 22 December 1977 respectively.

32,127.28 km² (24.7 % of the national territory) and has its administrative seat in the city of Bilwi, municipality of Puerto Cabezas.²

8. The Atlántico Sur Autonomous Region (RAAS) is bordered to the north by the RAAN, to the south by the department of Río San Juan, to the east by the Caribbean Sea, and to the west by the department of Chontales. It occupies an area of 27,546.32 km² (21.1 % of the national territory) and has its administrative seat in the city of Bluefields.³

9. Nicaragua's Caribbean coast is populated by six ethnic groups: Rama, Mayagna, Miskito, Creole, Mestizo and Garifuna. Mestizos predominate among the mining communities, Miskitos in Puerto Cabezas and Waspam, Creoles in Laguna de Perlas and Corn Island, and Mestizos and Creoles in Bluefields.

10. In addition, the north, centre and Pacific areas of Nicaragua are home to the Xiu-Sutiava, Naho-Nicarao, Chorotega and Cacaotera-Matagalpa indigenous communities.

11. The 2005 population census conducted by INIDE showed for the first time the self-recognition, or sense of belonging to indigenous groups or ethnic communities, for all people residing in the national territory. Table 1 provides information showing the population belonging to each indigenous group or ethnic community and also highlights Nicaragua's ethnic cultural diversity.

12. According to data provided by the 2005 Population and Housing Census, 8.6 % of the country's total population claim to belong to a particular ethnic group (Miskito, Mayagna, Creole, Rama, Garifuna, Chorotega, Xiu-sutiaba, Cacaotera or Naho). Of these, 11 % claim not to know which group they belong to; if one adds to them those not surveyed they account for 15 % of the total of population that is indigenous or Afro-Nicaraguan population.

13. The breakdown is as follows: Miskitos (27.2 %); Mestizos from the Caribbean Coast (25.3 %), Chorotega-Nahua-Mangues (10.4 %), Creoles (4.5 %), Xiu-Sutiavas (4.5 %), Cacaotera-Matagalpas (3.4 %), Naho-Nicarao (2.5 %) and Mayagna-Sumos (2.2 %).

14. These population groups are mostly rural (56.8 %) with different behavioural patterns, depending on the indigenous people or ethnic community. The Creole population has a marked urban presence (90.5 %), followed by the Xiu-Sutiava (80.4 %), Garifuna and Ulwa (62 % each).

² Data from the Nicaraguan Institute of Territorial Studies.

³ Idem.

Table No. 1

Indigenous People or Ethnic Community	Total					
	Population	%	Urban	RM%	Rural	RM %
THE REPUBLIC	443 847	100	191 682	93.6	252 165	104.9
Rama	4 185	0.9	1 907	97.2	2 278	102.1
Garifuna	3 271	0.7	2 033	92.7	1 238	97.4
Mayagna-Sumu	9 756	2.2	1 080	107.3	8 676	99.3
Miskito	120 817	27.2	45 445	89.7	75 372	99.6
Ulwa	698	0.2	433	98.6	265	122.7
Creole (Kriol)	19 890	4.5	18 219	90.5	1 671	108.4
Mestizo on the Caribbean Coast	112 253	25.3	49 611	94.4	62 642	108.7
Xiu-Sutiava	19.949	4.5	16 047	95.3	3 902	111.0
Nahoa-Nicarao	11.113	2.5	4 955	97.3	6 158	99.4
Chorotega- Nahua-Mange	46 002	10.4	11 808	100.2	34 194	108.5
Cacaopera-Matagalpa	15 240	3.4	3 874	91.7	11 366	107.3
Other	13 740	3.1	8 835	96.9	4 905	111.1
Don't know	47 473	10.7	16 461	95.3	31 012	106.5
not surveyed	19 460	4.4	10 974	94.9	8 486	107.2

Source: INIDE 2005 Population and Housing Census.

A. Refugees

15. The Nicaraguan State is committed to the respect and promotion of human rights, for which purpose it abides by its humanitarian commitment to provide effective protection for all persons without any discrimination whatsoever. To that end article 42 of the Political Constitution establishes that:

“Nicaragua recognizes and guarantees the right of refuge and asylum. Refuge and asylum provide protection only for persons persecuted for their struggle for democracy, peace, justice and human rights.

“The law shall determine the status of asylum-seeker or political refugee, in accordance with the international agreements ratified by Nicaragua. In the event of a decision to expel asylum-seekers, they may never be dispatched to the country in which they were persecuted.”

16. Nicaragua is host to 290 Salvadorian refugees, a reduction compared with previous decades. But there are still former Salvadorian refugees residing in Nicaragua, whose full social integration is jeopardized by their irregular status. For over five years, the Nicaraguan Council of Protestant Churches (CEPAD), the organization that represents UNHCR in Venezuela, has been endeavouring to secure their legalization, since they entered Nicaragua as refugees and many have been were documented as residents but have failed to renew their resident status, remaining

in the country irregularly for as long as 18 years, using expired identification having no access to various procedures and rights. CEPAD estimates at 1,300 the number of former Salvadorian refugees who have not been legalized.

17. Since early March 2004 work has been proceeding on the creation of an inter-agency commission on refugees in Nicaragua with the principal aim of elaborating a draft law on the subject. In July 2004, with the collaboration of UNHCR, training was provided for delegates of State institutions and non-governmental organizations covering the principal elements of refugee rights to be taken into account in the preparation of domestic laws.

18. As a result, starting in August 2004, a committee made up of representatives of the Ministry of the Interior, DGME, the Ministry of External Relations, the Office of the Human Rights Ombudsman, the Nicaraguan Centre for Human Rights (CENIDH), the Nicaraguan Network on Migration and CEPAD, began preparation of a sketch of the preliminary draft law.

19. On 25 April 2006, with the assistance of UNHCR, the preliminary draft refugees act was submitted to the members of the Population and Development Committee of the National Assembly and is being studied for its approval on the annual agenda of the current National Assembly.

20. The preliminary draft act seeks to establish the National Commission for Refugees, which would be the body responsible for determining refugee status in Nicaragua. It embodies the expanded concept of the Cartagena Declaration and guarantees a procedure that fully respects the rights of refugees, access to justice and protection, and to the principles on non-discrimination, *non-refoulement* and family unity, within the framework of international human rights law.

B. Migrants

21. In recent years the rate of migration as an alternative to employment has been increasing apace. Most Nicaraguans who emigrate are men, women and teenagers with scarce economic resources from rural areas, who, owing to lack of decent work, emigrate to other countries.

22. The most usual destinations are the United States of America and Costa Rica, to which a high percentage of Nicaraguans emigrate each year and where they are faced with difficult problems, such as high costs of consular services, discrimination, problems relating to social and cultural adaptation, scant communication with their families, lack of documents, informal labour, low wages, access to social services and so on.

23. In the United States the total number of those deported, returned or turned away has grown in comparison with other years: for 2005 it is estimated that 1,406 Nicaraguans were deported, much more than in previous years. This number is smaller than the number of deportees from Central American countries. In 2005 Costa Rica deported 10,195 Nicaraguans, somewhat fewer than in previous years.

**Nicaraguans returned, deported and turned away
Period 1996 - December 2005**

NATIONALITY	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	TOTAL BY COUNTRY
GERMANY	0	0	0	0	0	0	0	0	0	2	2
BELIZE	0	0	0	0	2	2	8	3	9	20	44
CANADA	6	18	4	6	1	3	5	1	8	5	57
COLOMBIA	0	0	0	0	0	0	1	0	1	0	2
COSTA RICA	50,368	59,494	95,094	72,230	54,957	18,829	15,661	14,170	10,256	10,195	401,254
CUBA	1	0	0	0	0	0	0	0	0	1	2
EL SALVADOR	0	3	1	0	3	0	0	1	1	1	10
SPAIN	0	0	0	0	0	1	0	0	0	4	5
UNITED STATES	424	459	298	263	326	402	386	600	857	1,406	5,421
FINLAND	0	0	0	0	0	0	0	0	0	1	1
FRANCE	0	0	0	0	0	0	0	1	0	0	1
GREAT BRITAIN	0	0	0	0	0	0	0	0	1	2	3
GUATEMALA	0	21	5	0	0	0	0	1	0	0	27
HAITI	0	0	0	0	0	0	0	1	0	0	1
HONDURAS	41	28	4	195	141	11	45	0	0	0	465
ITALY	0	0	0	0	0	0	0	0	0	2	2
MEXICO	3	6	0	0	0	0	0	2	24	25	60
OTHER COUNTRIES	20	4	1	0	0	0	0	0	0	0	25
PANAMA	3	4	1	3	13	10	11	30	38	16	129
PUERTO RICO	2	3	0	0	1	0	0	0	0	0	6
SWEDEN	0	0	0	0	0	0	0	0	1	2	3
GRAND TOTAL	50,868	60,040	95,408	72,697	55,444	19,258	16,117	14,810	11,196	11,682	407,520

Source: DGME.

24. The Government of Nicaragua has negotiated, together with other Latin American countries, agreements, conventions, laws and migration amnesties linked to political and economic contexts designed to benefit illegal immigrants. As a result of these hard-won arrangements, some countries, such as the United States and Costa Rica, have adopted various agreements, programme plans and migration amnesties in conjunction with international organizations so that Nicaraguans can avail themselves of these special circumstances in order to regularize their situations. The most significant of these are described below:

(a) NACARA Act (Nicaraguan Adjustment and Central American Relief Act). On 13 November 1997, the Congress of the United States of America approved this Act, which grants migration benefits to some Central Americans, especially Nicaraguans. The Act also benefited migrants' direct relatives (spouse and unmarried offspring), subject to the same requirements as the main applicant, even if they hold a different nationality. It was calculated that 150,000 Nicaraguans were eligible to benefit under this Act.

(b) Temporary Protected Status (TPS) for 18 months was approved on 29 December 1998 by the United States of America for Nicaraguans and Hondurans in order to suspend their deportation and help their countries through the emergency caused by Hurricane Mitch. TPS was granted to approximately 6,000 Nicaraguans. The Government of the United States has subsequently renewed TPS on six occasions. The sixth renewal took place in 2006 and expires in July 2007. On 3 May 2007 the Government of the United States, through the Department of Homeland Security, announced the approval of the seventh TPS renewal, granting work permits to some 5,000 Nicaraguan residents in the country. The extension will also have a life of 18 months.

(c) Amnesty in Costa Rica: the Costa Rican Government implemented a general amnesty for all irregular Central American immigrants from Nicaragua, Belize, El Salvador, Guatemala, Honduras and Panama who entered the country before 9 November 1998. Of the 155,316 applicants under this measure, 97.4 % (151,277) were Nicaraguans.

(d) The Mexican Plan of Action was adopted on 16 November 2004. It was designed and signed as a reaffirmation of the obligation of Latin American States to respect the principle of non-discrimination and to take steps to prevent, combat and eliminate all forms of discrimination and xenophobia. It likewise proposes that the policies on security and the fight against terrorism should respect national and international instruments for the protection of refugees.

25. At the same time the Nicaraguan State also safeguards respect for the rights of migrants who cross its territory. Nicaragua is an easy transit country owing to the decisions taken by the migration authorities to waive the visa requirement for various nationalities. With the globalization of emigration and the country's geographical position, Nicaragua has seen an increase in the flow of migrants crossing its territory on their way to the United States. Migrants transiting Nicaragua include Peruvians, Ecuadorians, Colombians, Dominicans and, to a lesser extent, Africans (Nigerians and Somalis) and Asians (Chinese, Indians and Nepalese).⁴

26. The Nicaraguan Network of Civil Society Organizations on Migration promoted a reform of the Migrant Traffic Control Act (Act No. 240)⁵ which was effected in 2004. The main purpose of the reform was to bring it into line with international norms so as not to discriminate against undocumented persons' exercise of their rights. The prime reasons for this initiative had to do

⁴ Rocha Gómez, José Luis. *Análisis de Percepciones y Aportes para una Política de Migración Internacionales en Nicaragua. Población y Desarrollo. (Analysis of international perceptions and inputs for a migration policy in Nicaragua. Population and Development)*. ECLAC. Santiago, Chile, January 2006, p. 43.

⁵ Approved on 26 November 2004 and published in *La Gaceta*, No. 20, of 28 January 2005.

with consideration of the precarious situation that motivates migrants to seek a better life abroad and the fact that, since Nicaragua is a migrant-exporting country, it would be inconsistent to maintain a dual policy that protects the rights of its nationals abroad while breaching the rights of foreign immigrants crossing or settling in Nicaragua.⁶

27. The Government of Nicaragua has embarked on the path of regularizing temporary work by migrants with the Agreement between Costa Rica and Nicaragua on the implementation of a binational migrant labour policy, signed on 21 January 2005 by the Ministers of Labour of both countries. In order to advance along this route the two Ministers approved a work matrix for administering migratory flows, on the way to adopting an agenda that is in keeping with both countries' public employment policies and that respects the principles established by the ILO. This agreement will guarantee orderly and safe migration for Nicaraguans seeking to improve their quality of life in the neighbouring country.

III. GENERAL LEGAL FRAMEWORK

28. Nicaragua recognizes the rights enshrined in the main international instruments in Article 46 of its Political Constitution, which provides as follows:

“All persons shall enjoy within the national territory the protection of the State and recognition of the rights inherent in the human person, unrestricted observance, promotion and protection of human rights, and full observance of the rights proclaimed in the Universal Declaration of Human Rights, in the American Declaration of the Rights and Duties of Man, in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and in the American Convention on Human Rights of the Organization of American States.”

29. The International Convention on the Elimination of All Forms of Racial Discrimination has the status of ordinary law in the domestic legislation of Nicaragua.

30. The Office of the Human Rights Ombudsman (PDDH) is the institution responsible for the protection of human rights and serves as an agency of the National Assembly for the promotion, defence and guardianship of constitutional guarantees and human rights.⁷ It has an Ombudsman and a Deputy Ombudsman elected by a qualified majority of at least 70 % of the Deputies of the National Assembly. They enjoy immunity and their terms of office run for five years.

31. The specific functions of the Office of the Human Rights Ombudsman include the following:

- (a) To counsel persons on the exercise and defence of their rights and obligations.
- (b) To oversee the performance of the public administration and its officials with regard to respect for human rights.

⁶ Rocha Gómez, José Luis. *op. cit.* (footnote 4 above).

⁷ The basic norm for its functioning is Act No. 212 (Human Rights Ombudsman Act) of 10 January 1996, amended by Act No. 471 of 3 October 2003.

(c) To investigate actions by the public administration in order to clarify acts of commission or omission that breach human rights.

(d) To request the suspension or dismissal of any authorities that, by their actions, injure or endanger human rights.

32. For its greater effectiveness the PDDH has a Procurator for Children and Adolescents, a Procurator for Women, a Procurator for Indigenous Peoples and Ethnic Communities of the RAAN and RAAS, a Procurator for the Mining Triangle, specifically in Siuna (RAAN); and a woman Procurator for Persons Deprived of their Liberty. The Office may create other specialized subsidiary procurator offices at the discretion of the Ombudsman.

33. The PDDH organizes networks of promotional offices, through which the organized population may protect and defend its rights. In this way, the Office generates a certain presence.

34. The promotional office network is comprised as follows in the departments with ethnic communities and indigenous populations:

Volunteer promotional office network			
Department	Participants	Men	Women
Matagalpa	74	24	50
Bluefields	40	12	28
Puerto Cabezas	24	18	6
Siuna	40	16	24

35. The PDDH has been one of the State institutions that have provided information for the preparation of the reports on the various human rights conventions and covenants ratified by Nicaragua. More specifically, the Office of the Procurator for the Defence of the Rights of Indigenous Peoples and Ethnic Communities has been supplying information to the Unit for the Monitoring of International Conventions (USCI) for preparation of the report on the International Convention on the Elimination of All Forms of Racial Discrimination.

IV. INFORMATION RELATING TO ARTICLES 1 TO 7 OF THE CONVENTION

A. Articles 1 and 2

36. Nicaragua, as a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, guarantees for all persons under its jurisdiction protection and effective remedies before its competent national courts and other institutions of State against any act of racial discrimination.

37. The Political Constitution of Nicaragua unequivocally determines the existence of indigenous peoples, ethnic communities and communities of African descent and thus recognizes that the nation enjoys great ethnic and racial diversity; likewise, it underscores that these groups

have the same rights, obligations, guarantees, freedoms and opportunities that are described in it for all as Nicaraguans.

38. In this connection, in addition to the provisions contained in articles 27 and 89 of the Political Constitution⁸, the Nicaraguan State has established a series of legislative measures for protecting the rights of the ethnic communities and indigenous peoples of the Atlantic Coast and the Pacific, central and northern regions of Nicaragua. They include:

1. General Act on the Environment and Natural Resources

39. When the Political Constitution of Nicaragua was reformed in 1995, the Regional Councils were endowed with the power to veto natural resources concessions granted by the State in the two autonomous regions. Hitherto this has permitted councils to refuse concessions deemed to be abusive of the rights of the indigenous peoples and ethnic communities and guaranteed their right to do so.

40. With the promulgation of the General Act on the Environment and Natural Resources (Act No. 217)⁹, the purpose of which is to establish the rules governing the conservation and preservation of the environment and natural resources, the State of Nicaragua has the obligation to lend its support to the indigenous peoples and communities of the autonomous regions of the Atlantic and the central and Pacific regions of Nicaragua for the preservation of the environment and sustainable use of natural resources. Any rational exploitation of the natural resources in the two Caribbean autonomous regions must be approved by the area's appropriate regional councils.

41. Act No. 217 establishes the system of permits and environmental impact evaluations to be administered by the Ministry of the Environment and Natural Resources (MARENA), in coordination with the regional council concerned when the works are to be executed in the autonomous regions.

42. The Act also stipulates that MARENA, in coordination with both autonomous regional councils, shall be responsible for determining the norms for the use of renewable and non-renewable natural resources and their monitoring, quality control and appropriate use. The Act further establishes that the preparation and implementation of land-use management plans are the responsibility of the municipal authorities; in the case of the Atlantic Coast autonomous regions, the task shall fall to the autonomous regional councils.

⁸ *Article 27*: "All persons are equal before the law and have an equal right to protection. There shall be no discrimination on grounds of birth, nationality, political views, race, sex, language, religion, opinion, origin or economic or social status."

Article 89: "The communities of the Atlantic Coast region form an indissoluble part of the Nicaraguan people and, as such, enjoy the same rights and have the same obligations."

⁹ Act No. 217 was approved on 27 March 1996 and published in *La Gaceta*, No. 105, of 6 June 1996.

43. All the functions granted by the General Act on the Environment and Natural Resources to the regional councils are fully consistent with the provisions of articles 8 to 23 of the Autonomy Statute, which establish that the autonomous regions must play an effective part in the preparation and implementation of development plans and programmes and in promoting the rational use of natural resources. The autonomous regions are therefore responsible for the administration and preservation of the natural resources of Nicaragua's Atlantic Coast.¹⁰

44. In the RAAS there is a project to build an inter-ocean overland canal. On the basis of this project, a multinational consortium began feasibility studies in 2005 and won from the Nicaraguan State the concession in perpetuity to build port facilities and a railway at Monkey Point to connect Nicaragua's Atlantic and Pacific regions. However, the Monkey Point community, made up of Creoles and members of the Rama indigenous people, who own the communal land that was to be used, opposed the construction and took the matter before the courts, as well as complaining to the regional council. This application was supported by the civil organizations of the entire Caribbean Coast, and the regional council did not approve the concession. The Nicaraguan State and Government were told that the communities would have to be informed and consulted on any feasibility study or initiative concerned with the canal and that they would first of all have to be given title to their communal land; failure to do so would constitute a violation of the Autonomy Statute and the General Law on the Environment and Natural Resources (Act No. 217).

45. This power of veto has also been used in support of some projects. For instance, when in 2005 it was decided to install an optical fibre relay station on the Caribbean coast to facilitate and reduce the cost of telecommunications and Internet access throughout the country, approval was sought from the two regional councils. To that end, the Ministry of the Environment and Natural Resources carried out two feasibility studies; the regional councils examined and analysed the project and found that it did not affect the communities' rights. They gave it their approval and the station was installed. The regional councils are currently receiving income for this concession.

