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SUMMARY RECORD OF THE 2578th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 17 October 2008, at 3 p.m.

Chairperson: Mr. RIVAS POSADA

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Nicaragua (continued) (CCPR/C/NIC/3; CCPR/C/NIC/Q/3
and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Nicaragua resumed their places at the Committee table.
2. Mr. LARA PALACIOS (Nicaragua) said that there were no shelters for victims of domestic abuse in Nicaragua, but that the law made provision for certain precautionary measures, including the immediate expulsion of persons suspected of domestic violence, spousal abuse or sexual assault from the home or, where appropriate, from the workplace.
3. In 2006, the National Assembly had adopted a law that had changed the provisions relating to abortion. The new law defined abortion as an intentional act on the part of the woman and prohibited health professionals from assisting in abortions. However, if an abortion was carried out without the consent of the mother, no penalties could be applied to her. Nor did the law penalize doctors who intervened during an abortion to save the life of the mother, provided that the abortion itself was not initiated by the doctor in question. The only person penalized was the person who initiated the abortion, regardless of whether it was intentional, resulted from negligence, or took place with or without the consent of the mother. The new law had been in effect for under a year, and the delegation had no statistics on the number of therapeutic abortions practised during that time. Doctors were required by law to assist women who required medical assistance as a result of an abortion; failure to do so could result in charges being brought - for example, for homicide by omission. The delegation had no information on the number of women who had died having abortions, but it would request the Ministry of Health to forward those statistics to the Committee.
4. The maximum length of court proceedings was three months if the defendant was in custody, and six months otherwise. In exceptionally complex cases, such as those involving transnational organized crime, that period could be extended to 12 months, but that provision was rarely invoked. At the conclusion of the trial phase, if the court did not issue a decision, the defendant was released and the case was not placed on his or her criminal record. “Donados”, or “gift prisoners”, were prisoners who received absolutely no family support; they called themselves by that name. Such prisoners were not kept in captivity beyond the expiry of their sentences.
5. Ms. LOVO HERNÁNDEZ (Nicaragua) said that the Working Group on Arbitrary Detention of the Human Rights Council had visited Nicaragua in 2006 and had concluded that while conditions were generally good in the prisons, there were a number of problems in detention facilities run by the National Police. Prison staff were generally more aware than the police of human rights, and more likely to respect the rights of inmates. The Working Group had recommended that measures should be taken to improve the observance by the National Police of various rules, including the rule that suspects must be brought before a judge within 48 hours,

and had called for an improvement of the system used for booking suspects at police stations. It had also called upon the Government to revise the country's drug laws, to ensure that fines were brought into line with the ability of defendants to pay them, and to improve the conditions of detention prevailing in Bluefields. Nicaragua was currently preparing a document for the Working Group that described a number of the steps taken to give effect to its recommendations.

6. The amendment of the Criminal Code and the Code of Criminal Procedure and the shift from an inquisitorial to an adversarial system had resulted in far less pretrial detention, which also had helped to relieve overcrowding. Pretrial detention could be ordered only by a judge, and only when there was a risk or a danger that the detainee might take steps that would obstruct justice. In some cases suspects were allowed to serve pretrial detention under such alternative arrangements as house arrest. The duration of such detention was never allowed to exceed the length of the sentence imposed for the offence with which the defendant was charged, and in the event of conviction, it counted as time served. The booking system had been improved to make it easier for family members and defence counsel to know the whereabouts of the accused.

7. Revision of the anti-drug laws was difficult to implement because it involved amending a fairly recent body of law, but the Working Group's recommendations were under consideration. With regard to the institution of enforcement by committal, she said that it would take time to change a law that had been in force for so many years, but a bill aimed at instituting a moratorium on the use of that measure was currently under consideration.

8. Under the Nicaraguan Constitution, no one should be imprisoned for debt. However, failure to pay alimony was considered also from the perspective of the rights of the child and was thus treated as a criminal rather than a civil offence. Under the new Criminal Code, penalties of six months to two years were applicable for failure to pay alimony, and two to three years when fraud was involved.

9. The Government had increased budget allocations for infrastructure and sanitation work at the Bluefields prison, where there were severe needs, and projects were currently under way at that facility.

10. The Working Group on Arbitrary Detention had also considered the plight of migrants and had found that their treatment was in line with international standards. Migrants were represented by their country's diplomatic representatives or, in their absence, by the Office of the United Nations High Commissioner for Refugees (UNHCR). Applicants for asylum were provided with legal aid. A recently adopted refugee protection act had established an inter-agency commission to deal with refugee issues, with the participation of UNHCR.

11. While Nicaragua was a relatively poor country, efforts were made to ensure that prisoners were provided with adequate food. There had been no reports of health problems resulting from malnutrition in the prisons. Prisoners exercised their rights to practise their religion and were able to receive conjugal visits.

12. The written replies to the list of issues had cited four cases in which the Covenant had been directly invoked, all of which had been heard by the Supreme Court. However, the Covenant was actually invoked at all levels of the justice system.