2. Act for the Promotion and Integral Development of Youth

46. The purpose of Act No. 392 (Act for the Promotion and Integral Development of Youth)¹¹ is to promote the participation and human development of young men and women and guarantee the exercise of their political, economic, social and cultural rights. It also generates improved opportunities of comprehensive training by providing educational facilities. This Act establishes rights to bilingual and intercultural education for young people from the ethnic communities in the Atlantic Coast autonomous regions in both their mother tongue and Spanish, in accordance with their habits, values and customs without any discrimination.

¹⁰ Centre for Legal Assistance to Indigenous Peoples (CALPI). Diagnóstico de la legislación nacional sobre los pueblos indígenas de Nicaragua (Diagnosis of domestic legislation relating to the indigenous peoples of Nicaragua), p. 24.

¹¹ Act No. 392 was approved on 9 May 2001 and published in *La Gaceta*, No. 126, of 4 July 2001.

47. For this training process under Act No. 392, organizational areas for young people were set up on the Caribbean Coast and served as key actors in consultations on this Act in 2001, thus ensuring that the interests of young coastal inhabitants were clearly reflected in the Act. Similarly, and in coordination with the Secretariat for Youth in the Office of the President of the Republic, the views of young coastal inhabitants were incorporated into the Plan of Action for National Youth Policy, which, in turn, promotes the indigenous culture of indigenous peoples and communities and those of African descent.

48. The proposals incorporated into the Plan of Action for National Youth Policy were the following:¹²

(a) To establish regional delegations of the Secretariat for Youth in both regional capitals (Bilwi and Bluefields) on Nicaragua's Caribbean Coast.

(b) To support initiatives by young coastal inhabitants to generate income on the basis of promotion of their cultures and the tourism opportunities offered by the region.

(c) To involve young people in efforts to guarantee the incorporation of the Regional Autonomous Education System (SEAR)¹³ into the Regulations pertaining to the General Education Act.

(d) To include young people from both autonomous regions in the Executive Board of the National Commission for Youth.

(e) To contribute to the revival and promotion of young coastal dwellers' artistic talents through the holding of fairs and cultural events, through programmes in support of local craftsmen and women.

49. Regarding the proposals for the Plan of Action for National Youth Policy, the most significant achievements for coastal youth organizations have been:¹⁴

(a) The establishment of the regional delegations of the Secretariat for Youth with their respective technical teams in the cities of Bluefields and Bilwi, comprising young coastal inhabitants selected by the Autonomous Region Youth Councils.

(b) The preparation by Youth Setting New Horizons (JENH-CEDEHCA), in coordination with the University of the Autonomous Regions of the Caribbean Coast of Nicaragua (URACAAN), of the title in the General Education Act relating to the Regional Autonomous Education System (SEAR).

¹² UNDP. *Informe de Desarrollo Humano 2005: Las Regiones Autónomas de la Costa Caribe ¿Nicaragua asume su diversidad?*, (Human Development Report 2005: The Caribbean Coast Autonomous Regions. Is Nicaragua assuming its diversity?), p. 142.

¹³ SEAR was approved in December 2004 by both autonomous regional councils and by the deputies of the Education Commission of the National Assembly.

¹⁴ UNDP, op. cit. (footnote 12 above), p. 143.

3. Citizen Participation Act (Act No. 475)

50. Act No. 475 (Citizen Participation Act)¹⁵ complements the legal framework of the regional autonomy process. In this connection, we consider it important to make mention of some provisions:

51. Article 19 of the Citizen Participation Act establishes the following:

“For the purposes and effects of this Act, the right of citizens to submit proposals for decisions and ordinances to the Atlantic Coast regional councils is hereby established and recognized.”

52. The only persons who have the right to submit proposals for decisions and ordinances are the indigenous peoples and ethnic communities of the Atlantic Coast, and they have rights in all matters relating to the interests and needs of their peoples and communities, so long as their political rights have not been suspended, this in conformity with article 47 of the Political Constitution.¹⁶

4. Code of Children and Adolescents

53. The purpose of the Code of Children and Adolescents (Act No. 287)¹⁷ is the full protection that the family, society, the State and private institutions must provide for children and adolescents.

54. Act No. 287 creates the National Council for Comprehensive Care and Protection of Children and Adolescents (CONAPINA); answerable to the Office of the President of the Republic, it serves as a liaison between Government institutions and as coordinator with the other authorities of State and civil society organizations working with children and adolescents.

55. The Code of Children and Adolescents of the Republic of Nicaragua refers in its articles 8 and 9 to the rights of adolescents and children belonging to the indigenous and ethnic communities of the autonomous regions of the Atlantic Coast of Nicaragua and established that the State shall guarantee the rights to their own cultural, educational and religious life and to their language, promoting the key principle of the best interests of children and adolescents. This is an important distinction, because in processes of adoption, for instance, consideration

¹⁵ Act No. 475 was approved on 22 October 2003 and was published in *La Gaceta*, No. 241, of 19 December 2003.

¹⁶ *Constitution, art. 47*: Citizens are all Nicaraguans who have reached the age of 16 years. Only citizens enjoy the political rights enshrined in the Constitution and the laws, with no restrictions other than those established by reason of age.

Citizens' rights are suspended by the imposition of corporeal penalties or specific accessory penalties, and by an executory civil interdiction sentence.

¹⁷ Act No. 287 was approved on 24 March 1998 and published in *La Gaceta*, No. 95, of 27 May 1998.

must be given to the fact that children offered for adoption should preferably remain with persons of the same culture. In cases in which adolescents are sent to a place of rehabilitation, consideration must be given to their culture, religion and language or to their remaining in their own geographical area.

56. In the international sphere, Nicaragua has approved the main international instruments for the protection of the human rights of children and adolescents without any discrimination:

(a) Convention on the Rights of the Child and its optional protocols on the involvement of children in armed conflict and on the sale of children, child prostitution, and child pornography;

(b) The Hague Convention on the Civil Aspects of International Child Abduction;

(c) The Inter-American Convention on International Restitution of Minors;

(d) ILO Convention No. 182 on the prohibition and immediate action for the elimination of the worst forms of child labour, 1999.

(e) Protocols to prevent suppress and punish trafficking in persons, especially women and children, complementing the United Nations Convention on Transnational Organized Crime.

57. In 2005 the Centre for Human Rights and Rights of Citizens and Autonomous Groups (CEDEHCA), a non-governmental organization, implemented in 2005 the following projects for eradicating racial discrimination against children in the Atlantic Coast region of Nicaragua:

(a) Participation and involvement of children and adolescents in the defence of their rights;

(b) Promotion of the principle of non-discrimination against children and adolescents from a multi-ethnic and intercultural perspective (Save the Children).

5. The Municipalities Act and amendments thereto¹⁸

58. The Municipalities Act and amendments thereto (Acts Nos. 40 and 261), establish in articles 67 to 69 that:

“The Municipalities shall recognize the existence of the indigenous communities located on their territories, whether constituted de jure or de facto. They shall also respect their formal and traditional authorities. Traditional authorities in indigenous communities are those that are ruled by tradition and custom, such as the Councils of Elders, Reform Councils, Mayors (*Alcaldes de Vara*) or others whose election or appointment is not provided for in official regulations.”

59. In this way the Municipalities Act recognizes the traditional authorities of the indigenous communities, classifying them as either de jure or de facto, but according them the same

¹⁸ Published in *La Gaceta*, No. 162, of 26 August 1997.

treatment, and creates a genuine option for elections of authorities, since they are governed by the traditions and customs of the communities themselves.

60. The representativeness of the traditional leaders of ethnic and indigenous communities does not depend on the formalities established in written law but on the elections or appointments carried out by consensus within a single community, in accordance with their historic customs and traditions, which is in itself a constitutional right of the communities and their members and the exercise of which has been increasing through its implementation with the constitutional backing of the Act on Municipalities.

61. The election of community leaders as members of the Executive Board, Council of Elders, trustees, communal judges, or any other type of traditional leader among the indigenous communities of Nicaragua is not subject to any written, enacted or codified law, but rather to their own customary law derived from the traditional habits and customs recognized in article 180 of the Constitution, which establishes the following:

“The communities of the Atlantic Coast have the right to live and develop under the forms of social organization, in keeping with their historic and cultural traditions.

“The State guarantees these communities the enjoyment of their natural resources, effective exercise of their own forms of communal property and the free election of their authorities and deputies.

“It likewise guarantees the preservation of their cultures, languages, religions and customs.”

62. The adult members of the indigenous communities of the Atlantic Coast of Nicaragua thus constitute themselves into an assembly and, by consensus, appoint or remove their communal authorities, who, for the most part, are not elected for fixed terms, but for indefinite periods, depending on the community's circumstances and needs. Generally speaking, the communities do not keep records; rather, the mutual commitment of the person elected and of the electors constitutes the validity and security of the election made and solid respect for it.

6. Creation of the Presidential Secretariat for Atlantic Coast Affairs

63. Under Act No. 290 (Act on Organization, Competence and Procedures of the Executive Branch) of June 1998, the Office of the President of the Republic of Nicaragua is empowered to create by decree the secretariat responsible for establishing coordination relationship among the autonomous regional councils of the Atlantic Coast and the various ministries of State. On this legal basis, in July 2004 the President of the Republic created, by executive decrees (Nos. 76-2004, 108-2004 and 69-2005), the Presidential Secretariat for Atlantic Coast Affairs (SEPCA).¹⁹

64. The main purpose of SEPCA has been to organize the Government's activities for strengthening regional institutions and promoting development in the autonomous regions and indigenous communities of the Atlantic Coast, coordinating the mechanisms of communication

¹⁹ Information provided by the Presidential Secretariat for Atlantic Coast Affairs.

between the President of the Republic and the governments of the autonomous regions and liaising between the Office of the President and the other State authorities on matters relating to the autonomous regions of the Atlantic Coast.

65. In addition, one of SEPCA's priorities is to coordinate the activities of the institutions of the Executive branch involved in the process of property organization and demarcation of indigenous land, all of which takes place under the provisions of Act No. 445²⁰ (Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio and Maíz Rivers).

66. SEPCA has been supporting the process for the implementation of Act No. 445 and has established the various technical teams, guaranteeing the legal-technical inputs needed for the various activities concerned with planning, methodological development, implementation and monitoring of the process for the demarcation and titling of the land of Nicaragua's indigenous communities.

67. When the Government of National Reconciliation and Unity assumed the presidency on 10 January 2007, SEPCA became the Atlantic Coast Council²¹, with the following main functions:

(a) To promote and organize communication and integration among the Government, the regional authorities and the indigenous community leaders of the Caribbean Coast of Nicaragua and their various social sectors;

(b) To formulate conceptual frameworks and ensure coherent functioning of the activities of the various bodies of Government regarding the autonomous regions of the Caribbean Coast of Nicaragua.

(c) To organize Government activities for strengthening regional institutions and promoting development in the autonomous regions and indigenous communities of the Caribbean Coast.

(d) To coordinate the mechanisms for communication between the President of the Republic and the governments of the autonomous regions, in accordance with articles 6 and 11 of Act No. 290.²²

²⁰ Act No. 445 was approved on 13 December 2002 and published by the Government of Nicaragua on 23 January 2003.

²¹ Published in *La Gaceta*, No. 7, of 10 February 2007.

²² *Art. 6.* "The Executive branch, as an integral part of the State, shall act in harmonious coordination with the other branches of State, with the regional governments of the autonomous regions and the municipal governments, in accordance with the Political Constitution and the laws."

Art. 11. "One of the Presidential Secretariats shall be the body responsible for establishing coordination among the autonomous regional councils of the Atlantic Coast and the various State

(e) To serve as liaison between the Office of the President of the Republic and the other branches on matters relating to the autonomous regions of the Caribbean Coast.

(f) To coordinate the activities of the institutions of the Executive branch involved in the process of organization of property and demarcation of indigenous land, under Act No. 445 (Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio and Maíz Rivers).

(g) To establish the organizational structure needed to discharge its functions, especially the establishment of subsidiary offices in Bilwi and Bluefields.

7. Indigenous peoples of the Pacific, central and northern regions of Nicaragua

68. The indigenous peoples prepared an initiative for the Act on Indigenous Peoples of the Pacific, Central and Northern Regions of Nicaragua, which was presented in 2006 to the Commission on Ethnic Affairs and Indigenous Communities of the National Assembly. This Commission conducted a consultation in which the country's indigenous peoples participated; through meetings, seminars and consultation workshops, they were able to express their views and concerns, all of which were considered by the members of the Commission when they came to frame an advisory opinion favouring those communities.

69. A very important element that was added to this advisory opinion was the creation of an institution to cater for the indigenous peoples. Its functions will include strengthening indigenous unity and promoting the economic and cultural progress of the indigenous communities. Under this law the State will make a budgetary allocation in accordance with article 5, paragraph 3, of the Political Constitution, which determines that:

“The State recognizes the existence of the indigenous peoples, who have rights, duties and guarantees enshrined in the Constitution, especially those relating to the preservation and development of their identity and culture, maintenance of their own forms of social organization and administration of their local affairs, as well as maintenance of the communal forms of land ownership and enjoyment, use and benefit of them, all in accordance with the law [...]”.

70. If the Act on Indigenous Peoples of the Pacific, Central and Northern Regions of Nicaragua is approved this year, it would give rise to the repeal of a series of obsolete laws and decrees on rights of indigenous peoples which are not consistent with the actual situation of those peoples. The laws and decrees which would be repealed include the following:²³

(a) Legislative Decree of 27 December 1902, published in the *La Gaceta*, Official Records, No. 1856, of 22 January 1903;

ministries mandated in article 8, paragraph 2, of Act No. 28, “Autonomy Statute of the Regions of the Nicaraguan Atlantic Coast.”

²³ Draft Act on Indigenous Peoples of the Pacific, Central and Northern Regions of Nicaragua.

(b) Act of 16 February 1906, published in the *La Gaceta*, Official Record, No. 2745, of 21 February 1906;

(c) Executive Decree of 20 February 1908, published in *La Gaceta*, Official Record, No. 25, of 27 February 1908;

(d) Act of 3 June 1914, published in *La Gaceta*, Official Record, No. 128, of 6 June 1914;

(e) Executive Decree of 6 August 1918, published in *La Gaceta*, Official Record, No. 182, of 14 August 1918;

(f) Executive Decree of 26 November 1943, published in *La Gaceta*, Official Record, No. 258, of 1 December 1943;

(g) Executive Decree No. 491 of 10 March 1952, published in *La Gaceta*, Official Record, No. 57, of 11 March 1952;

(h) Presidential Decisions No. 902 of 29 March 1968 and No. 167 of 10 April 1970, published in *La Gaceta*, Official Record, No. 81, of 15 April 1970 and any other law or administrative regulation to the contrary thereof.

8. Categorization of the offence of discrimination

71. In order to fight racism and discrimination and promote respect and the effective exercise of the rights of indigenous peoples, those of African descent and ethnic communities of the autonomous regions of the Caribbean Coast of Nicaragua, the Centre for Human Rights and Rights of Citizens and Autonomous Groups (CEDEHCA) and the Committee for Solidarity with Peoples (CISP) prepared a proposal for the characterization of the offence of racial discrimination, which was submitted to the National Assembly on 21 March 2007.

72. The motion for the characterization of the offence of discrimination was based on the international covenants, treaties and agreements to which Nicaragua is signatory, including the Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban (South Africa) in August and September 2001, as well as the Political Constitution of the Republic and the Legal Framework on Autonomy that comprises the Autonomy Statute and its regulations, the Act on Demarcation and Titling of Communal Property (Act No. 445), the General Education Act of Nicaragua and the Language Act, among others.

73. The draft Criminal Code is currently under discussion in the National Assembly, and so far there has been agreement on 591 articles of the new Code; they include the characterization of the offence of discrimination in various articles, one example being article 36, which establishes that discrimination exists:

“When an offence is based on racial grounds or any type of discrimination connected with the victims’ ideology or political views, religion or beliefs, their ethnic origin, race or the nation to which they belong, their sex or sexual orientation, or disease or disability.”

74. Article 316 defines discrimination, servitude and exploitation in the following terms:

“Any person who discriminates in employment on grounds of birth, nationality, political affiliation, race, ethnic origin, sex, religion, opinion, economic condition or social status shall be sentenced to imprisonment for a term of six months to one year and a fine equivalent to 90 to 150 days.

The same penalty shall be imposed on anyone who, through deception or abuse of a situation of need, imposes on workers labour or social security terms and conditions that jeopardize, suppress or restrict the rights recognized by law or contract.

Any person who submits, reduces or keeps another person in slavery, servitude or any other situation that runs counter to human dignity at work shall be sentenced to a prison term of three to six years.

A term of imprisonment of one to four years and a fine of 150 to 300 days shall be imposed on persons illegally trafficking in labour.

The penalty for the offences set forth in the preceding paragraphs shall be increased by up to one half of the maximum sentence for the offence in question, when perpetrated:

- a) Against children, or
- b) Through the use of violence or intimidation.

Should both the above circumstances be present, the penalty shall be increased by up to three quarters of the maximum sentence for the offence in question.”

75. Similarly, article 404 refers to discrimination as follows:

“Any person who hinders or obstructs another in the exercise of a right or an option provided for in the Constitution, the laws or the regulations on the grounds of birth, nationality, political views, race, sex, language, opinion, origin or economic or social status shall be punished by a term of imprisonment ranging from six months to one year or a fine of 300 to 600 days.”

76. Article 405 also defines promotion of discrimination:

“Any person who publicly promotes the commission of the acts of discrimination referred to in the foregoing article shall be punished by a fine of 100 to 500 days.”

B. Article 4

77. The Nicaraguan State, through its laws and Constitution, prohibits any attempt to perform actions or practices designed to encourage any type of act of racial discrimination.

78. The Political Constitution of Nicaragua stipulates in article 3 that:

“The struggle for peace and for the establishment of a just international order are inalienable commitments of the Nicaraguan nation. Hence we oppose all forms of

colonialist and imperialist domination and exploitation and stand in solidarity with all peoples who fight against oppression and discrimination.”

79. The Criminal Code of the Republic of Nicaragua²⁴ punishes any violation of human rights or incitement thereto and the commission of any act of physical violence against persons.

80. It should be stated that, on the basis of articles 549²⁵ and 550²⁶ of the Criminal Code, any norm that undermines peace or any violations of the human rights of a particular group has no legal validity.

81. During the period covered by this report there were no complaints in the courts of justice of any act that undermined peace and human security in accordance with the articles cited.

1. Act on Amendments and Additions to the Criminal Code

82. Act No. 230 (Act on Amendments and Additions to the Criminal Code)²⁷ in its article 2, paragraph 10, establishes that:

“In the case of the communities of the Atlantic Coast security measures shall be applied by the Communal Court in accordance with the traditional procedures of the laws in force.”

83. This article appears to be contradictory in that traditional communal procedure is one thing and the laws in force are another. This does not necessarily mean that the two are incompatible, but neither are they one and the same, as a first glance at the article may suggest; in practice what the Communal Court does is to apply the customary laws of the indigenous peoples and not the national laws.

84. It is interesting that the national legal system takes interest in the customary law of the indigenous peoples, but this must be done with respect for the fundamental principles of customary law and for the fact that the right to their customs and traditions in this matter is a constitutional right of the indigenous peoples under the same national constitutional regime and in accordance with existing laws in force.

²⁴ The Criminal Code was approved by Decree No. 297 of 1 April 1974 and published in *La Gaceta*, No. 96, of 3 May of that year.

²⁵ *Article 549*: “Any person who commits acts or prescribes measures intended to destroy an ethnic or religious group wholly or partially, such as physical attacks on its members, mass deportations, forced removal of children or adults to other groups, imposition of conditions that make it difficult for them to survive, or operations or practices aimed at preventing them from reproducing, shall be guilty of the crime of genocide and shall be punished by imprisonment for 15 to 20 years.”