13. Sir Nigel RODLEY asked if there were any target dates for resolving the problem of prison overcrowding. While the delegation had said that people who abused power or committed torture were subject to sanctions, the Committee would like to know how many sentences had actually been handed down in such cases and what compensation had been awarded to the victims of such abuses of power. Regarding abortion, he said that it was reassuring to hear that a doctor who failed to act to save the life of the mother, including by way of abortion, would be liable for a criminal act. Since that was not clear to many representatives of civil society, it would be useful for the delegation to cite the legal provision that set out that policy.

14. Ms. LOVO HERNÁNDEZ (Nicaragua) said that extrajudicial executions were not practised in Nicaragua, and certainly not the killing of street children or young people, who were among the Government's highest priorities. Nicaragua had one of the lowest death rates for street children in the region, and when such deaths did occur, they were the result of common crime. Persons who committed such crimes, whether citizens or State officials, were subject to the full effect of the law. The State implemented policies, projects and plans to promote the rights of children and women, in particular by carrying out training and awareness activities for the police and persons working in the justice system. The State had strengthened the internal affairs and investigation departments of the police so as to ensure strict compliance with human rights standards. In 2002, allegations had been made before United Nations bodies that the State had taken part in extrajudicial killings, but by 2006 the cases in question had been dropped, as it had become clear that those deaths had been the result of common criminal acts committed by members of the police.

15. Mr. KHALIL wished to know what measures had been taken to resolve the perennial issue of the donados within the prison system and whether the underlying problem had been identified.

16. Mr. LARA PALACIOS (Nicaragua) replied that although the State directly encouraged families to ensure that their relatives did not remain in prison, the situation of the donados was a family matter and beyond Government control.

17. Turning to questions 17 to 24 on the list of issues, he said that in June 2008, as part of the effort to modernize the judiciary, the Supreme Court of Justice had approved Order No. 51, on rules governing judicial appointments, which established a merit-based selection process for the first time. Administrative proceedings had been instituted before the National Council on Judicial Administration and Service, and its judicial inspectorate was directly accessible to parties in the courts. The Disciplinary Committee was authorized to investigate and judge complaints of judicial misconduct, and its decisions could be referred to the Supreme Court for review.

18. Oral hearings under the Judicial Service Act had expedited proceedings in recent years and had led to the imposition of various sanctions and penalties upon a number of judges. The Office of the Human Rights Ombudsman, which dealt with complaints against members of the judiciary, had also had a positive impact, as judges were bound to respect its findings and recommendations. The long-term impact of the new rules governing appointments remained to be seen.

19. With regard to question 18, he said that the three complaints against State institutions lodged with the Human Rights Ombudsman by journalists had been settled. The Access to Public

Information Act of 2007 was being implemented and the relevant information, including the salaries of government officials, was being posted on websites. The Ministry of Finance and Public Credit had been asked to ensure that institutions under its purview could provide similar public access to information.

20. Concerning question 19 on the list of issues, he said that, although he could not cite any specific examples of the harassment of human rights defenders in Nicaragua, legal provisions establishing procedures and remedies for lodging complaints did exist to address instances of physical ill-treatment, threats or defamation by public officials directed against members of human rights organizations or other citizens. Nicaraguan law sought to protect the rights of all citizens, including the right to freedom of association, peaceful assembly and participation in public affairs on conditions of equality. His delegation had just received a communication from the Nicaraguan authorities in connection with an incident involving Vilma Núñez de Escorcía, and a police investigation would be conducted with a view to identifying those responsible.

21. Referring to question 20 on the list of issues, he said that the right to strike was regulated by the Constitution and the Labour Code. Permits for public events could be obtained from the National Police, who established the rules that were to be followed and were responsible for ensuring public order. A range of national and international rules and regulations governed the use of force and firearms by the police and armed forces. Article 7 of the National Police Act stipulated that only necessary force could be used, and then only under specific, stringent conditions.

22. Turning to question 21, he said that Nicaragua was concerned that all parents should assume their parental responsibilities. The Responsible Parenthood Act of 2007 focused on the interests of children and had introduced new mechanisms for the recognition of paternity; specialized family courts and judges had been introduced in 2008. The Act also empowered the Ministry of the Family, Children and Adolescents to initiate administrative proceedings in the case of the absence or death of either parent. The Ministry was developing a promotion policy and an implementation plan, and was organizing training for officials and institutions working with children and families. It was also developing a plan to provide free DNA testing for low-income parents.

23. In connection with question 22, he drew attention to the statistical data on incidents of sexual exploitation and trafficking in persons for 2006 and 2007 that were presented in the written replies (CCPR/C/NIC/Q/3/Add.1). It was difficult to quantify the actual number of cases because some crimes were not specifically defined as constituting sexual exploitation; however, it was hoped that the problem of underreporting would gradually be overcome. A number of measures had been introduced under the new Criminal Code adopted in July 2008, which modernized and expanded the definition of sexual offences. Training programmes had also been devised for persons working in the criminal justice system in order to promote understanding of the crimes defined in the new Code. He drew attention also to the measures taken since 2001 to combat sexual exploitation and trafficking in persons, which were described in detail in the written replies. Emphasis had been placed on institution-building and strengthening cooperation between the organizations that investigated sex crimes.