²⁶ *Article 550*: “The organization of groups which have as their object the commission of the crime of genocide and public incitement thereto shall be punishable by imprisonment for five to eight years.”

²⁷ Act No. 230 was approved on 13 August 1996 and published in *La Gaceta*, No. 191, of 9 December 1996.

C. Article 5

1. Case of the Yapti Tasba Masraka Nanih Alatakanka (YATAMA) Indigenous Party

85. The YATAMA Regional Party was excluded from participation in the 2001 municipal elections as a result of the amendment to the 1999 Electoral Act.

86. In this connection, on 16 June 2003, the Inter-American Commission on Human Rights filed a petition with the Inter-American Court of Human Rights for alleged violation of the political rights, judicial guarantees, judicial protection and the obligation to respect the rights set forth in the American Convention on Human Rights against candidates for the post of mayor, deputy mayors and councillors presented by the YATAMA party at the municipal elections of 5 November 2000 in the RAAN and RAAS.

87. The petition was based on the ground that the State did not provide a remedy that permitted safeguard their right to participate and be elected and that, at the same time, it erred by not adopting legislative or other measures required to give effect to the rights enshrined in the American Convention, especially the failure to provide rules in the Electoral Act to facilitate the political participation of the indigenous organizations in electoral processes in the autonomous regions in accordance with the customary law, values, habits and customs of the indigenous peoples.

88. On 23 July 2005 the Court ruled against the State of Nicaragua, declaring it to have violated the rights to judicial guarantees, judicial protection, political rights and equality before the law.

Compliance and current status

89. The State of Nicaragua is in the process of enforcing the judgement, for which purpose it has created a Special Commission comprising representatives of the Office of the Chancellor, YATAMA and the Nicaraguan Centre for Human Rights (CENIDH); the judgement handed down by the Court is being implemented. However, still pending are:

(a) Broadcast of the judgement on the radio in the Rama language. It should be pointed out that this public announcement has not been possible owing to the small number of persons speaking this language.

(b) Payment of 95,000 dollars for damages and legal costs, plus the interest due for failure to comply within the stipulated one-year period.

(c) Lastly, the amendment of the Electoral Act for the establishment of a simple, swift and effective judicial remedy which permits monitoring of the decisions of the Supreme Electoral Council (CSE) that affect human rights; and consideration of the measures necessary to enable the members of the indigenous and ethnic communities to participate effectively in the electoral processes, and which take their traditions, habits and customs into account.

90. This requirement of the Court is of great significance in the current national situation, since many sectors are calling for reform of the Electoral Act. It also constitutes an important legal precedent for indigenous organizations in Latin America that are endeavouring to open

up areas of participation in national contexts in which representation is controlled by a handful of parties to the exclusion of the indigenous peoples.

2. Administration of justice

91. The administration of justice in the Atlantic autonomous regions is governed by special regulations that reflect the autonomous characteristics of the indigenous peoples and ethnic communities of the Caribbean Coast

92. Article 40 of the Regulations pertaining to the Autonomy Statute establishes that:

“The special regulations relating to the administration of justice, which reflect the special characteristics of the communities of the Atlantic Coast of Nicaragua, shall be established on the basis of coordination of the judiciary with the autonomous regional councils and other competent authorities. Likewise, the necessary coordination shall be established with the representatives of the branches of State with a view to harmonizing enforcement of the national laws and the Autonomy Statute on the Atlantic Coast.”

Rural judicial facilitators

93. In 2000 the main characteristics of the country’s rural areas, mainly those in the central, northern and Atlantic Coast regions, reflected a high degree of isolation, insecurity, shortage of State institutions, high levels of violence, impunity and the constant threat of social and political instability caused largely by poverty. For this reason a work agenda was established with specific priorities, including the need to continue working on consolidation of a justice system founded on democracy.

94. This gave rise to the emergence of the Programme of Access to the Administration of Justice in Rural Areas, known as the Programme of Rural Judicial Facilitators, with the signing of the cooperation agreement between OAS and the Supreme Court of Justice in March 2003, with the support of the Swedish International Development Cooperation Agency (SIDA).

95. The rural judicial facilitators have their legal basis in the Code of Criminal Procedure, which, in its article 200 *bis*, establishes that:

“The rural judicial facilitators constitute a body in the service of the Administration of Justice. The Supreme Court of Justice, by decision, shall regulate their organization, functions, attributes, requirements and the system of entry, training and development.”

96. The rural judicial facilitators are recognized leaders who, on the proposal of the people, are elected to community assemblies in the presence of the local judge of the municipality. The exercise of traditions, habits and customs of the indigenous communities form part of the application of justice. Their work is voluntary.²⁸

²⁸ Jambrina Rodríguez, Fernando. *Hacia un Modelo Pluralista de Administración de Justicia en las Regiones Autónomas de la Costa Caribe de Nicaragua*. (Towards a pluralist model of administration of justice in the autonomous regions of the Caribbean Coast of Nicaragua). EU-CISP-URACCAN-CEDEHCA. B7-701-2002-0172, pp. 53-54.

97. The functions of the rural judicial facilitators are to:

- (a) Advise the inhabitants of their community or municipality on matters relating to the environment, domestic violence, property problems, children and adolescents, and human rights in general;
- (b) Conduct and monitor extrajudicial mediation (in cases so permitted by the law);
- (c) Multiply the legal knowledge acquired in the community or municipality;
- (d) Support the measures taken for the administration of justice;
- (e) Engage in prior mediation.

98. There are currently 54 rural judicial facilitators in all in the Atlántico Sur Autonomous Region, not counting those of the municipalities of Nueva Guinea, Muelle de los Bueyes, El Rama and El Ayote. In the RAAN the number has passed the hundred mark²⁹.

99. The rural judicial facilitators have been administrators of justice in the less accessible villages where the judicial authorities, non-governmental organizations, mayors' offices and the population at large have been directly involved in facilitating coordination of work functions; as the various mayors' offices have assumed the role of funding the facilitators by providing them with a subsistence allowance or assistance to enable them to travel around in order to settle problems that arise in the indigenous and ethnic communities. This has resulted in progress in all the country's constituencies, and the judicial facilitator has become a necessary figure who has brought justice to the most remote communities.

100. A legally recognized tool has been created as part of the justice administration system in the person of the rural judicial facilitator, who has capacity to provide legal advice and to assist in some proceedings and possesses knowledge of the State's system of political and administrative organization.

101. All the country's indigenous communities now possess an alternative method of settling disputes which obviates the need for the population to seek access to the tribunals or courts. In this way, the indigenous peoples and ethnic communities can economize on resources in most of the cases when they cannot bear the high costs of litigation; it also gives them swifter and more effective access to justice.

Assistance, mediation, information and guidance centres (CAMINOS)³⁰

102. The Supreme Court of Justice, with assistance from the Inter-American Development Bank (IDB), is implementing the CAMINOS programme to align and harmonize the indigenous system of administration of justice with the Western system. The former rests on a

²⁹ Idem

³⁰ Mairena Ruiz, Rigoberto, Inter-American Human Rights Institute. Consultoria: Acceso a la Justicia de las Personas y los Pueblos Indígenas y Procuradería para la Defensa de los Derechos Humanos. (Consultation. Access to Justice for Indigenous Persons and Peoples and the Office of the Human Rights Ombudsman). Managua. May 2002, p. 66.

fundamental principle of indigenous ancestral justice, such as conciliation for establishing peace and harmony, as well as the ultimate aim of administering justice. These principles have already been incorporated by Nicaraguan legislation into the Code on Children and Adolescents, the Act on Urban and Agrarian Property Reform (No. 278), the Organic Act on the Judiciary (Act No. 260)³¹ and the Code of Criminal Procedure (CPP).

103. At the beginning of December 2005 the first attention, mediation, information and guidance centres were inaugurated in the Miskito community of Aúlla Pihni in Bilwi and in the Kururia community in Waspam.

The creation of district criminal and civil courts (Administrative Decision No. 134)³²

104. The Supreme Court of Justice, exercising the powers conferred on it by the Political Constitution and the Organic Act on the Judiciary, decided to create the following courts in order to enable the indigenous peoples and citizens in general to lodge complaints in the event of violations of their rights:

(a) The higher-ranking court is the district criminal court for Bilwi, Puerto Cabezas and the Atlántico Norte Autonomous Region. It will have jurisdiction over the local courts at Waspam and in the municipality of Bilwi;

(b) The district criminal court in Siuna (Atlántico Norte Autonomous Region), based in Siuna, will be the higher-ranking court, with jurisdiction in criminal matters over the courts in Rosita, Bonanza, Prinzapolka and in the municipality of Siuna;

(c) The district criminal court in Rama and Zelaya Central (Atlántico Norte Autonomous Region), based in Rama City, shall be the higher-ranking court with jurisdiction in criminal matters in the municipalities of Muelle de los Bueyes and Rama. Its hierarchical superior is the Court of Appeal of the Central Judicial District;

(d) The district criminal court in Nueva Guinea (Zelaya Central in the Atlántico Sur Autonomous Region), based in Nueva Guinea, shall be a higher-ranking court with jurisdiction in criminal matters over the local court in Nueva Guinea. Its hierarchical superior is the court of appeal of the central judicial district.

105. The workload of the district courts in the RAAN and RAAS judicial districts is still lighter than that of the country's other judicial districts. This is due to a number of circumstances which hamper the work of the judiciary in these regions – distance of communities, inaccessibility, infrastructural conditions, and deterioration of equipment³³ - but the courts do endeavour, in one way or another, to provide solutions for the population. It is frequently said that the low caseload in these courts is due to the work of the judicial facilitators, who settle many cases at an early

³¹ Act No. 260 was approved on 7 July 1998 and was published in *La Gaceta*, No. 137, of 23 July of that year.

³² Administrative Decision No. 134 was approved on 12 June 2003 and published in *La Gaceta*, No. 146, on 5 August of the same year.

³³ Jambrina Rodriguez, Fernando, *op. cit.* (note 28 above), p. 41.

stage so that they do not need to be brought before the courts. Another positive factor to be borne in mind is that the level of criminality is lower in these zones than in the rest of the country.

Workload of district courts by subject-matter, 2004

Judicial district	New cases	Cases settled	Cumulative results	Total
Criminal				
RAAN	33	7	347	354
RAAS	24	9	59	68
Labour				
RAAN	51	18	54	72
RAAS	40	6	8	14

Source: Department of Judicial Statistics, CSJ.

106. All the members of the ethnic communities and indigenous populations in the Caribbean Coast area of Nicaragua will have the right of access to the courts of their respective regions and to have their cases heard in their mother tongue. They will also have the right to the services of an interpreter or translator free of charge in the event that one or more of the parties does not speak the language used by the courts or tribunals.

107. Article 17 of the Organic Act on the Judiciary reads as follows:

“Legal proceedings shall be conducted in the Spanish language and in that of the autonomous regions when they take place within the scope of their territorial competence and when any party concerned so requests.

If the language or idiom of the party is other than that in which the case files are prepared, the proceedings must without exception be conducted with an interpreter or translator present. The parties may not for any reason be prevented from using their own language or idiom. The services of the interpreter or translator shall be provided free of charge and shall be guaranteed by the State in accordance with the law.”

108. Act No. 346³⁴ established the Public Prosecutor’s Office as an independent body with organizational autonomy. It is responsible in criminal proceedings for bringing charges and representing the interests of society and of the victims of crimes through the agency of the Prosecutor-General of the Republic. It will be subordinated only to the Political Constitution of the Republic and the laws.

109. There is a branch of the Public Prosecutor’s Office in the town of Bluefields in the Atlántico Sur Autonomous Region, staffed as follows:

- (a) A regional prosecutor;

³⁴ Act No. 346 was adopted on 2 May 2000 and published in *La Gaceta*, No. 196, of 17 October 2000.

- (b) Three associate prosecutors, two of them handling cases in the district criminal court and one in the local criminal court;
- (c) An itinerant prosecutor, who also assists with cases in the local criminal court;
- (d) A records officer responsible for keeping records of offences;
- (e) Two assistants responsible for reception and drafting and support to the associate prosecutors;
- (f) A female administrative officer;
- (g) Two trainees (law students from BICU University).

110. These persons provide coverage for the entire Atlántico Sur Autonomous Region (11 municipalities); there is also a prosecutor, together with an assistant, handling cases in the municipality of Corn Island.

111. There is no itinerant prosecutor in the RAAN; instead there are six prosecutors in the principal towns of certain municipalities (three in Siuna, since there is a district court there, one in Waspam for the Coco river area and one in Rosita. A proposal is in course of preparation for the establishment of two additional posts, one in Alamikamba for the Prinzapolka river area and one in Bonanza for the entire indigenous zone in the Bosawas reserve. Prosecutions in Mulukulu are handled from the Matagalpa district. Thus there are 11 prosecutors in all in the Norte Autonomous Region.

112. The following table shows the numbers of prosecutors in the departments and municipalities with indigenous populations and ethnic communities; in one way or another they are providing responses to the problems of human rights. The table also shows the areas covered by the prosecutors.

Judicial region	Department	Municipalities	Prosecutors	Coverage
Atlántico Norte	RAAN	Puerto Cabezas, Prinzapolka, Rosita, Siuna, Bonanzas, Waspam, Cabo Gracias a Dios.	8	4 offices: 1) Puerto Cabezas; 2) Siuna; 3) Rosita; 4) Waspam
Atlántico Sur	RAAS	Bluefields, Corn Island, La Cruz de Río Grande, Kubra Hill, Laguna de Perlas, El Tortuguero, Karawala.	10	4 offices: 1) Bluefields; 2) Corn Island; 3) El Rama and Muelle de los Bueyes; 4) Nueva Guinea and El Almendro.
Norte	Matagalpa	Matagalpa, Sébaco, San Isidro, Ciudad Darío, Terranova, San Dionisio, Esquipulas, Muy Muy, San Ramón, Maniguas, Río Blanco, Rancho Grande, Tuma-La Dalia, Waslala, Bocana de Paiwas.	17	6 offices: 1) Matagalpa, San Ramón, San Dionisio y Esquipulas; 2) Waslala; 3) La Dalia and Rancho Grande; 4) Río Blanco y Paiwas; 5) Maniguas and Muy Muy; 6) Ciudad Darío, Terragona, San Isidro and Sébaco.
Norte	Jinotega	Jinotega, San Rafael de Norte, San Sebastián de Yalí, La Concordia, Santa María de Pantasma, Wiwili, El Cuá Bocay, San José de Bocay.	8	3 offices: 1) Jinotega y Santa María de Fantasma; 2) Wiwili; 3) El Cuá Bocay and San José de Bocay.

Judicial region	Department	Municipalities	Prosecutors	Coverage
Las Segovias	Madriz	Somoto, Las Sabanas, San Lucas, Yalaguina, Totogalpa, San José de Cusmapa, Palacaguina, Telpaneca and San José de Río Coco.	8	2 offices: 1) Somoto, Totogalpa, Las Sabanas, San Lucas, Yalaguina, San José de Cusmapa and Palacaguina; 2) San Juan del Río Coco.
Las Segovias	Nueva Segovia	Ocotal, Santa María, Macuelizo, Dipilto, Mozonte, Ciudad Antigua, San Fernanda, Jalapa, El Jicaró, Quitali, Wiwili and Murra.	7	3 offices: 1) Ocotal, Santa María, Macuelizo, Dipilto and Mozonte; 2) Ciudad Antigua, San Fernanda and Jalapa; 3) El Jicaró, Quitali, Wiwili and Murra.
South	Rivas	Rivas, San Jorge, Buenos Aires, Tola, Altagracia, Moyogalpa, Cárdenas, Potosí, San Juan del Sur and Belén	9	3 offices: Rivas, San Jorge, Buenos Aires, Tola, Potosí and Belén; 2) Altagracia and Moyogalpa; 3) San Juan del Sur and Cárdenas.
South	Masaya	Masaya, Masatepe, Nindirí, Catarina, San Juan de Oriente, Niquinomo, Nandasmó, La Concepción and Tisma	11	4 offices: 1) Masaya, Catarina and San Juan de Oriente; 2) Nindirí and Tisma; 3) Masatepe, Niquinomo and Nandasmó; 4) La Concepción.

3. Political rights

113. As mentioned earlier, the Political Constitution of the Republic of Nicaragua guarantees the enjoyment of political, social, cultural and economic rights to all Nicaraguan citizens.

114. In that context Nicaragua is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.³⁵

115. The Constitution provides that political power shall be exercised by the people through their elected representatives. It also recognizes the right of the indigenous peoples to have their own forms of social organization and to administer their local affairs in accordance with their historic and cultural traditions.

116. Six regional political organizations in all have participated in regional elections since 1990. This indicates that the populations of the autonomous regions have had organizations of their own in the political sphere.

117. The Yapti Tasba Masraka Nanih Aslatanka indigenous party (YATAMA) was the first of the regional political organizations to be established as such. It took part in the 1990, 1994, 1998, 2004 and 2006 elections. YATAMA is in a dominant and leadership position and has a social basis in the Miskito indigenous communities. Its political platform has been focusing on the strengthening of an ethnic autonomy favouring the indigenous peoples and ethnic communities of the Caribbean Coast of Nicaragua.

³⁵ Both covenants were ratified on 12 March 1980 by Decree No. 255 dated 8 January 1980 and were published in the Official Journal *La Gaceta*, No. 25, dated 30 January 1980.

118. For the November 2004 municipal elections the YATAMA regional party endeavoured to increase its provision of candidates for other ethnic groups.

119. Regional autonomy has steadily evolved since its establishment, principally in the area of political decentralization. This has been particularly apparent in the regional elections for the authorities of the autonomous regional councils, in which not only the national political parties such as the Sandinista National Liberation Front (FLSN) and the Liberal Constitutionalist Party (PLC), but also the regional political parties such as YATAMA, the Multiethnic Indigenous Party (PIM), the Coastal Alliance (AC) and the Coastal Unity Movement Party (PAMUC), took part.

120. The Autonomy Statute (Act No. 28) states that all ethnic groups have equal rights, regardless of their numbers or level of development.

121. However, there is some difficulty regarding the appropriateness of the representation of the indigenous peoples of African descent and the non-Mestizo ethnic communities in the regional councils. The steady decline in the size of the indigenous peoples and of the population African descent in face of a growing Mestizo majority in both autonomous regions is reflected in a degree of purely formal and symbolic political representation and that is declining in terms of both quantity and quality.

122. In the Atlántico Sur Autonomous Region (RAAS), in which the majority of the municipalities and villages are Mestizo this situation is particularly, even though article 9 of the Autonomy Statute states that the councils concerned must contain representatives of all the ethnic communities in the autonomous region concerned, while article 142 of the Electoral Act states that in constituencies with a majority indigenous population the first candidate must be from the ethnic group concerned. Table 3 shows the ethnic representation in the regional councils, revealing, particularly in the RAAS, that the Mestizos enjoy an absolute majority, while the representation of the other ethnic groups is nominal.³⁶

ETHNIC REPRESENTATION IN THE RAAS REGIONAL COUNCIL

Ethnic group	1998-2002		2002-2006	
	No. of councillors	%	No. of councillors	%
Mestizo	27	57.4	28	59
Creole	7	14.8	9	19.1
Mískito	5	10.6	3	6.4
Garifuna	3	6.4	2	4.3
Sumu-Ulwas	3	6.4	3	6.4
Rama	2	4.3	2	4.3
TOTAL	47	100	47	100

Annual report of the Centre for Human Rights and Rights of Citizens and Autonomous Groups (CEDEHCA), 2004.

³⁶ UNDP, op. cit. (footnote 12 above), p. 226.

123. In the Atlántico Norte Autonomous Region similar problems arise regarding the representation of the Creoles in the municipality of Puerto Cabezas, who have to be elected by Mestizos and Miskitos. A similar problem exists with regard to the Sumo Mayagna in the municipalities of Siuna and Rosita, where an overwhelming majority of the voters are Mestizo, leaving less scope at every election for this ethnic group and other minorities to decide on their representatives and to stand for electoral office, a situation illustrated in the table below.³⁷

ETHNIC REPRESENTATION IN THE RAAN REGIONAL COUNCIL

Ethnic group	1998-2002		2002-2006	
	No. of councillors	%	No. of councillors	%
Mestizo	23	47.93	27	56.26
Creole	2	4.16	1	2.08
Miskito	21	43.75	18	37.50
Sumu-Mayagna	2	4.16	2	4.16
TOTAL	48	100	48	100

Annual report of the Centre for Human Rights and Rights of Citizens and Autonomous Groups (CEDEHCA), 2004.

124. In 2001 the Miskitos, basically represented by YATAMA under the leadership of Brooklyn Rivera, signed an agreement with the then candidate for the office of President of the Republic, Mr. Enrique Bolaños, to introduce a reform of the Electoral Act to ensure priority participation of the local parties in regional elections. In the same agreement a proposal was made for the creation of an Indigenous Development Fund, the incorporation of the former combatants of YATAMA into the armed forces and the police, and promotion of a stronger role for indigenous women.

125. Similarly, the Creoles and Garifunas, through the intermediary of the Nicaraguan Black Association for Autonomy, signed agreements with the then candidate for the office of President of the Republic, Daniel Ortega, in which changes to the Electoral Act were proposed with the aim of establishing a better balance of numbers and representativeness in the Regional Council of all the ethnic groups living in the autonomous regions.

³⁷ Annual report of the Centre for Human Rights and Rights of Citizens and Autonomous Groups CEDEHCA), 2004.

126. The composition, by political party and sex, of the Atlántico Norte and Atlántico Sur Autonomous Regional Council (1994-2006) is as follows.³⁸

Atlántico Norte Autonomous Regional Council (CRAAN)

Party / Period	No. of councillors	Men	Women
1990-1994			
FSLN	22	16	06
UNO	03	03	00
YATAMA	23	21	02
Subtotal	<u>48</u>	<u>40</u>	<u>08</u>
1994-1998			
FSLN	18	14	04
PLC	22	20	02
YATAMA	<u>08</u>	<u>05</u>	<u>03</u>
Subtotal	<u>48</u>	<u>39</u>	<u>09</u>
1998-2002			
FSLN	12	11	01
PLC	26	22	04
YATAMA	09	08	01
Unity Alliance	01	01	00
Subtotal	<u>48</u>	<u>42</u>	<u>06</u>
2002-2006			
FSLN	16	14	02
PLC	20	16	04
YATAMA	11	9	02
PAMUC	01	01	00
Subtotal	<u>48</u>	<u>40</u>	<u>08</u>
Total	192	161	31

³⁸ Género, etnia y partidos políticos en las elecciones regionales de la Costa Caribe. Retos de la Diversidad. (Gender, ethnic origin and political parties in the Caribbean Coast regional elections. Challenges of diversity.) (2006) *Revista del Caribe Nicaragüense*, WANI, No. 25, CIDCA-UCA. Managua, pp. 16 and 17.

Atlántico Sur Autonomous Regional Council (CRAAS)

Party / Period	No. of councillors	Men	Women
1990-1994			
FSLN	19	18	01
UNO	24	20	04
YATAMA	04	04	00
Subtotal	<u>47</u>	<u>42</u>	<u>05</u>
1994-1998			
FSLN	15	14	04
PLC	99	20	02
YATAMA	05	05	03
ADECO	01	01	0
UNO	05	05	00
MAAC	02	11	01
Subtotal	<u>47</u>	<u>41</u>	<u>06</u>
1998-2002			
FSLN	12	10	02
PLC	21	16	05
YATAMA	04	03	01
PIM	08	07	01
Coast Alliance	02	02	00
Subtotal	<u>47</u>	<u>38</u>	<u>09</u>
2002-2006			
FSLN	14	11	03
PLC	31	25	06
YATAMA	02	01	01
Subtotal	<u>47</u>	<u>37</u>	<u>10</u>
Total	188	158	30

127. The figures clearly demonstrate that the participation of women in both autonomous regional councils since 1990 has been low in comparison with the number of men who obtain seats through the different political parties. Since the establishment of the councils the proportion of women among their membership has never exceeded 20 % of the total.³⁹

³⁹ Idem.

128. Nevertheless, during the legislative period 2002-2006 the proportion of women in the Atlántico Sur council increased. On the other hand, the proportion of women in the RAAN council has remained consistently low since 1990.

Women, ethnic origin and political organizations, RAAN (1990-2002)

Ethnic group	Political organization			Total
	FSLN	PLC	YATAMA	
Miskito	02	02	07	11
Mestizo	06	07	00	13
Mayagna	01	00	00	01
Creole	04	01	01	06
Total	13	10	08	31

Source: Revista del Caribe Nicaragüense, WANI, o. 25, CIDCA-UCA. Managua, Nicaragua.

Women, ethnic origin and political organizations, RAAS (1990-2002)

Ethnic group	Political organization					Total
	FSLN	PIM	PLC	UNO	YATAMA	
Miskito	00	00	01	00	02	03
Mestizo	06	01	08	02	00	17
Mayagna	00	00	00	00	00	00
Creole	02	00	05	02	00	09
Rama	01	00	00	00	00	01
Total	09	01	14	04	02	30

Source: Revista del Caribe Nicaragüense, WANI, o. 25, CIDCA-UCA. Managua, Nicaragua.

129. According to the above figures, YATAMA is the political party with the largest number of Miskito women councillors, while Mestizo women have been best incorporated in national parties. The FSLN is the most multi-ethnic party, since it includes Mayagnas, Miskitos, Mestizos and Creoles. However, this cultural and gender diversity is still limited in all the parties, even the FSLN. Creole women have succeeded in securing a relatively high proportion of seats within the FSLN, whereas in the other parties their representation is tiny or non-existent⁴⁰.

130. In the Atlántico Norte council the FSLN has the largest number of women councillors (13). In the Atlántico Sur council the PLC is the party which has brought in the highest number of women councillors (14) during the four legislative periods of the Regional Council.

131. In contrast to the situation in the RAAN, Mestizo and Creole women are best represented in the RAAS Regional Council. The PLC has a majority of women among its councillors; the FSLN is following the same general trend, albeit with a lower proportion of Creole women⁴¹.

⁴⁰ Idem.

⁴¹ Idem.

4. Regulations pertaining to the Autonomy Statute of the Atlantic Coast

132. As a development of the constitutional guarantees, the indigenous peoples and ethnic communities of the Caribbean enjoy an Autonomy Statute for the Atlantic Coast (Act No. 28) and the regulations pertaining thereto.⁴²

133. The Regulations pertaining to Act No. 28 clearly define the regime of autonomy in the following terms (article 3):

“It is a legally, politically, administratively, economically and financially decentralized system or form of government within the unity of the State of Nicaragua; it defines the powers peculiar to the autonomous regions of the Atlantic Coast of Nicaragua and of their administrative organs, and the rights and duties devolving on its inhabitants for the effective exercise of the historic rights of the indigenous peoples and ethnic communities of the Atlantic Coast of Nicaragua, as laid down in the Political Constitution of the Republic of Nicaragua, Act No. 28 and other laws of the Republic.”

134. Article 8 of the Autonomy Statute provides that:

“The autonomous regions established are legal persons in public law which shall act in line with national policies, plans and orientations wherever applicable. Through their administrative organs their general functions are to:

1. Participate effectively in the preparation and implementation of national development plans and programmes in their respective regions with a view to harmonizing these with the interests of the communities of the Atlantic Coast.
2. Administer health, education, cultural, supply, transport, communal services and other programmes in coordination with the relevant Ministries of State.
3. Promote economic, social and cultural projects of their own.
4. Promote the rational use and enjoyment of water, forests, communal lands and the defence of the ecosystem.
5. Promote the study, fostering, development, preservation and dissemination of the traditional cultures of the communities of the Atlantic Coast and their historical, artistic, linguistic and cultural heritage.
6. Promote the national culture in the communities of the Atlantic Coast.
7. Foster traditional interchanges with the nations and peoples of the Caribbean region in accordance with the national laws and procedures applying to that field.
8. Promote the linkages of the regional and interregional market, thus contributing to the consolidation of the national market.

⁴² The Regulations pertaining to the Autonomy Statute were published in the Official Journal *La Gaceta*, No. 186, of 2 October 2003.

9. Establish regional taxes in accordance with the laws governing the subject.”

135. The regional councils are legislative bodies. Each consists of 45 members, together with the two deputies representing the RAAS in the National Assembly and the three representing the RAAN. Their principal function is that of a regional legislature, regulating regional affairs within their fields of competence by means of decisions and ordinances. Their functions, according to article 28 of the Regulations pertaining to the Autonomy Statute, are as follows:

(a) Guiding and monitoring the autonomous regional Government and each of its organs of regional administration;

(b) Preparing and presenting to the National Assembly of the draft Act concerning the regional taxation plan;

(c) Effective participation in the preparation, planning of and monitoring of regional and national policies and programmes of an economic, social and cultural nature which affect or concern the region, with representation on the National Planning Council and the different bodies established to that end in accordance with the provisions of the Political Constitution, the Autonomy Statute and the present regulations;

(d) Settling boundary disputes between the communities of the region following analysis and a decision by the appropriate committee of the autonomous regional council concerned;

(e) Establishing administrative policy and ensuring the proper use of the Special Development and Social Promotion Fund, in accordance with paragraph 6 of article 30 of the Autonomy Statute;

(f) Appointing the regional institutional Atlantic Coast delegates in coordination with the national ministries;

(g) Requesting periodic reports and, where appropriate in particular cases, addressing queries to the delegates of the ministries and other Government bodies and regional officials in accordance with the procedure laid down in the internal rules of the autonomous regional council;

(h) Defining and approving, through the Executive Board and in coordination with the regional coordinator, the organizational structure and executive direction of the regional administration;

(i) Establishing in each autonomous regional council of a body that ensures:

- i) active and systematic participation by regional, municipal and community women's organizations in the policy-setting process and in the preparation, implementation and evaluation of plans and projects being executed in the autonomous regions;
- ii) promotion of equal presence of women at the managerial level in the different bodies of the autonomous regional government and other organs of regional administration;

- iii) promotion of equal presence of women at the managerial level in the different bodies of the Council and the autonomous regional government;
 - iv) the establishment of mechanisms ensuring a system of dissemination, education, supervision and follow-up of the implementation, in the autonomous regions, of the laws adopted at national level to benefit women, young persons, children and the family;
- (j) Preparation and approval of internal rules and amendment thereof through a favourable vote of the majority of the members of the autonomous regional council;
- (k) Approval by the two autonomous regional councils meeting jointly, and by a two-thirds majority in favour, of draft proposals to amend parts of the Autonomy Act as necessary;
- (l) Approval, implementation and supervision of the execution of the annual regional development plan drawn up within the framework of the Strategic Regional Development Plan and of programmes and projects to be implemented in the region;
- (m) Management and financial, technical and material support at the national and international levels for the development of the region's economic and social sectors;
- (n) Other functions laid down in the Autonomy Statute and the Regulations, their own internal rules and other laws of the Republic;
- (o) Administration of the assets of the region.

136. The Regional Government Coordinator is elected from among the 45 members of the regional council. All councillors are elected for four-year terms by popular election, by vote of the inhabitants of the autonomous regions of Nicaragua's Caribbean area. The Regional Coordinator holds the rank of governor of the region. In addition to the functions conferred on him in Act No. 28 the Regional Coordinator is responsible, in accordance with article 30 of the Regulations, for the following:

- (a) Presentation to the regional council of biannual reports on the discharge of his functions every six months;
- (b) Preparation and submission for approval of proposals for the organization and management of the executive machinery of the regional administration to the plenary autonomous regional council through the executive Board;
- (c) Direction of the executive activities of the autonomous region in accordance with the organizational policies approved by the plenary autonomous regional council;
- (d) Handling of matters within his competence vis-à-vis national and international authorities;
- (e) Preparation and submission of the annual operational development plan and the regional budget to the autonomous regional council and its competent committee;

(f) Other matters assigned to him under the Autonomy Statute, the Regulations, the internal rules of the council and other laws of the Republic.

137. The autonomous regional councils have decided to give priority attention to the preparation of strategic regional development plans in application of Act No. 28, and the regulations pertaining thereto with a view to coordinating the impetus of development of the autonomous regions with that of the National Development Plan (PND).

138. This process has been carried out in close coordination with the municipal, sectoral and community authorities and civil society in the Atlantic Coast region. The principal achievement has been that the Regional Strategic Development Plan (PDER) is becoming a dynamic process with linkages to sectoral, municipal and community plans. The main results have been as follows:⁴³

- (a) The secretariats of the regional councils are functioning as administrative public service units in the autonomy context;
- (b) Community authorities have been registered and accredited;
- (c) A regional health model;
- (d) An autonomous regional educational system;
- (e) A regional forest development strategy;
- (f) An environmental monitoring strategy;
- (g) A productive economic development strategy;
- (h) Community forests management plans;
- (i) Rules for the management of fishing in the Miskito Cays;
- (j) Decentralization of the environmental impact evaluation system;
- (k) Rules and procedures for the award of concessions in the autonomous regions;
- (l) Establishment of joint territorial boards on production, health and education;
- (m) Negotiation of the model for the administration of protected areas in the autonomous regions;
- (n) Creation and functioning of regional universities with a community approach.

⁴³ UNDP, *op. cit.* (see footnote 12 above), pp. 230 and 231.

5. Budget of the Atlántico Norte and Atlántico Sur Autonomous Governments and Regional Councils

139. In accordance with the Act concerning the General Budget of the Republic, the central Government makes an annual budget allocation to the regional governments and councils of the Atlantic region.

140. During the last 10 years the Atlántico Norte Autonomous Regional Government (GRAAN) has received from the central Government a total of approximately 299,898,946 cordobas for capital investment expenditure (projects) and current expenditure transfers to cover the operations of the regional administration.

141. Similarly, during the last 10 years the Atlántico Sur Autonomous Regional Government has received from the central government a total of 309.1 million cordobas in the form of transfers. Of this total 176.4 million (57 %) consists of ordinary transfers and 132.7 million (43 %) of capital transfers.

142. Within the powers conferred in article 5, paragraphs (b) and (c), of the Regulations pertaining to the Autonomy Statute, the autonomous regions have the following powers:

(a) To receive from the central Government the resources and means necessary for the administration of health, education, culture, transport, basic services, sport and infrastructure programmes (bearing in mind the particular conditions prevailing in the Atlantic Coast region) which have to be included in the general budget of the Republic in coordination with the agencies or ministries concerned;

(b) To guarantee, together with the regional councils, municipal governments and central Government, the approval of projects concerning investment, concessions, contracts, licences and permits programmed for implementation in the autonomous regions and in their fields of competence.

143. In this context, and to contribute to putting an end to the marginalization and poverty of the indigenous peoples and ethnic communities, during the period 2002-2006 the regional government of the RAAN completed the following projects:

Year 2002

No.	SECTOR / PROJECT	INDICATOR	BENEFICIARY ETHNIC GROUPS
	TRANSPORT AND TRAFFIC		
1.	Construction of the SISIN intermunicipal bridge (Puerto Cabezas and Waspam)	1 unit.	Multiethnic
	PUBLIC FUNCTION OF REGIONAL COUNCIL		
1	Construction of CRAAN building	1 unit	

Year 2003

No.	SECTOR / PROJECT	INDICATOR	BENEFICIARY ETHNIC GROUPS
WATER SUPPLY AND SEWERAGE			
1.	Construction of rural artesian wells	141 wells constructed	Indigenous communities of the municipalities of Puerto Cabezas and Waspam and Mestizo groups in Mining Triangle
2.	Construction of rural latrines	690 latrines	Indigenous communities of municipalities of Puerto Cabezas and Waspam and Mestizo groups in Mining Triangle
COMMUNITY WORKS AND SERVICES			
1.	Street construction	785 metres	Mestizos in Rosita municipality
2.	Construction of intercommunity footbridge	1 bridge	Indigenous communities of Puerto Cabezas municipality

Year 2004

No.	SECTOR / PROJECT	INDICATOR	BENEFICIARY ETHNIC COMMUNITIES
WATER SUPPLY AND SEWERAGE			
1.	Construction of rural artesian wells	84 wells	Indigenous communities
2.	Construction of rural latrines	300 latrines	Indigenous communities
COMMUNITY WORKS AND SERVICES.			
1.	Construction of intercommunity footbridges	330 metres of bridges	Rural indigenous communities
2.	Construction of community footpaths	6 500 metres	Indigenous communities
COMMUNAL RIVER INFRASTRUCTURE			
3.	Construction of communal wharves	108 Metres	Indigenous communities
MULTISECTORIAL			
1.	Construction of community market at Bilwi, Puerto Cabezas	1 market	Multi-ethnic
PRODUCTION			
1.	Promotion of non-industrial fishing with credits for fishermen on the shorelines of the municipalities of Puerto Cabezas, Prinzapolka and Waspam		Indigenous artisan fishermen

Year 2005

No.	SECTOR / PROJECT	INDICATOR	BENEFICIARY GROUPS
COMMUNITY WORKS AND SERVICES			
1.	Construction of intercommunity footbridges	10 bridges.	Rural indigenous communities
2.	Construction of rural footpaths	7 000 metres	Indigenous and Mestizo communities
	Construction of urban streets	1 000 metres	Mestizo ethnic groups in Siuna
MULTISECTORAL			
1.	Replacement of the ferry at the Wawa Boom crossing, communication with the other mining municipalities and the untroubled parts of the country	1 lighter	Multi-ethnicity and public benefit
PRODUCTION			
1.	Construction of an ice-making plant in the Sandy Bay community, municipality of Puerto Cabezas	1 plant	Indigenous artisan fishermen of the North Coastal zone
2.	Construction of silos and basic grain storage points in the municipality of Waspmam	1 unit	Indigenous and Mestizo communities
GRAAN INTERNAL PUBLIC ADMINISTRATION			
1.	Extension of the Regional Government building	1 unit	Institutional strengthening, multi-ethnicity and public use
SOCIAL SECURITY			
1	Impetus to regional anti-drug campaign	1 plan	Multi-ethnicity

Year 2006

No.	SECTOR / PROJECT	INDICATOR	BENEFICIARY GROUPS
COMMUNITY WORKS AND SERVICES.			
1.	Construction of intercommunity footbridges	2 bridges	Rural indigenous communities
2.	Construction of footpaths	10 000 metres	Indigenous and Mestizo communities
3.	Construction of streets, footpaths and ditches in Puerto Cabezas		Population of Puerto Cabezas
4.	Rehabilitation of the municipal stadium of Bonanza	1 unit	Multi-ethnicity
EDUCATION			
1.	Construction of a residential student centre in Waspmam	1 building	Multi-ethnicity
PRODUCTION			
1.	Promotion of non-industrial fishing in two municipalities	340 beneficiaries	Indigenous and Mestizo communities
2.	Financing of small mining enterprises with credits	448 beneficiaries	Multi-ethnicity
RIVER INFRASTRUCTURE			
	Construction of communal wharfs in the municipalities of Prinzapolka and Puerto Cabezas	106.25 metres	Indigenous communities

144. Execution of the above-mentioned projects has made a tangible and significant contribution to the process of development of the communities in a broader context of bringing about gradual change in the population's standard of living, basically focusing on health, education and the production component as an alternative approach intended to promote the

take-off of the local economy with a view to promoting the productivity, sustainability and competitiveness of traditional and non-traditional products.

145. It should be mentioned that this process is based on the mission, vision, objective and on the strategic action guidelines laid down in the Strategic Regional Development Plan (PDER) which the Government of the Atlántico Norte Autonomous region is using as an instrument of guidance to help improve the living conditions of the population of the RAAN through the implementation of plans, programmes and projects having a social, productive and economic impact and envisaged for the medium and long term.

146. Similarly, in recent years the RAAS Government and Regional Council, in coordination with other institutions and national ministries, have been implementing public investment projects in some communities with indigenous populations. The following table shows the different types of investment effected:

Projects for 2004

Community	Institution
Laguna de Perlas	
Strengthening of bilingual intercultural education in the Atlantic Coast region (FOREIBCA-Phase II)	MECD
Construction of two meeting rooms in the community of Hallouver	Local authority
Construction of 3 classrooms in secondary schools in Laguna de Perlas	Local authority
Sustainable development of rural community tourism in 4 indigenous communities	MARENA
Purchase of plant and installation of electricity supply network in the communities of Orinoco and Tasbapounie	GRAAS
Desembocadura	
School construction in Company Creek and Guadalupe	FISE
Installation and construction of rice-threshing plant in the "LA ESPERANZA" community	FISE
Endowment and installation of radio communicators in 4 indigenous communities	FISE
Training and strengthening of the indigenous authorities in Sandy Bay in community-run projects	FISE
1.- Purchase of generating plant for electricity supply system in Sandy Bay	Local authority
2.- Construction of children's playground in Karawala	Local authority
Bluefields	
Expansion of secondary schools (2 classrooms, 56 m2) in Rama Cay (MECD/FISE)	FISE
Strengthening of bilingual intercultural education in the Atlantic Coast region (FOREIBCA-Phase II)	MECD
Purchase of plant and installation of electricity supply network in the community of Rama Cay	GRAAS
Registration of community authorities	PRODEP

Community	Institution
La Cruz de Río Grande	
Replacement of "Gracias a Dios" school in the "Betanis" community	
Strengthening of local capacities of indigenous authorities in Makatankita and Tumarín Indígena	FISE
Projects managed by indigenous communities: Installation of water-storage facilities, rice-threshing plant and improvement of 45 dwellings	FISE

Projects for 2005

Laguna de Perlas	
Training of teachers, bilingual intercultural education in different schools	MECD
Replacement of pre-school classroom in Awas community	FISE
Replacement of secondary school in Orinoco	
Desembocadura	
Training of teachers, bilingual intercultural education in different schools	MECD
Construction of 100 dwellings	INVUR
Improvement of dwellings in Kara community	
Bluefields	
Training of teachers, bilingual intercultural education in different schools	MECD
Replacement of school in Punta de Aguila	FISE
La Cruz de Río Grande	
Improvement of dwellings in Walpa, Angloamérica and Betania	FISE
Training to strengthen territorial indigenous authorities in Makantakita and Tumarín Indígena communities	FISE

Projects for 2006

Laguna de Perlas	
Repair of Andrés Castro school in Hallouver community.	FISE
Replacement of assembly hall in secondary school in Tasbapounie.	FISE
Desembocadura	
Rio Grande mouth. Maranata church. Decent housing. ARRASTRE	INVUR
La Cruz de Río Grande	
Construction of community wells in Makantakita	FISE

6. General position of the State of Nicaragua on the Awas Tingni case

147. The State of Nicaragua is in the process of complying with the judgement of the Inter-American Court of Human Rights, which ruled, inter alia, that the State must demarcate, delimit and title the geographical area in which the community of Awas Tingni lives and carries on its activities.

148. The State has exceeded the time-limit of 17 December 2002 set by the Court. This is due to the fact that there are in the territory claimed by Awas Tingni contains areas owned by third parties (dual claims). These include other indigenous communities, settlers and demobilized members of the resistance and armed forces. In these circumstances, the State is under an obligation to safeguard the rights of these Nicaraguan citizens on a basis of equality of opportunity. Consequently, it must take all measures necessary to that end. In view of this situation, the demarcation and delimitation processes are being conducted in detail.

Background and elements of the judgement

149. Three important judicial steps have been taken with regard to this case: two at the level of the Inter-American Court of Human Rights, namely a judgement and an order concerning precautionary measures, and one at the level of our national courts, namely a recourse in amparo. On 17 September 2001 the Inter-American Court of Human Rights communicated the judgement, finding that the State of Nicaragua had violated the right to judicial protection and the rights of property enshrined in article 25 taken together with paragraphs 1 and 2 of article 1 and article 21 of the American Convention on Human Rights⁴⁴.

⁴⁴ *Article 1*. “(1) The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. (2) For the purposes of this Convention, “person” means every human being.”

Article 21. “(1) Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. (2) No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms prescribed by law. (3) Usury and any other form of exploitation of man by man shall be prohibited by law.”

Article 25. “Judicial Protection: Everyone has the right to a simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts which violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. The States Parties undertake:

- (a) To ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State;
- (b) To develop the possibilities of judicial remedy; and

150. The Court sentenced the State:

(a) To pay through the Commission the sum of US\$30,000 in respect of expenses and legal costs incurred by those communities within a term of six months;

(b) To invest in the course of 12 months the sum of US\$50,000 in works or services of collective interest for the benefit of the community and by common agreement with it;

(c) To take legislative, administrative and all other measures necessary to delimit, demarcate and title the geographical area in which those communities live and carry on their activities. The Court fixed a non-extendable term of 15 months for the implementation of these measures;

(d) Demarcate, delimit and title the geographical areas in which these communities live and carry on their activities. The period allowed expired on 17 December 2002;

(e) To submit biannual reports on the progress made on compliance with the judgement and the measures taken.

Decision concerning precautionary measures

151. On 9 September 2002 the Inter-American Court issued an order concerning precautionary measures against the State of Nicaragua in favour of the indigenous community, requiring it:

(a) Point 1: to adopt measures to protect the use and enjoyment of property of the lands belonging to the community and the natural resources thereon;

(b) Point 2: to keep the applicants informed of and allow them to participate in the planning and implementation of the measures taken;

(c) Point 3: to investigate the facts set forth in the claim which gave rise to the order so as to discover and punish those responsible;

(d) Point 4: to report on steps taken to implement the agreement on provisional recognition of the community's rights to use, possession and development;

(e) Point 5: to report every two months on the provisional measures adopted.

152. On 16 January 2003 the representatives of the community lodged an appeal in *amparo* against representatives of the State with the Court of Appeal of Puerto Cabezas, alleging non-compliance with the order and violation of constitutional rights.

Application for additional compensation

153. On 13 December 2006 the representatives of the Awás Tingni community, updating the application of 3 May 2005, submitted to the Inter-American Court a new application seeking additional compensation in respect of the damage caused by the continued violation by the State

(c) To ensure that the competent authorities shall enforce such remedies when granted.

of Nicaragua of the rights of the community recognized by the Court in its judgement and the order concerning precautionary measures.

154. The basis of the application is the alleged non-compliance and the absence of effective measures for the protection of the community's use and enjoyment of the property and natural resources. It states that, as a consequence, the Awas Tingni community is currently in a highly precarious situation with regard to the enjoyment and use of its rights, on account of the uncontrolled activity of foreign third parties that have invaded and permanently occupied its lands and are exploiting them.

Compliance and present situation

155. The State of Nicaragua has complied with points 6 and 7 of the judgement; as regards point 7, relating to legal costs, a cheque for 30,000 dollars of the United States was remitted to the community on 16 April 2002 through the Commission.

156. The requirement in point 6 to invest 50,000 dollars has been met with the construction of a student residential centre and a community sewing workshop for the women of the community. These were completed in March 2003 after expiry of the term fixed. This circumstance gave rise to the payment of default interest totalling 3,384.53 dollars, which was paid by the State on 3 March 2004.

157. The State of Nicaragua has complied with point 3, which refers to legislative, administrative and all other measures necessary to delimit, demarcate and title the geographical area in which those communities live, by promulgation of Act No. 445 (Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Nicaraguan Atlantic Coast and the Bocay, Coco, Indio and Maíz Rivers).

158. As regards the central item of the demarcation, delimitation and titling of communal property, the State, through the National Demarcation and Titling Commission (CONADETI), has drawn up a basic procedure for the settlement of disputes with neighbouring communities and has at the same time identified the areas free of settlers, third parties and inter-ethnic disputes as a preliminary to the specific procedure of titling.

159. The State has given its unqualified support to the steps taken by the Demarcation Commission of the Atlántico Norte Autonomous Regional Council since December 2004 within the framework of article 52 of Act No. 445. Although the neighbouring indigenous communities' disposition to introduce legal proceedings at the national and international levels is a source of considerable concern, the award of title to the Awas Tangni community does infringe the rights of equality which those neighbouring communities possess as indigenous communities vis-à-vis the State of Nicaragua.

160. The Government of Nicaragua continues to hold the view that the members of the Awas Tingni community have concentrated their attention solely on the request for demarcation and have failed to perceive the whole problem of radical and far-reaching social implications as they really exist and as they are perceived by the institutions of State, CONADETI and the Demarcation Commission of CRAAN Regional Council. For this reason, it continues to strive

towards a correct and responsible solution, determined as it is to comply with national and international human obligations in the field of human rights.

161. The Autonomous Regional Council, through its Demarcation Commission, is required to deal with this case, undertaking an exhaustive, detailed and impartial analysis and completing the dispute settlement phase as defined in Act No. 445. To that end, since August 2005 the CRAAN, through its Demarcation Commission, has been supporting working meetings in which the Government, through the SEPCA, has been providing the support (including the provision of technical teams) needed for the preparation of the draft settlement documents to be submitted by the Demarcation Commission of the Atlántico Norte Autonomous Regional Council. These draft documents were presented to the Awas Tingni indigenous community in December 2005. This gave rise to a meeting on 3 February 2006, at which the Awas Tingni community presented a new proposal, offering to relinquish 10,000 hectares of the claim it had submitted in favour of neighbouring indigenous communities such as Santa Clara, La Esperanza and Francia Sirpi, a claim which had been rejected by the communities concerned.

162. In February 2007 the Atlántico Norte Autonomous Regional Council issued decision No. 26-02-2007 ratifying the settlement measure proposed by the Demarcation and Territorial Organization Commission, thus putting an end to the boundary dispute between Awas Tingni and the communities of Santa Clara, La Esperanza and Francia Sirpi, this being an essential prerequisite for the marking of boundaries and the subsequent award of titles, in accordance with the procedures laid down in articles 19 and 22 of Act No. 445.

163. In addition, CONADETI has been allocated the sum of 22,000 dollars for the demarcation and titling of 73,394 hectares claimed by Awas Tingni.

164. Following Decision No. 26-02-2007, CONADETI envisages proceeding to titling in the Annual Plan of Operations (POA) for 2007 and presentation of the appropriate community title to Awas Tingni on 9 August 2007 at a public ceremony to be attended by representatives of community, territorial, municipal and regional authorities and the central Government.

165. The 23 Mayagna families located in the area of the three Miskito communities in the Tasba Raya block comprising 2,020 hectares will be included in the title awarded to the Awas Tingni community.

166. It is the political will of this new Government of Reconciliation and National Unity to speed up the demarcation and titling process for the indigenous peoples and ethnic communities of the Atlántico Norte region of Nicaragua and the Bocay, Coco, Indio and Maíz rivers. For that reason the elected President, a few days after taking up his post, issued guidelines for structural changes in institutions and naming persons familiar with and suitable for the demarcation and titling process. The institutional structures are now as follows:

(a) Development Council for the Caribbean Coast (Commander Lumberto Campbell). From the Creole ethnic group, responsible for coordinating the central government ministries in matters concerning the autonomous administration of the Caribbean Coast region of Nicaragua;

(b) President of the Indigenous Affairs Commission of the National Assembly: Brooklyn Rivera (head of the Miskito ethnic group and a national deputy in the National Assembly);

- (c) Minister of ADPESCA: Steadman Fagoth (member of Miskito executive);
- (d) Vice-Chancellor of the Republic: (Vice-Minister and Secretary for External Cooperation Msc.) Valdrack L. Jaentschke (a professional of Creole origin);
- (e) Vice-Minister of MARENA: Jacobo Charly (member of Mayagna indigenous group);
- (f) Vice-Minister of MAGFOR: Benjamin Dixon (Miskito);
- (g) Assistant director of INAFOR: Jorge Canales (Mestizo from the coastal region);
- (h) Vice-administrator of Properties: Eveling Taylor (Miskito);
- (i) PRODEP (Indigenous Component): Dr. Hazel Law (Miskito); her function is to monitor the demarcation and titling process.

167. These persons are all of Caribbean Coast origin and most of them are from indigenous groups. In this way the current Government is transferring to the Council for the Caribbean Coast and the Indigenous Component (PRODEP-CI) the funds to be used for the demarcation and titling of the Awas Tingni Mayagna community (45,442) for 2007, thus complying with the order of the Inter-American Court of Human Rights.

168. The new manual on the demarcation and titling process has been simplified in order to speed up the process; this will accelerate the proceedings. In that connection, a meeting was held on 8 May of this year a meeting was held to take measures based on this manual and to coordinate broader measures, thus speeding up compliance with the judgement in favour of Awas Tingni.

169. To this end, coordination was effected between the measures taken by INETER and CONADETI, and more particularly, a special plan was drawn up for the demarcation of the territories of Awas Tingni and the block at the mouth of the Rio Grande in which INETER will make available from its own resources a coordinator to liaise between the regional authorities and INETER. Similarly, CONADETI, using its own resources, will engage regional technical personnel for conducting topographical surveys and erecting boundary stones marking the perimeters of those territories.

7. Indigenous peoples and ethnic communities in Nicaragua which hold title to their properties

170. Five of the six indigenous territories situated along the Caribbean Coast and Jinotega regions have been awarded title: three in the Caribbean Coast region, namely the Lilammi Tasbaika Kum indigenous territory with an area of 138,226.63 hectares, the Kipla Sait Tasbaika indigenous territory with 113,596.75 hectares and the Miskito Indian Tasbaika Kum indigenous territory with 113,596.75 hectares, as well as two in the Jinotega region, namely the Mayagna Sauni Bu indigenous territory with an area of 102,440.32 hectares, and the Mayagna Sauni As indigenous territory, with 163,810.08 hectares.

171. The indigenous communities situated on the Pacific coast and in the North and centre of the country possess legal deeds but no formal title, the essential requisites for their registration not having been met. However, the indigenous communities of El Viejo, San Lucas and Cusmapa have been duly registered in the public register of properties.

8. International Labour Organization Convention No. 169

172. It is in the interest of the Government of Reconciliation and National Unity to ratify international treaties to promote human rights, always provided that they are in line with the Political Constitution and will be of benefit to the Nicaraguan peoples. In that context the Government of Nicaragua will review the appropriateness of ratifying ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries and will undertake the necessary consultations on its content with all the institutions of State and the civil society organizations concerned.

173. The Political Constitution of Nicaragua deals with matters relating to the rights of the indigenous peoples and ethnic communities and labour rights in general.

174. Articles 20 and 23 of the Convention deal with matters relating to recruitment and conditions of employment and vocational training in handicrafts and rural and community-based industries. They stipulate that governments must ensure equality between all men and women workers and prevent discrimination against members of indigenous peoples with regard to access to and forms of employment, remuneration, the right of association and systems of medical care and social security, and specifically that these peoples “are not subject to working conditions hazardous to their health.”

175. The foregoing is fully consistent with the content of article 82 of the Political Constitution of Nicaragua, which provides that:

“Workers have the right to working conditions ensuring them pay which is equal for equal work performed in identical conditions and adequate for their social responsibilities without discrimination for reasons of politics, religion, race, sex or of any other nature and ensuring them a well-being compatible with human dignity.”

176. Article 24 of Convention No. 169 also deals with social security, stipulating that social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them. This appears to be in line with article 61 of the Nicaraguan Constitution, which establishes social security as a right.

9. The right to work

177. All Nicaraguans have the right to decent work without discrimination on political, religious, racial or other grounds.

178. In this connection, the Political Constitution of Nicaragua (article 80) provides that:

“Work is a right and a social responsibility. The labour of Nicaraguans is the fundamental means to satisfy the needs of society and of the individual, and is the source of the wealth and prosperity of the nation.”

Labour Code, reforms and additions thereto and authentic interpretation (Act No. 185)

179. The purpose of the Labour Code (Act No. 185)⁴⁵ is to secure the full employment of all Nicaraguans, irrespective of sex, while guaranteeing them their fundamental rights as individuals.

180. Article 5 of Act No. 185 represents an unprecedented advance in our labour legislation. It reads as follows:

“The use of Spanish, the official language of the State, is compulsory in employment relationships. The languages of the communities of the Atlantic Coast region shall also be used officially in employment relationships in the Atlántico Norte and Atlántico Sur Autonomous Regions, and also in the Miskito and Sumo communities historically located in the departments of Jinotega and Nueva Segovia.”

181. Article 5 of the Labour Code is extremely important within the general legislative framework, since it recognizes the importance of and the need for the indigenous peoples and ethnic communities - not only the communities situated in the autonomous regions, but also those in the departments of Jinotega and Nueva Segovia - to have access to knowledge of their labour rights in their mother tongues.

182. In addition, one of the principal tenets of the Labour Code is that women have equal rights with men regarding access to employment and equality of treatment. The Act also recognizes that working women shall enjoy all the rights guaranteed in the Code and other legislative instruments under equal conditions and opportunities and may not be subjected to discrimination of any kind on account of their being women.

Decree No. 30 – 2006 (National Employment Policy)

183. The National Employment Policy was approved by Decree No. 30-2006. It is based on the governmental political strategies and programmes designed to deal with the structural and cyclical problems of development and is closely linked to the National Development Plan and the corpus of laws in force in the labour sphere. Sections 1, 3 and 17 of the Policy acknowledge that the fundamental principles and rights in the work sphere are of great importance and special significance for the indigenous peoples as a means of avoiding the social exclusion with which they are faced and which restricts their opportunities to obtain decent work. That exclusion is a product of a number of interrelated economic, social, political and cultural factors and calls for specific consideration of the rights of indigenous persons in the design of programmes for productive development and overall advancement at the territorial level. For this reason, section 5 envisages public investment to support modernization of the informal sector and small-scale peasant and indigenous economies.

184. Paragraph 1 of article 82 of the Political Constitution stipulates that:

“Workers have the right to working conditions ensuring them, in particular, pay which is equal for equal work performed in identical conditions and adequate for their social

⁴⁵ Published in *La Gaceta*, No. 205, of 30 October 1996.

responsibilities without discrimination for reasons of politics, religion, race, sex or of any other nature and ensuring them a well-being compatible with human dignity.”

185. Thus, elimination of all labour contracts or conditions of employment that infringe the provisions of the Political Constitution and the labour laws of the country lies within the competence of the Government and the labour inspectorate.

186. In addition, national labour legislation has been continuously enriched by the doctrinal and formal contribution resulting from the evolution of international thinking in the social and labour spheres within the ILO, of which Nicaragua is a member State. Nicaragua has ratified 59 international labour conventions, including those internationally recognized as fundamental labour standards in the ILO Declaration on Fundamental Principles and Rights at Work, all of which have been ratified by Nicaragua. They are:

- (a) Convention 29: Forced Labour Convention, 1930;
- (b) Convention 87: Freedom of Association and Protection of the Right to Organize Convention, 1948;
- (c) Convention 98: Right to Organize and Collective Bargaining Convention, 1949;
- (d) Convention 100: Equal Remuneration Convention, 1951;
- (e) Convention 105: Abolition of Forced Labour Convention, 1957;
- (f) Convention 111: Discrimination (Employment and Occupation) Convention, 1958;
- (g) Convention 138: Minimum Age Convention, 1973;
- (h) Convention 182: Worst Forms of Child Labour Convention, 1999.

187. These Conventions have enabled the State or Government of Nicaragua to equip itself with a body of labour legislation which contributes to the process of democratization, guaranteeing the fundamental and human rights of workers, and in particular the principles of freedom of association and plurality of unions, without prejudicing efficient operation within enterprises and a broad understanding between the social partners on the need for negotiation to settle socio-economic disputes.

188. Freedom of association is guaranteed in Nicaragua by provisions of the Political Constitution: “Full trade union freedom exists in Nicaragua. Workers may organize voluntarily in unions, which shall be constituted in conformity with the law. No worker may be compelled to join, or refrain from joining, a particular union. Full union autonomy is recognized and union immunity is respected.”

189. A union may be formed by workers or employers for the representation and defence of their respective interests. According to the first paragraph of article 203 of the Labour Code, no authorization is necessary to form a union.

190. Unions have the right to:

- (a) Freely draw up their statutes and rules;
- (b) Freely elect their representatives;
- (c) Choose their organic structure, administration and activities;
- (d) Draw up their programme of action.

191. The Union of Atlántico Norte Fishermen (SPAN) was founded in 1994 and, together with the union known as Los Delfines, succeeded in negotiating a collective agreement with the employers of the trade association with the regional authorities as witnesses. This agreement improved the working conditions of fishermen in the RAAN.

192. In 1997 there was renewed interest in the idea of a union following a strike by all the captains of the shrimping fleet of the United States Gulf King company, located in the Bluff (Atlántico Sur Autonomous Region). The workers were protesting against their ill-treatment by the company. In the circumstances, and to protect their labour rights, they obtained legal personality for the Union of Marine and Related Workers (SINTRAMARSI) in the RAAS from the Ministry of Labour (MINTRAB). SINTRAMARSI includes divers, boatmen, seamen, captains and the women working in the maquiladora plants in Bluefields, the Bluff, Corn Island and the Laguna de Perlas basin and at the mouth of the Rio Grande de Matagalpa.

193. The year 2000 saw the emergence of the Union of Divers of the Atlántico Norte Autonomous Region (SIBURAAAN). With the support of the Ministry of Labour of the RAAN and the Council of the Elders, it succeeded in negotiating a new agreement with the Atlántico Norte Fisheries Association (APAN), which represents the interests of the shellfish processing and exporting plants in the RAAN.

194. Collective bargaining has developed substantially in our trade union and entrepreneurial culture, which is moving towards the creation of new contractual and institutional structures such as the collective agreement; acceptance of the need to update the entire corpus of regulatory instruments; and making relations between employers and workers more flexible where desirable, without ignoring the role of the State in the tripartite handling of the country's labour and social realities.

195. In Nicaragua, under article 88 of the Political Constitution, the inalienable right of workers to conclude individual contracts and collective agreements with employers in the defence of their individual or collective interests is recognized and guaranteed.

10. The right to public health

196. The main provisions of the Constitution stipulate that education, health and social security services are inalienable obligations on the State, which is required to provide, improve and expand them on a non-exclusive basis. The facilities and infrastructure of these services are the property of the State, and their ownership may not be transferred in any way. The vulnerable sectors of the population are guaranteed free health care, and priority is given to the

implementation of mother and child care programmes. In addition, the State health and education services must be expanded and strengthened.

The health of the indigenous peoples

197. The inhabitants of the communities of the Atlántico Norte region have the right to recover, in a scientific fashion and in coordination with the national health system, the lore of natural medicine accumulated throughout their history.

198. The regulations pertaining to Act No. 28 establish a regional health model in the form of a set of principles, standards, rules, regimes, plans, programmes, intervention measures and instruments adopted by the autonomous regions. This model is implemented through binding and mandatory decisions that guide and direct health measures in the autonomous regions concerned.

199. Article 12 of the Act on Official Use of the Languages of the Communities of the Atlantic Coast region of Nicaragua (Act No. 162), on the subject of public health, states that:

“Communications concerning public health must be drawn up and framed in accordance with the cultural characteristics of the communities of the Atlantic Coast region. They must also be translated into and disseminated in those languages. The services of an interpreter or translator must be available in the health units working in these autonomous regions when a case so requires.”

The regional health model

200. The Autonomy Statute (Act No. 28) established the responsibility of the autonomous regional governments for health administration acting in coordination with the Ministry of Health and in a manner suited to the realities and needs of the indigenous peoples and the ethnic communities living in the autonomous regions. It also confirms the right of the peoples to their traditional practices and the use thereof.

201. The regulations pertaining to Act No. 128 refer to the responsibilities incumbent on the autonomous regional governments and the national health authorities in the area of health administration. They also stipulate that health administration must be decentralized.

202. In 2005 the autonomous regional councils, in coordination with civil society as a whole, drew up the Regional Health Model, with a large measure of participation by society. The principle underlying this model is the revitalization of the Caribbean culture; in the two autonomous Caribbean regions traditional physicians have the same rights as Western physicians, and midwives have exactly the same status and rights as specialist maternity and children’s nurses.

The General Health Act (Act No. 423)

203. Article 11 in chapter IV of the General Health Act (Act No. 423)⁴⁶ reads as follows:

“The autonomous regions of the Atlantic Coast may define a health-care model or health care in line with their traditions, cultures and customs within the framework of the policies, plans, programmes and projects of the Ministry of Health. The general objective shall be that of helping to maintain individuals in mental, physical, spiritual and social health through their daily lives in a healthy environment in which they construct their own socio-economic development, marked by a high level of citizen participation, through the strengthening of democratic institutions and respect for individual and collective rights and responsibilities.”

204. To this end the model seeks to guarantee the following:

(a) To increase the population’s life expectancy and quality of life, with particular emphasis on the most vulnerable groups (adolescents, young persons, women, children, the elderly, indigenous peoples and ethnic communities);

(b) To promote healthy environments with respect for the culture of each of the indigenous peoples and ethnic communities, directing attention to the problems of drug addiction, alcoholism, violence generally, etc.;

(c) To improve the working conditions of workers, and especially those of the productive groups in fishing, mining, forestry, agro-industry, etc.;

(d) To introduce comprehensive management and self-management measures to reduce the prevalence of the diseases affecting the population, with emphasis on healthy practices permitting improvements in access to drinking water and in sewage and solid-waste disposal with local variants;

(e) To develop health models for the autonomous regions by speeding up and broadening the decentralization process, consolidating the same by means of a wide-ranging social participation to strengthen local structures;

(f) To improve efficiency and effectiveness in the use of the financial resources available and to promote initiatives which will generate additional income and are such as to reduce the existing economic shortcomings;

(g) To increase the satisfaction of the population using the health services with regard to prompt attention, respect and for warmth towards the individual and the quality, conditions and safety of the services performed by the different actors.

⁴⁶ The General Health Act was approved on 14 March 2002 and was published in *La Gaceta*, No. 91, on 17 May of the same year.

Programmes for strengthening the institutions of the regional health system

205. There are a number of programmes for strengthening of the institutions of the regional health system. Mention may be made of the following:

- (a) A project for the strengthening of the health secretariat (human resources, equipment and transport facilities) of the RAAN;
- (b) A project for the creation of municipal health service branches in municipalities (infrastructure, equipment, human resources, transport facilities);
- (c) A project for the administrative incorporation and establishment of municipal health service branches (cases of Mulukukú and Waslala in the RAAN); infrastructure, equipment, human resources and transport facilities.

206. There are also health communication programmes, which include:

- (a) A project for the design and implementation of the health communication programme;
- (b) Translation and dissemination of the legislation concerning health in the autonomous regions;
- (c) Translation and dissemination of the health models, plans and programmes for the autonomous regions into the different languages;
- (d) A project for a second edition of the Health Model.

207. From time to time the national media report on diseases (such as grisis signi) appearing in the communities of the Coco river. In the eyes of Western medicine grisis signi is a form of collective hysteria or madness. However, for traditional physicians it is an ailment affecting persons when they lose their sense of balance or their relationship with their environment.

208. When this ailment appears in an indigenous community in the Caribbean region the Ministry of Health (MINSa) sends doctors to deal with the problem, but only traditional physicians, because they are the only ones who know how to cure it. On the Caribbean coast the Ministry of Health cares for 40 % of the population and traditional physicians 60 %; midwives attend 50 % of births and Ministry of Health personnel the other 50 %. In the ethnic communities in the Atlantic region people go first to the traditional physician and then to the Western doctor. Consequently, in the health secretariat of the two autonomous regions there is always one person concerned with Western medicine, one with traditional medicine and one with social and community participation in health matters. The regional health model matches this reality.

Access to health: National Health Policy and Plan 2004-2015

209. In May 2004 the Government of Nicaragua submitted the National Health Plan 2004-2015. This plan contains general guidelines, concrete policies and strategies designed to bring about change in the health situation in the Atlantic Coast communities.

210. A balance has been struck between preventive and therapeutic care and rehabilitation and between respectful, human and equitable care, solidarity, social participation and access to health care. Similarly, the plan is geared towards the development of a new care model, thus reflecting the complexity of the epidemiological condition of the population and in line with its cultural, political, ethnic and geographical features.

211. The Government has made progress in the area of care for the indigenous peoples and ethnic communities. The State and civil society have adopted a more open attitude to the subject of the health of indigenous peoples by recognizing and institutionalizing the traditional health-care model for the autonomous regions.

212. A draft Act concerning traditional medicine and alternative therapies is before the National Assembly. In addition, the participation of the autonomous regions in the National Health Council has been guaranteed.

Alliances, projects, networks

213. Progress has been observed in the area of cooperation between the State and various sectors of society. Particular mention may be made of the work programme of the Indigenous Parliament of America, the MINSA-APRODIN arrangement, the MINSA-RAAN agreements and the existence of non-governmental organizations working in the area of the health of indigenous peoples (in particular Horizonte 3000, Acción Médica Cristiana and the Red Cross).

214. Particular mention must also be made of the strengthening of the indigenous organizations with health agendas, of the national and international forums held by the universities of the autonomous regions to discuss general development themes, including health and the start of operations by some networks of community officials and traditional physicians, or to address specific problems such as AIDS, violence and adolescents.

Primary health care and intermingling of cultures

215. In the RAAN mention should be made of the important contributions of the URACCAN and the Institute of Traditional Medicine, professional training of local personnel in the subject, exchanges of experiences, the introduction of the Health Model for the Autonomous Regions and the training of human resources with a multicultural, multi-ethnic and all-embracing approach. Mention should also be made of the definition of the Mayagna health model and the design of programmes and projects by local NGOs.

216. Mention should be made of the earlier creation of the Institute of Natural Medicine in Estelí and the recent efforts to revive natural medicines. In addition, in the North, Central and Pacific Coast regions of Nicaragua progress has been made at the local level with the implementation and evaluation of territorial health plans with the support of the Local Comprehensive Health-care Assistance System (SILAIS) and municipal authorities.

217. Specific health-care areas in which successes have been reported include the establishment and reopening of maternity facilities in indigenous regions, recognition and treatment of the disbarism syndrome, recognition of cultural ailments and the holding of the Congress of Traditional Medicine.

Information, analysis, monitoring and management

218. Some efforts at compilation, publication, circulation and bibliographical dissemination of material on traditional medicine, and, more recently, on ethnic origin and health, have been observed.

219. In the health sector the Atlántico Norte Autonomous Regional Government, acting in consultation with PAHO, WHO and UNICEF, has promoted programmes focusing on the safety, regulation and protection of divers. These programmes are being executed on the basis of the statistics on sicknesses arising from decompression following uncontrolled submersion of the persons concerned.

220. According to the RAAN Regional Government, divers have been trained in “safe diving techniques and the handling of diving emergencies”. The participants (40 divers from different areas of the region) were taught the principles and given a basic knowledge of diving, as well as knowledge of the application of basic skills in the use of first-aid techniques to deal with problems of sickness and suffering among divers on the high seas.

221. The participants were also taught to use the table for measuring the amount of excess nitrogen in the body and, thereby, to determine limits and maxima of time and depth to avert the risk of decompression sickness.

222. The RAAN Regional Government is coordinating follow-up programmes, undertaking improvements to infrastructure, equipment and treatment in the motorneuron disease ward in the regional hospital. The regional Government has held a number of meetings with various employers with a view to improving their treatment of their divers, guaranteeing them contracts, adjusting their wages and registering them with the social insurance scheme so that they can pay contributions and receive benefits.

223. Particular mention should also be made of the policy of the regional health system particularly concerned with regard to children in municipal hospitals and health centres, where there are child-care programmes. The organs of the Atlántico Norte Regional Council and Regional Government are working on the application of measures to secure compliance with the health programmes for children and are working with other bodies such as UNICEF, PAHO and WHO, and also NICASALUD, which will begin work this year with a care programme in the municipalities of Sinua and Waspam.

224. In addition, WFP is promoting a food programme for pre-school children with the aim of avoiding dropouts among primary schoolchildren, an objective which is also being sought on the academic side. This programme is being implemented in a large number of communities in the RAAN.

11. The right to education

225. Education is a constitutional right of every citizen, which the State of Nicaragua must ensure for all Nicaraguans without any discrimination. However, owing to the cultural and linguistic plurality existing in various areas of the country, the indigenous and ethnic population groups of the Atlantic autonomous regions have had limited access to education because of their special geographical, climatic, social, economic and cultural characteristics, in addition to a poor

transport and communications infrastructure, which make access to education precarious in the rural municipalities and communities.

226. To address this problem the Nicaraguan State, through MINED, has promoted a series of activities designed to create or strengthen policies to remove factors preventing indigenous and ethnic communities from gaining access to primary, secondary and vocational education.

227. In 2005 the Government promulgated the National Education Plan. One of its policies is to maximize educational supply through the improvement of infrastructure, food supplements, strengthening of bilingual education and priority attention in poor areas, with the Caribbean Coast as a specific target. The principles, proposals and objectives of this Plan are quite explicit in that it defines education as a fundamental human right and reaffirms respect for multi-ethnic and multicultural diversity and non-exclusion. It reflects the desire and respect for equity without discrimination, and its promotion.

228. Article 121 of the Political Constitution of the Republic of Nicaragua establishes that:

“Access to education is free and equal for all Nicaraguans. Primary education is free and compulsory in State schools. Secondary education is free in State schools, without prejudice to voluntary contributions made by families. No person may be excluded in any way from a State school for economic reasons. The indigenous peoples and ethnic communities of the Atlantic coast have the right in their region to intercultural education in their mother tongue, in accordance with the law.”

229. MINED promotes intercultural mother-tongue education for the indigenous peoples and ethnic communities of the Atlantic Coast of Nicaragua.

230. Article 11 of the Political Constitution of Nicaragua and article 1 of the Languages Act establish that:

“Spanish is the official language of the State. The languages of the communities of the Atlantic Coast region of Nicaragua shall also be used officially in the cases specified by law.”

Bilingual intercultural education

231. All the programmes promoted by MINED in the rest of the country – pre-school, bilingual primary, special and secondary – are also implemented in the two autonomous regions of the Caribbean Coast of Nicaragua with Miskito, Creole, Sumo-Mayagna and Garifuna populations.

232. In this connection, in October 1997 the Regional Autonomous Education System (SEAR) was approved. It aims at comprehensive education of the indigenous peoples and ethnic communities, is based on and supported by the national legislation in force; the Political Constitution; the Autonomy Statute; the Languages Act and the General Act on Basic and Secondary Education, with a Bilingual Intercultural Education Programme (PEBI) that facilitates access for the inhabitants of Nicaragua’s Atlantic autonomous regions to the various types of education on offer.

233. SEAR is based on the principles of autonomy, cultural plurality, solidarity, belonging, quality, ethical and civic values and regional and national culture in order to achieve sustainable economic, social, political and cultural development. Its aim is to educate the coastal inhabitants committed to the sustainable human development of their community and region by means of the permanent practice of intercultural activities, with sound scientific, technical and humanist preparation and a clear knowledge and interpretation of the legal framework that supports the process of autonomy and with high self-esteem and pride in their ethnic, cultural and linguistic identity, and who contribute to the project on national unity in diversity.⁴⁷

234. PEBI basically originated in the indigenous and ethnic language literacy campaigns carried out in 1980 and 1981, and the 1984 bilingual intercultural educational programme (PEBI Creole, Mayagna and Miskito). Its significant achievements include its incorporation as an important basis for educational subsystems of the National Education Plan. It aims at the educational development of the Atlantic region. To that end, a curriculum subcommittee was established to transform educational content in the autonomous regions of the Caribbean region of Nicaragua, and hence to expand school education coverage throughout the Atlantic region.

235. Most of the schools run under PEBI are located in three ethnic-linguistic areas: Sumo-Mayagna, Miskito and Creole. In the Atlántico Norte Autonomous Region (RAAN) they are located in the municipalities of Waspam, Puerto Cabezas, Siuna, Bonanza and Prinzapolka. In the Atlántico Sur Autonomous Region (RAAS) PEBI is in use in the municipalities of Corn Island, Bluefields, Laguna de Perlas and Desembocadura. While official PEBI support is recent, bilingual intercultural education has been vital to the recovery and strengthening of indigenous languages and culture, which constitute part of the heritage of mankind.⁴⁸

General Education Act (Act No. 582)

236. As a result of a protracted process of revision and consensus, Nicaragua now has a General Education Act (Act No. 582), published in La Gaceta, No. 150, of 3 August 2006, and enshrining the constitutional principle of the basic rights of the indigenous peoples and ethnic communities of the Caribbean Coast such as the right to intercultural education in their mother tongue and the study of Spanish as the national language.

237. Article 4, subparagraph (i), of the General Education Act provides for:

“Comprehensive education of the children, adolescents, men and women of the Caribbean Coast at all levels of the education system, and respect, recovery and strengthening of the various ethnic, cultural and linguistic identities, in accordance with the principles set forth in our Political Constitution.”

⁴⁷ UNDP, *op. cit* (footnote 12 above), pp. 71-72.

⁴⁸ *Idem*.

238. Similarly, article 5 provides for:

“The development among Nicaraguans of moral, ethical, scientific and humanist awareness; development of their personality with dignity; and their preparation for assuming the tasks required for the development of a multi-ethnic nation.”

239. For the education of the autonomous regions of the Atlantic Coast, Act No. 582 recognizes the Regional Autonomous Education System (SEAR) for the Nicaraguan Caribbean coast as an integral subsystem within the National Education System which organizes, directs and manages education in the municipalities and communities of the autonomous regions, thereby consolidating by law the process of territorial decentralization relating to education and public administration, pursuant to Act No. 28.

240. The Atlantic Coast has special education schools. The Maureen Courtney School in Puerto Cabezas provides education for pupils in various areas: hearing disability and intellectual deficiency, as well as vocational training workshops covering crafts, sewing, confectionery and carpentry. The Aaron Hodgson School in Bluefields covers the areas of intellectual, visual, hearing and motor deficiency; it also has vocational training workshops for crafts and sewing. Both these schools use the basic education curriculum and adjust it to the students' educational context and individual characteristics.⁴⁹

241. In the period between 2000 and 2003 the Directorate of Secondary Education of MECD, with OAS support, founded three secondary schools in the Miskito communities of Río Coco at San Andrés de Bocay, Raití and Walakitan.

242. With regard to special education, 5,000 posters in Creole, Miskito, sign language and Braille were prepared and distributed in the country's 16 departments in order to reinforce inclusive education within the community.

243. Basic education for young people and adults is currently being developed with a bilingual intercultural approach in Rosita, Bonanza, Prinzapolka, Alamikamba and communities in the RAAN. Classes are given in the Miskito and Mayagna languages.

244. The Government of National Reconciliation and Unity is endeavouring to reduce the illiteracy rate on the Caribbean Coast through the committee for coordination of the literacy programme being promoted by MINED, in coordination with URACCAN and other local organizations. These institutions are implementing the Yo, sí puedo (Yes, I can) programme in order to reduce illiteracy both along the Atlantic Coast and nationally.

Higher education

245. Higher education in the autonomous regions of the Nicaraguan Caribbean coast has made significant progress, thus strengthening the autonomy process. This progress is manifest in the existence of two higher education establishments: URACCAN and BICU. These universities have campuses in various municipalities of the Atlantic region, such as Corn Island, Rama City, Nueva Guinea, Siuma and Bilwi.

⁴⁹ Information furnished by the Ministry of Education (MINED), Managua, October 2006.

Act on Allocation of the University Budget and inclusion of Bluefields and Indians
Caribbean University and the University of the Regions of the Nicaraguan Caribbean Coast
in the Act on Autonomy of Higher Education Institutions (Act No. 218)

246. In this connection BICU and URACCAN Universities receive a share of an annual budget of six % of the General Budget of the Republic, a right granted under Act No. 218 and in article 125 of the Political Constitution, which establishes that:

“The universities and centres of higher technical education which by law must be financed by the State shall receive an annual allocation of six % of the General Budget of the Republic, which shall be distributed in accordance with the law. The State shall award additional allocations for the extraordinary expenditure of those universities and centres of higher technical education.”

247. BICU and URACCAN contribute to the vocational and scientific training of the Coastal society, tap and strengthen skilled regional human capital and have become necessary institutional reference points in the social, economic, cultural and political dynamic of both regions making for economic, social and community integration.⁵⁰

248. The training and professionalization of primary and secondary school teachers at the regional universities have generated a process of curricular change at the pre-school, primary and secondary levels, which strengthens the intercultural educational capacities of both regions of Nicaragua’s Caribbean area.

249. BICU and URACCAN play a strategic role not only in higher and vocational education in different subjects, but also as partners of the regional governments by helping with the formulation of work documents, draft laws, consultative processes and so on.

250. In this connection, the establishment of BICU and URACCAN has made a significant contribution to the creation of an area for the organization of young people. They have also helped incorporate the subject of youth into the plans of some civil society organizations in both autonomous regions, such as the Centre for Human Rights and Rights of Citizens and Autonomous Groups (CEDEHCA).

251. These two universities, together with CEDEHCA, have developed coordinated action to promote the organization of young people and to facilitate the establishment of important areas of dialogue for decision-making in order to augment the input capacities of the young people of Nicaragua’s Caribbean Coast.⁵¹

252. Some of the results of these endeavours are: student governments at the BICU and URACCAN universities, the Youth Setting New Horizons movement (JENH-CEDEHCA) and the Regional Councils of Autonomous Youth of the RAAN and RAAS. These youth organizations comprise over 800 young people from the Coast belonging to various indigenous peoples and ethnic communities of the municipalities of both autonomous regions.

⁵⁰ UNDP, op. cit (above), p. 78.

⁵¹ Ibid. p. 142.

Projects and Programmes of the Centre for Human Rights and Rights of Citizens and Autonomous Groups and the Foundation for the Autonomy and Development of the Atlantic Coast of Nicaragua

253. The main projects and programmes carried out by non-governmental organizations, such as the Centre for Human Rights and Rights of Citizens and Autonomous Groups (CEDEHCA) and the Foundation for the Autonomy and Development of the Atlantic Coast of Nicaragua (FADCANIC), in coordination with the Regional Council of the RAAS, working to eradicate the social marginalization of the indigenous inhabitants and ethnic communities, especially in the area of education for children and adolescents, are as follows:

Centre for Human Rights and Rights of Citizens and Autonomous Groups (CEDEHCA)

2002	Save the Children. Preparation of the multi-ethnic education curriculum on the rights of the child.
2004	Save the Children: start-up of preparation of teaching guides on the rights of children and adolescents in the autonomous regions. In addition, human rights were promoted in primary schools in the following languages: Miskito, Creole, Mayagna, Garifuna and Spanish. Work was also done on teachers' manuals in Spanish, prepared during the first phase of the project.
2005	Study for validation and revision by experts in the subject with a focus on the rights of children and adolescents, an intercultural autonomy and gender perspective, as well as preparation of methodology designs and validation instruments in the training plan for teachers, principals and municipal and regional technicians.
2006	Training for teachers, principals, and municipal and regional technicians. Adjustments to the translation, illustrations and diagrams in the final version of the learning guide and teaching guides.
2007	Regional Education Programme in Human Rights and Rights of Autonomous Groups (PREDHA). This is intended for human rights facilitators, spokespersons and disseminators, as well as representatives of public institutions and members of national and international non-governmental organizations involved in the promotion and protection of the human rights of the autonomous groups of the Caribbean Coast.

Foundation for the Autonomy and Development of the Atlantic Coast of Nicaragua (FADCANI(C))

1992/2007	Strengthening of pre-school education in the municipality of Laguna de Perlas and Desembocadura de la Cruz de Río Grande, financed by HORIZONTE 3000.
1997/2007	Education programme of professionalization courses for pupil teachers in seven municipalities of the RAAS, with a view to raising the level of professionalization of classroom teachers.
2003	Strengthening of pre-school and primary education in the municipality of Laguna de Perlas for the validation of the bilingual intercultural education: a 3-year programme
2006	The MINED-USAID "Excelencia" project for promoting educational change in the autonomous regions, following the SEAR subsystem principle.

254. Throughout the 10 years of assistance to the communities and peoples of the autonomous regions, the FADCANIC programmes have helped strengthen the following aspects of autonomy:

(a) Training of the human resources support which autonomy requires through the establishment of the first higher education centre in the history of Nicaragua's Caribbean Coast, the University of the Autonomous Regions of the Caribbean Coast of Nicaragua (URACCAN);

(b) Greater equity in early access to education through the establishment of communal pre-school centres, in which poor Miskito, Garifuna, Creole, Rama, Mayagna and Mestizo children have the opportunity to study and learn within the framework of a curriculum that takes account of the sociocultural reality of their environment;

(c) Improving the quality of the learning/teaching process on the Caribbean coast of Nicaragua through the training of rural teachers;

(d) Alternatives for healthy coexistence and recreation for children and adolescents, through the promotion of cultural and sports activities.

12. The right to a name and a nationality

255. The Political Constitution establishes, in its articles 16 and 17, that Nicaraguan nationality may be acquired by birth or naturalization. Persons born in Central America have the right to opt for Nicaraguan nationality without the need to renounce their nationality of origin and may apply for it to the competent authority when they reside in Nicaragua. By the same token, article 20 establishes that "No national may be deprived of his or her nationality. The status of Nicaraguan national shall not be lost as a result of acquisition of another nationality."

256. In the case of an alien wishing to obtain or apply for Nicaraguan nationality, article 7 of the Nationality Act establishes that aliens may be naturalized, once they have renounced their nationality, on application to the competent authority and having met certain requirements.

257. Nicaragua, a State party to the International Convention on the Rights of the Child, has undertaken to do all in its power to promote the effective implementation of that Convention. To this end all sectors of society are called upon to redouble their efforts to bring about the genuine exercise of the rights of children and young people in Nicaragua and to do their utmost to increase its coverage and impact.

258. Articles 1 to 7 of the Convention on the Rights of the Child provide that a child means every human being below the age of eighteen years and that the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know his or her parents.

259. In Nicaragua the Code of Children and Adolescents, approved by the National Assembly of the Nicaraguan State on 12 May 1998 by Act No. 287, reproduces the content of the Convention and establishes, in article 2, that:

"All human beings who have not reached the age of 13 years are considered to be children, and those between the ages of 13 and 18 are considered to be adolescents".

260. The Code of Children and Adolescents also establishes in its article 13 that:

“Children shall have from birth the right to nationality, to their own name, to know their parents and to be cared for by them. The State shall respect the right of children and adolescents to preserve their identity, including their nationality and name, and may never be deprived of their own identity. Therefore, the births of children shall be registered within the time frames established by law”.

261 The construction of identity, personality development and the building of self-esteem start from birth with the acquisition of a name, a family and a community to which one belongs for the rest of one’s life.

262. National and international organizations jointly conducted a situation diagnosis on the under-registration of children in the RAAN in 2000 and 2001 and in the RAAS in 2006, in order to promote a programme for children and adolescents to recover their right to a name and nationality.

263. This programme was carried out in Bonanza in 2004 with the registration of 3,495 children. The same registration process was initiated in Rosita in 2005, with the registration of 7,175 children. In that same year 11,956 children and adolescents were registered in Puerto Cabezas. The programme was implemented by CEDEHCA, funded in three stages by Save the Children Canada and supported by UNICEF in the final stage.

264. The programme was executed by Acción Médica Cristiana in the municipality of Prinzapolka with the registration of 8,776 children and adolescents, financed by UNICEF.

265. In 2006 the programme was initiated in the municipality of Waspam (Río Coco) with the registration of 22,365 children and adolescents. It was implemented by CEDEHCA and financed by Save the Children Canada, UNICEF and Plan International.

266. The experience acquired by Save the Children Canada in the implementation of the programme entitled “Children’s right to a name and nationality” in six municipalities of the RAAN between 2001 and 2005 permitted restoration of this right to over 96,000 children and adolescents, facilitated the adjustment and improvement of child registration procedures, generated lessons learned and, in particular, helped to raise the awareness of society as a whole of the scale of the problem on Nicaragua’s Caribbean Coast.

267. In 2006 this experience motivated the start-up of a process of consultation with institutions, organizations and civil society in the RAAS. To that end a situation diagnosis was conducted in 12 municipalities in order to generate viable responses to the vulnerability of this right of children in the region. In addition to the above, this need was also evidenced by:

- (a) The high rate of non-registration of children in the area;
- (b) The request by parents, guardians and community leaders for support in administering records, registration and delivery of legal papers for confirming their rights as citizens;

(c) The readiness of the Supreme Electoral Council at the national and regional, levels and of municipalities, NGOs and religious denominations to support the execution of this programme in each municipality.

D. Article 6

1. Creation of the Office of Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities

268. Act No. 212 empowers the Human Rights Ombudsman to create special human rights procurators' offices, including that of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities. An office of this kind exists in each autonomous region, one in Bluefields and the other in Puerto Cabezas, with competence and jurisdiction over all the territory of their respective regions.

269. The Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities plays a fundamental role in strengthening the rights of the indigenous and ethnic peoples of the RAAS and RAAN. Efforts have been made to recruit and train volunteer community promoters in human rights in general, with emphasis on the human rights of indigenous peoples. The task of these volunteers is to ensure respect for and defence and promotion of human rights in their communities. They also receive complaints and, as far as they are able, settle disputes through mediation in the first instance or by referral to the appropriate bodies (single-judge local court or the competent dispute-settlement institution).

270. Despite the fundamental role played by the Office of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities in both regions, it is very difficult for it to operate in the Caribbean communities. One reason is that the offices do not have their own transport to make regular visits to remote indigenous populations and ethnic communities far from the regional capitals of the Caribbean autonomous regions. One way of resolving this problem is to coordinate visits to those communities with visits by other institutions and organizations when they travel to the area or locality. This would allow them to visit and inspect the performance of the human rights promoters working in the communities and those who are working together with the Office of the Procurator. The ethnic communities and indigenous peoples are often informed of the Procurator's visit by radio so that they can prepare themselves to be heard by him

271. The population complains about court proceedings relating to cases still pending judicial settlement or to anonymous complaints. Although a great deal of work has been put into the promotion and dissemination of the Ombudsman Act through radio programmes and in the print press, it has been quite difficult to impress upon the population that the Office of the Procurator cannot intervene in cases that fall outside its competence, since it is neither an administrator of justice nor a legal firm.⁵²

272. Once the Criminal Code is approved, the inhabitants of the indigenous and ethnic communities will be able to take their complaints of racial discrimination to the courts of justice.

⁵² Jambrina Rodríguez, *op. cit* (footnote 28 above), p. 52.

273. In 2005, according to information supplied by the PDDH, 2,425 complaints of human rights violations were lodged in the RAAS, 1,018 of them relating to cases among private parties (41 %) in which the Office of the Procurator is not competent to intervene, and 1,407 relating to violations by the public administration (58.1 %).⁵³

274. Meanwhile, the number of rulings by the Office of the Procurator increased from 122 in 2004 to 1,029 in 2005. The total number of cases of human rights violations considered was 124; 288 findings reported no violation whatever, while 617 provided guidance in cases of disputes between private individuals. These figures continue to be very low for a Procurator's office when compared with those of Procurators in other countries in the region.⁵⁴

275. However, the autonomous regions have the highest complaint rates of all the country's constituencies with the exception of Managua.

PDDH complaints, 2005			
Constituency	Complaints	Population	Complaints per 100,000 inhabitants
RAAN	50	249,716	0.91
RAAS	47	382,079	0.85
Managua	1,660	1,380,339	30.27

Source: Jambrina Rodríguez, Fernando. *Hacia un Modelo Pluralista de Administración de Justicia en las Regiones Autónomas de la Costa Caribe de Nicaragua* (Towards a pluralist model for the administration of justice in the autonomous regions of Nicaragua's Caribbean Coast).

276. In order to protect the supremacy of the Constitution, individual members of indigenous communities, through their traditional communal representatives, may bring an action of unconstitutionality against the adoption of any law that violates their constitutional rights or any instrument, decision, act or omission by a public official, or his or her agents, which violates or attempts to violate their rights.

277. Article 18 of the Autonomy Statute establishes that:

“The administration of justice in the autonomous regions shall be governed by special regulations reflecting the special cultural characteristics of the communities of the Atlantic Coast, in accordance with the Political Constitution of Nicaragua.”

278. The special regulations referred to in the preceding paragraph clearly refer to those peoples' customary law. In this regard the Organic Act on the Judiciary (Act. No. 260) establishes that the judiciary shall respect, promote and guarantee the autonomy regime of the autonomous regions and that local civil magistrates must coordinate the administration of justice

⁵³ Idem.

⁵⁴ Idem.

with the judges elected by the communities of the Atlantic Coast, once they have created the special regulations.

279. Article 181 of the Political Constitution declares that:

“The State shall organize, through an Act, the system of autonomy for the indigenous peoples and ethnic communities of the Atlantic Coast, which must contain, among other rules, the powers of their organs of government, its relationship to the Executive branch and the legislature and to the municipalities, and the exercise of their rights. For its approval and amendment this Act shall require the majority established for the amendment of constitutional laws.

Concessions and contracts for the rational exploitation of natural resources granted by the State in the autonomous regions of the Atlantic Coast must be approved by the appropriate autonomous regional council.

The members of the autonomous regional councils of the Atlantic Coast may lose their status for reasons, and in accordance with procedures, established by law.”

280. Accordingly, article 181 of the Political Constitution has been the subject of case law relating to an administrative amparo petition decided on favourably in the Supreme Court of Justice in a ruling of 27 February 1997. The Supreme Court of Justice of Nicaragua ruled on the case, in which two members of the autonomous regional council of the RAAN sought the administrative remedy of amparo on the ground that article 181 had been breached when the Ministry of the Environment and Natural Resources (MARENA) awarded a concession to the Korean firm Sol del Caribe S.A. (SOLCARSA).

281. The concession was awarded by the Minister of the Environment and Natural Resources on the basis of an endorsement signed by the members of the Executive Board of the Autonomous Regional Council and the Regional Coordinator of the RAAN, without any discussion or approval of the award by the full regional council.

282. The plaintiffs alleged that their rights as members of the regional council and those of their representatives had been violated by the Minister of the Environment and Natural Resources when he interpreted the endorsement as the approval required by article 181, since such approval could only be granted by the full council following discussion and a vote in plenary. Hence, the Executive Board of the Council and the Regional Coordinator did not have the power to grant approval; in so doing they would be exercising powers granted not to them but to the full Council. The Court accepted the plaintiffs’ argument, allowing the amparo petition, and on 16 February 1998 the Minister, in an unprecedented act, annulled to the concession contract earlier awarded to SOLCARSA.

283. Similarly, in ruling 123 of the Supreme Court of Justice (CSJ) of 13 June 2000, an *amparo* petition filed by the indigenous community of Rama Cay was also approved. The remedy had been sought against the Regional Delegate of the Nicaraguan Agrarian Reform Institute, who was accused of ordering and encouraging the invasion of community land by a group of persons

demobilized from the Nicaraguan Resistance, who entered the area carrying weapons, raiding and attempting to take over an area of 500 blocks⁵⁵.

284. The CSJ allowed the amparo petition, basing its ruling on the aforementioned articles 5, 89 and 180 of the Political Constitution and on article 3656 of Act No. 28, which guarantees that communal land is exclusive and perennial and may not be confiscated.

285. In the same way, in its ruling 101 of 26 August 2004 the CSJ allowed an amparo petition filed by the indigenous community of Sébaco against its municipal government for calling and holding elections in application of the Decree of 11 March 1952, without consultation of the indigenous authorities. The CSJ declared the aforementioned decree null and void on the ground of its unconstitutionality, considering that the granting of powers to municipal governments to call and organize elections to the executive boards of the indigenous communities breaches the aforementioned article 5, paragraph 3, of the Political Constitution.

286. In this connection the CSJ upheld the validity of the statutes of the indigenous communities as the instrument governing their internal functioning and confirmed the obligation of municipal governments to take into account the indigenous communities existing in their territories and to include them in municipal development plans and programmes⁵⁷.

287. With that ruling the CSJ upholds the historic rights of the indigenous peoples, stipulating that the municipal governments have no powers to interfere in the internal affairs of the indigenous communities and, in particular, in the appointment of their authorities.

2. The right to land

288. Land disputes are settled under Act No. 445, the purpose of which is to regulate the system of communal ownership of land by the indigenous and ethnic communities of the Atlantic Coast and the basins of the Coco, Bocay, Indio and Maíz rivers.

289. In this connection article 89, paragraph 3, of the Political Constitution establishes the following:

“The State recognizes the communal forms of ownership of land of the communities of the Atlantic Coast. It also recognizes their enjoyment, use and benefit of the waters and forests of their communal lands.”

290. The indigenous peoples and ethnic communities of the Caribbean Coast may avail themselves of the administrative remedy when they deem their land rights to have been violated.

291. Article 60 of Act No. 445 establishes the following:

⁵⁵ Mairena Ruiz, *op. cit.* (footnote 30 above), p. 69.

⁵⁶ Article 36 of Act No. 28: Communal property consists of land, water and forests that have traditionally belonged to the Atlantic Coast communities.

⁵⁷ Mairena Ruiz, *op. cit.* (footnote 30 above), p. 69.

“The administrative remedies established in articles 39 to 45 of Act No. 290 (Act on Organization, Competence and Procedures of the Executive Branch) may be invoked by the communal and territorial authorities or any other citizen who deems his or her rights to have been violated in connection with the demarcation and titling process.”

292. Similarly, article 61 of Act No. 445 states that:

“Once the administrative remedy has been exhausted, in accordance with the proceeding established for that purpose in Act No. 290, citizens may resort to amparo, in accordance with the amparo Act in force, since the indigenous peoples’ rights to land are constitutional rights.”

293. The Government of Nicaragua, with the support of the International Development Association of the World Bank, has been executing a land administration project aimed at a substantial improvement of security of ownership for the country’s small and medium-sized producers.

294. The purpose of the Land Administration Project (PRODEP) is to improve security of land tenure; to that end, one of its intermediate objectives is to introduce elements of social justice, focusing on the most vulnerable groups, especially the indigenous communities.

295. Another of the project’s aims is to enhance security of land tenure through the technical implementation of activities relating to planning; methodology development; measures to improve the law; and analysis of disputes that arise in the lands of the indigenous communities of the Pacific, central and northern regions, specifically those located in the departments of Chinandega, Estelí, Madriz and León.

3. Regulations of the Organic Act on the Judiciary

296. The Regulations of the Organic Act on the Judiciary (LOPJ)⁵⁸ establish that, for the election of the judges in the autonomous regions, Jinotega and Nueva Segovia, preference would be given to members of the judiciary with knowledge of the languages of the indigenous and ethnic communities of the Atlantic Coast of Nicaragua.

297. Similarly, article 62 of the LOPJ establishes that:

“The administration of justice in the autonomous regions ‘shall be governed also by special regulations which reflect the special cultural characteristics of their communities, opening the door to recognition of the ancestral customary cultural reality of the indigenous populations in the administration of justice by the State.”

298. In its turn, article 226 of the LOPJ states that:

“In each of the autonomous regions of the Atlantic Coast, on the proposal of their judicial officials and with the participation of the other State and civil society institutions, task

⁵⁸ The LOPJ was approved on 14 May 1999 and published in *La Gaceta*, No. 104, of 2 June 1999.

forces shall be set up which, following a study to determine the nature, objectives and functions of the communal or community judges, shall formulate proposals for special regulations for imparting justice in those regions, which must be submitted to the Supreme Court of Justice.”

299. It should be pointed out that article 19 of the Act on Official Use of the Languages of the Communities of the Atlantic Coast of Nicaragua (Act No. 162) stipulates that:

“The judicial proceedings conducted, and the documents submitted, in the official language of an Atlantic Coast community, shall be fully valid and effective without the need for translation into Spanish. They shall automatically be translated when they give rise to consequences outside the jurisdiction of the judicial organs established in the autonomous region, unless the consequences occur in the other autonomous region whose own official languages are the same.”

300. It is important to mention that in Nicaragua’s indigenous communities there are traditional authorities elected by the community itself at communal assemblies; these authorities are responsible for communal government. Accordingly, the Political Constitution, the Autonomy Statute and the Municipalities Act recognize the existence of traditional authorities in the indigenous communities.

301. The Judge (or *Wihta Tara*) is the highest community authority and representative and is responsible for law and order and for meting out justice on the basis of his or her experience and knowledge. Each community also has a Council of Elders composed of those senior leaders who are able to provide guidance through their experience, customs and knowledge.

302. The autonomous regions also have a trustee, elected by the community to represent their interests and safeguard their natural resources. The trustee is also the repository of the community’s real estate deeds, documents and seals. For this reason elected trustees are always leaders with wide experience and knowledge of community affairs.

303. Thus in the indigenous communities of the Atlantic coast of Nicaragua adult members form community assemblies and by consensus appoint and remove their communal authorities, who are, for the most part, elected, not for fixed terms, but for indefinite periods depending on the community’s needs and circumstances. The communities do not generally keep records, but the mutual commitment of the elected person and the electorate makes for the validity and sound respect for the election.

304. In the Atlantic Coast communities some decisions regarding justice are taken in the assembly, in which the community itself decides what is to be done. For instance, if someone has broken the law, the community rules on the case. A person may be punished up to twice for the same offence if he or she reoffends: if the offender is tried under Western justice he or she would be punished under the national laws, and on return to the community the person would again be punished under community law.

E. Article 7

305. In order to relieve inter-ethnic tensions among the indigenous communities, URACCAN is promoting the building-up of intercultural relations among the indigenous and ethnic communities of the Atlantic Coast. Similarly, URACCAN has embarked on the dissemination of the history of each of the different cultural groups through lectures on the subject of racial discrimination. The University has included study programmes that promote the rights of the indigenous people in the range of courses it offers.

306. Likewise, the local URACCAN channel, which has wide coverage in the RAAN and provides space for reflection and discussion, broadcasts documentaries on the fight against racial discrimination. In addition, Radio Caribe broadcasts a TINNISKA programme that also addresses topics relating to discrimination.

307. Another radio channel that deals with the subject of discrimination is a programme run by CEDEHCA. Visión Costeña also deals with topics that promote the rights of the indigenous people and ethnic communities in local radio programmes in the RAAS and RAAN.

308. In addition to programmes run by organizations working involved in gender equity, such as Gaviota and the Centre for Justice and Human Rights of the Atlantic Coast of Nicaragua (CEJUDHCAN), there is another important radio and television programme for the promotion of the rights of multi-ethnic women. It is run by the Information Centre for Multi-Ethnic Women (CEIMM) in URACCAN, which disseminates it in the region's various languages.

309. Educational change has been taking place in the schools of the Atlantic Coast region since 2000. It covers pre-school and primary education and teacher training, and since 2005 it has included secondary and adult education. It is conducted by ethnic community leaders under the direction of the local authorities.

310. This means that Nicaragua will become one of the few countries of Latin America to have a mother-tongue education system and to promote the human rights of members of the indigenous peoples and ethnic communities (which is an expression of racial non-discrimination) for the exercise of their rights regarding the preservation, dissemination and promotion of culture and, eventually, development, since language or idiom is in the majority of cases associated with race. In this regard consideration has been given to the provisions of the Political Constitution of the Republic, the Autonomy Statute, the Languages Act and the Regional Autonomous Education System, which provide legal and institutional support.

311. MINED has earmarked substantial budgetary allocations under the headings of training in bilingual intercultural education (EIB), preparation and printing of textbooks and educational material in the vernacular languages, monitoring, and national and foreign special technical assistance, infrastructure, etc.

312. To this end Government agreements have been signed with a view to securing the necessary financing, either in the form of grants or where necessary through loans. These include:

- (a) Terra Nuova project – Italy (1992-1006)
- (b) FOREIBA – Finland (2000-2004)
- (c) APRENDE - World Bank (2000-2004)

- (d) BASE II - USAID (2000-2005)
(e) FOSED - European Union (2001-2006)

1. Training for specialists in bilingual intercultural education

313. In November 2005 the technical staff of Excelencia (USAID) provided training for specialists in bilingual intercultural education assigned to FADCANIC for the development of EIB materials. The training course was also attended by all the education authorities of the two autonomous regions of the Caribbean Coast in order to fix the guidelines for the production of those materials.

314. A total of 24 persons (13 men and 11 women), comprising technicians from FADCANIC and regional authorities, received this training in Managua.

315. The following is a list of the schools served by FADCANIC in the autonomous regions:

Region and municipalities	Multigrade	Bilingual multigrade	Regular	Bilingual regular	TOTAL
RAAN	11	19	8	18	56
Bonanza	1	7	0	1	9
Prinzapolka		4	0	2	6
Puerto Cabezas		2	1	8	11
Rosita	5	4	1	2	12
Siuna	4		6		10
Waslala*					
Waspam	1	2	0	5	8
RAAS	10	3	12	10	35
Bluefields	3		8	2	13
Corn Island				2	2
Desembocadura De Rio Grande		1	1	2	4
El Rama**					
Kukrahill	5		2		7
Laguna De Perlas	2	2	1	4	9
Muelle De Los Bueyes **					
Nueva Guinea **					
Total	21	22	20	38	91
(*) The schools in the municipality of Waslala in the RAAN are served directly by the Excelencia project.					
(*) The schools in the municipality of Waslala in the RAAN are served directly by the Excelencia project.					
(**) The schools in these municipalities in the RAAS are served directly by the Excelencia project.					

Source: FADCANIC, Dec. 2006

316. In October 2005 FADCANIC conducted a series of training workshops for the participants in the design of bilingual intercultural educational materials in the autonomous regions of the Caribbean Coast. The aim of the workshops was to establish the methodological and technical guidelines for the preparation of EIB materials.

317. The following activities have been guaranteed with support from the European Union:

(a) Formulation of the curricula of the fifth and sixth grades of bilingual intercultural education;

(b) Start-up of the syllabus validation process and the first batch of text books for the fifth grade of bilingual intercultural primary education in the Mining, Waspam and Prinzapolka sectors;

(c) Execution and follow-up of the professionalization and higher technical courses in bilingual intercultural education for graduate and pupil teachers in the Mining, Waspam and Prinzapolka sectors;

(d) Training in the new fifth-grade curriculum for teachers of bilingual intercultural education in the Miskito, Mayagna and Creole PEBIs.

318. With the support of the Grand Duchy of Luxembourg two teacher-training colleges were built in the autonomous regions (RAAN and RAAS). They currently serve as training centres for teachers in bilingual intercultural education.

319. From the point of view of participation and the right to discharge public and decision-making functions, the functions of Coordinator of the Education Commission of the Regional Council, Director of the Education Secretariat of the Regional Government, departmental and regional delegates of the MECD and principals of the bilingual schools are performed by professionals originating in the ethnic communities of the autonomous regions.

320. With a view to achieving sustainability, development and strengthening of bilingual education in the various ethno-linguistic zones, there has been encouragement of activities such as: replacement of old schools by new ones; professionalization of pupil teachers and further training of serving teachers; supply of materials to schools, teachers and pupils; construction and equipment of learning resource centres; construction and equipment of premises for the MECD offices; and provision of water and land transport to the MECD offices and the bilingual programme.

321. Given that a large number of adults from the various communities, ethnic groups and indigenous peoples have not previously had the opportunity to begin and pursue their studies, equip themselves for work or receive training, impetus is currently being given to a bilingual vocational training and education programme for adults in the various localities of the autonomous regions of Nicaragua, which will help reduce illiteracy and raise the levels of school attendance and integration into the world of work for adults participating in the programme. This programme is being promoted in coordination with the National Technology Institute (INATEC).

322. This all goes hand in hand with secondary distance learning and education by radio, and the various communities of the country, from which no ethnic groups are excluded, are being given universal access to information through technology and communication (educational technology centres).

2. The right to culture

323. The population of the autonomous regions of the Atlantic Coast of Nicaragua is known for its cultural diversity. The territory is home to various different indigenous peoples, people of African descent and ethnic communities, all with their own history, language and culture, which distinguish them from one another and from the rest of the Nicaraguan population.

324. The languages of the indigenous peoples and ethnic communities of the Nicaraguan Caribbean Coast are key elements of their cultural legacy and, hence, of the cultural heritage of Nicaragua as a multi-ethnic and multilingual society. The Atlantic Coast communities have the right to preserve and develop their cultural identities within national unity, adopt their own forms of social organization and administer their local affairs in accordance with their traditions.

325. Article 90 of the Political Constitution of Nicaragua establishes that:

“The communities of the Atlantic Coast have the right of free expression and preservation of their languages, art and culture. The development of their culture and values enriches the national culture. The State shall create special programmes for the exercise of those rights.”

326. In this connection provisions have been enacted for maintaining and developing the cultural identity of the indigenous peoples and ethnic communities of the Atlantic Coast; they include Decree-Law No. 61 of 25 November 1980, the Act on Language Education on the Atlantic Coast, which is the first Act authorizing instruction in the Miskito language and English in schools in the area occupied by those indigenous and Creole communities of the Caribbean Coast, and requiring the Ministry of Education to plan, regulate, coordinate and evaluate the instruction authorized. Also, the Ministry of Culture (today the Nicaraguan Cultural Institute, or INC), in collaboration with the Ministry of Education and the then Nicaraguan Institute of the Atlantic Coast, is called upon to establish programmes for the preservation, revival and promotion of the Miskito, Suma, Rama and Creole cultures and other cultures that still survive⁵⁹.

Act on Official Use of the Languages of the Communities of the Atlantic Coast (Act No. 162)⁶⁰

327. Act No.162 establishes that Spanish is the official language of the State but that the languages of the Atlantic Coast communities shall be used officially in the Atlantic autonomous regions.

⁵⁹ Information provided by the Presidential Secretariat for Atlantic Coast Affairs.

⁶⁰ On 22 June 1993 Act No. 162 was adopted and was published in *La Gaceta*, No. 132, of 15 July 1996.

328. Similarly, the Act covers very broad areas and is fairly ambitious in its content, although its application has not as yet been greatly developed. Act No. 162 stipulates that, in addition to Spanish, the languages of the Atlantic Coast communities shall also have official status and that those communities have the right in their region to intercultural education in their mother tongue in the situations enumerated in the Act.⁶¹

329. The languages of the Atlantic Coast communities are English, Creole, Garifuna, Miskito, Rama and Sumo (Mayagna), which are the mother tongues of the members of those communities and widely used in the region. However, the Act also establishes that the Miskito and Mayagna communities of the departments of Jinotega and Nueva Segovia shall enjoy the rights established therein.⁶²

330. According to article 91 of the Political Constitution of Nicaragua:

“The State has the obligation to enact laws designed to promote measures that ensure that no Nicaraguan is subjected to discrimination because of language, culture or origin.”

331. In 2004 and 2005 the INC provided technical assistance for developing a project to inventory the country’s intangible heritage, including the languages of the Atlantic Coast indigenous communities, as well as the cultural expressions, dances and theatre of the entire country. This project was implemented by the Nicaraguan National Commission for UNESCO with funding from UNESCO.

332. In 2005, on the basis of this inventory and under UNESCO auspices, the INC carried out a study of the language, dance, cultural expression and other aspects of the Garifuna culture in order to determine how it could be revived and promoted.

333. At the same time work has been proceeding since 2001 on training in techniques for improving the treatment of ceramics by indigenous groups in different parts of the country, with the aid of training workshops for the improvement of ceramics and handicrafts for artisans in Mosonte, San Fernando, La Paz Centro, San Juan de Oriente, San Ramón in Matagalpa, Ocotal, Loma Panda in Ocotal and Ducualí in Estelí. These workshops were supported by the various municipal councils. Since 2001 the same method has been used to develop workshops for training folklore groups in the various regions of the country and among different indigenous peoples with a view to preserving and promoting their cultural identities.

⁶¹ Art. 4: “The Miskito, Creole, Sumo, Garifuna and Rama languages are official languages in the Autonomous Regions of the Atlantic Coast.”

Art. 6: “The State shall establish programmes for the preservation, recovery and promotion of the Miskito, Sumo, Rama, Creole and Garifuna cultures. It shall do the same for any other indigenous culture still existing in the country and shall study the feasibility of education in those mother tongues in the future.”

⁶² CALPI, *op. cit.* (see footnote 10 above), p. 26.

Decree No. 37-2006: “National Garifuna Day”

334. In addition, as a means of guaranteeing the exercise of the right of the communities of Nicaragua’s Atlantic Coast to culture, ethnic pluralism and recognition of the indigenous peoples and their right to preserve and develop their identity and culture, pursuant to articles 5, 11, 90 and 180 of the Political Constitution and to the Universal Declaration of the United Nations Educational, Scientific and Cultural Organization (UNESCO) of 2 November 2001, the Executive branch issued Decree No. 37-2006, published in La Gaceta, No. 122, of 23 June 2006, declaring 19 November each year as “National Garifuna Day” in order to disseminate among Nicaraguans the expression and preservation of the language, art, culture and values of the Garifuna people of Nicaragua.

335. In this regard, as a means of promoting culture, Nicaragua organized a Presidential Summit, entitled “First Garifuna Summit”, and held on Corn Island from 11 to 13 November 2005. The Summit was attended by renowned representatives of the Garifuna culture of Belize, Guatemala, Honduras, Saint Vincent and the Grenadines, Dominica, Guyana and Nicaragua.

V. CONCLUSIONS AND PROJECTIONS OF THE GOVERNMENT OF NATIONAL RECONCILIATION AND UNITY

336. The State of Nicaragua has adopted a series of legislative measures and decrees to give effect to the International Convention on the Elimination of All Forms of Racial Discrimination.

337. Over the past 10 years significant laws and administrative rules have been approved in favour of the indigenous peoples and ethnic communities of the Caribbean Coast. They include: Act on Official Use of the Languages of the Communities of the Atlantic Coast; Regulations pertaining to the Autonomy Statute of the two Regions of the Atlantic Coast of Nicaragua; Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio and Maíz Rivers; Decree creating the Council of the Caribbean Coast; Decree introducing National Garifuna Day (19 November of each year).

338. Other general laws have been promulgated during the past 10 years; they contain special provisions for the protection of the rights of indigenous peoples, such as: Citizen Participation Act; General Education Act; Code of Children and Adolescents; General Act on Environment and Natural Resources; Act on the Promotion of Integral Development of Youth; and General Health Act.

339. There has been nationwide progress on communal property rights for the indigenous peoples of the Pacific, central and northern regions of Nicaragua, but no special laws on their behalf have been adopted. However, currently before the First Secretariat of the National Assembly there is the draft Act on the Indigenous Peoples of the Pacific, Central and Northern Regions of Nicaragua, which, in view of the sensitive nature of the subject-matter, needs to go through a process of consultation with all sectors so that the most appropriate decisions can be taken. In this connection Nicaragua has reaffirmed its determination to guarantee the rights of the indigenous peoples and to be in the vanguard of the countries that have made the most progress in establishing laws on indigenous rights.

340. Despite the limitations in law on the protection of refugees, Nicaragua reiterates its firm determination to strengthen national systems, protection mechanisms and its quest for lasting solutions for refugees. To this end Nicaragua has concluded the preparation of the Refugees Act, which is currently undergoing a process of analysis and consultation by the legislature.

341. In order to resolve the problems and difficulties relating to migration, the Government of Nicaragua has taken steps, together with other countries, to formulate agreements, arrangements, laws and migration amnesties, linked to political and economic contexts, benefiting illegal immigrants and safeguarding the full exercise of their human rights, regardless of their immigrant status.

342. The multi-ethnic and multicultural society of Nicaragua's Caribbean Coast is eager to consolidate a solid autonomous region, with economic, social and territorial integration in the interests of integral and sustainable development based on a steadily progressing and competitive economy with developed and credible institutions contributing to national development and also effectively exercising their human and constitutional rights.

343. The Political Constitution and the Autonomy Statute with its Regulations are the foundations of the autonomy of the peoples and ethnic communities of the Caribbean Coast of Nicaragua, including the 1995 constitutional amendments which expanded the rights of the autonomous governments over their territories' natural resources. However, despite these major advances, the populations of the autonomous regions feel that there is still a need to develop the exercise of their right of administration as part of their autonomy. This is a major challenge which the Government of National Reconciliation and Unity will address during its term of office.

344. The regional councils and governments, in exercise of the powers conferred on them by law, have in recent years implemented important projects on behalf of the indigenous populations and ethnic communities of the Caribbean Coast. However, these have not sufficed to reduce the gap of poverty and marginalization affecting many of the peoples of those regions.

345. In this regard the central Government is promoting a regional forum in the RAAS to submit to the cooperation community a Regional Development Plan for the RAAN and RAAS in order to attract investment and social projects that benefit the municipalities and communities with indigenous and ethnic populations such as the Miskitos, Sumo-Mayagnas, Ramas, Garifunas, Afro-Nicaraguans and Mestizos.

346. In addition to the progress made within the legal framework in recent years, institutions that guarantee compliance with national and international human rights laws have been created and developed. These include the Office of the Human Rights Ombudsman, with its Special Procurator for the Rights of the Indigenous Peoples and Ethnic Communities in the capitals of the Atlantic autonomous regions and a Special Procurator for the Mining Triangle Zone in Siuna (RAAN). Also under way is a process of modernization of the judicial system, some of the most significant steps being the creation of judicial facilitators, the Public Prosecutor's Office and the Code of Criminal Procedure of Nicaragua.

347. Nevertheless, for the indigenous peoples of the Pacific, central and northern regions of Nicaragua there is no Special Procurator's Office (as there in the RAAN and RAAS) to oversee these peoples' human rights: therein lies a new human rights goal for the State of Nicaragua.

348. President Daniel Ortega, in exercise of the powers conferred on him and of the rules established by Act No. 290, has created the Development Council for the Atlantic Coast, chaired by Comrade Lumberto Campbell, who comes from the RAAS and is a member of the Creole ethnic group.

349. At the same time, the Government of National Reconciliation and Unity wishes to promote greater integration of the Atlantic Coast with the Pacific, central and northern regions of Nicaragua. This is evidenced by the fact that several of the ministries and institutions of the central government are headed by Afro-Nicaraguans, Miskitos and Mayagnas of both autonomous regions, who, in addition to their merit, have displayed great capacity for the tasks entrusted to them.

350. Similarly, the Sandinista National Liberation Front (FSLN), the party that brought the Government of National Reconciliation and Unity to power, has three representatives of African descent in the Central American Parliament. Furthermore, of the five deputies representing the Caribbean autonomous regions in the National Assembly, three were elected by the FSLN and are of Mestizo, Miskito or African origin.

351. From the cultural point of view, specific measures have been initiated, such as support for the Action Plan for Safeguarding the Garifuna Language, Music and Dance in Belize, Guatemala, Honduras and Nicaragua, "A masterpiece of the oral and intangible heritage of mankind" (1 March 2006 to 31 August 2008). The aim of this plan is the revival of Garifuna culture.

352. It is in the interests of the Government of National Reconciliation and Unity to ratify international treaties for promoting human rights, but on condition that they are consistent with the Political Constitution and are of benefit to Nicaraguans. Accordingly the Government of Nicaragua will review the appropriateness of ratifying Convention No. 169 and conduct the necessary consultations on its content with all State and regional institutions and civil society organizations concerned.

353. The Government of National Reconciliation and Unity is also interested in promoting positive measures on behalf of the indigenous peoples of the Pacific, central and northern regions of Nicaragua, in keeping with those peoples' claim to their human rights.

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