24. Referring to question 23, he said that since 2007 his Government had made a concerted effort to promote the integration and participation of indigenous peoples in the economic and

political life of the country at the national, regional and municipal levels, in particular in the autonomous Atlantic coast regions. The Caribbean Coast Development Council, which had been created to promote development in the autonomous regions and indigenous communities, had prepared a development plan for the Caribbean coast.

25. The objectives of the National Human Development Plan 2009-2012 included poverty reduction and development in the autonomous regions, which were also considered to be priority areas in food security and zero hunger programmes. Municipal government was being strengthened through the creation of a technical secretariat for municipalities, and bilingual education programmes were being enhanced. A series of infrastructure projects aimed at providing roads, electrical power and housing and ensuring the granting of title deeds for communal properties had already benefited thousands in a large number of indigenous communities. Nicaragua was making headway with the delimitation of indigenous territories and the provision of titles for those lands pursuant to a decision of the Inter-American Court of Human Rights, and it had submitted a report to the Court on its compliance with that decision. Nicaragua had also complied with the Court's decision in the Awás Tingni case and had paid damages.

26. Turning to question 24, he said that the Government had taken steps to ensure that the preparation of Nicaragua's third periodic report was a participatory process and that the report was disseminated. Preparation of the report was undertaken by the Inter-Institutional Committee on Human Rights, which involved both government and civil society organizations. He emphasized that the Nicaraguan Centre for Human Rights had decided not to participate in drafting the report before the Committee as it had submitted its own, independent report.

27. Mr. SANCHEZ-CERRO, referring to question 16 of the list of issues, said that the enactment of the new Code of Criminal Procedure was welcome progress. However, there was also a need for reform in the area of civil procedure, and particularly of the provision that allowed civil court judges to order detention for failure to fulfil a contract; that provision was a clear violation of article 11 of the Covenant. It was important to distinguish between different categories of offences, for while abandonment of the family was a criminal offence, failure to pay support was a civil offence, and the respective penalties should reflect that difference.

28. Turning to question 17, he said that although the delegation had reported that there was a solid legal basis for the independence and impartiality of judges, the Committee had received information that political parties, major economic players and religious leaders made use of the judiciary for their own purposes. An example was the case of Ernesto Cardenal, a Catholic priest and poet who was reportedly being prosecuted for making certain views public, and he invited the delegation to provide further information on that case. He also sought further information concerning the procedure followed in the National Assembly for the appointment of the Public Prosecutor and Deputy Prosecutor, which amounted to an exercise in bipartisan control, as the practice was clearly pernicious in terms of any criminal action that might be brought against civil servants.

29. Mr. KHALIL said that while he welcomed the supplementary information just provided by the delegation regarding complaints submitted to the Ombudsman of threats and attacks against journalists, he wished to know what results those complaints had had. The delegation had also

maintained that the right to access to public information had been legally secured. Yet the State party had also been candid in admitting that journalists had been murdered in 2004 and that others had been attacked in 2006. He reminded the delegation that in 2006 the former Special Rapporteur of the Human Rights Council on the promotion and protection of the right to freedom of opinion and expression had urged the Government to take the necessary measures to ensure that journalists were able to fulfil their mission in a secure environment, in keeping with the principles express in article 19 of the Covenant. He therefore wished to know what legal and practical measures the authorities in the State party had taken to ensure freedom of expression in accordance with Nicaragua's obligations under article 19.

30. Turning to question 19, he invited the delegation to comment on reports by the Nicaraguan Centre for Human Rights that government authorities had perpetrated attacks against human rights defenders. He requested information about the objectives and composition of the Citizen Power Councils, which had also allegedly been implicated in attacks on civil society organizations.

31. Regarding question 20, he said that he had received reports of illegal arrests by Nicaraguan police of transport workers who had gone on strike in March 2008. He would appreciate an explanation of those incidents, as well as information on domestic legislation governing the right to strike.

32. In connection with question 21, he said that it was not enough for the Government to formulate plans to deal with the problem of the large number of children born out of wedlock who were not recognized by their fathers. Adequate financial resources also needed to be allocated for those plans so that they could be implemented as soon as possible.

33. Mr. JOHNSON, referring to question 24, said that he was concerned that not all Nicaraguan NGOs that had wished to do so had been able to take part in the consultations organized by the Nicaraguan Government concerning the preparation of the State party's periodic report, owing to the late transmittal of the Government's invitation. The Government should correct its procedures so that such a situation did not recur in the future.

34. Ms. MAJODINA, referring to question 23, noted that although the Government of Nicaragua had made progress in implementing the judgement of the Inter-American Court of Human Rights in the Mayagna (Sumo) Awas Tingni Community v. Nicaragua case, difficulties remained in delimiting indigenous peoples' communal lands on the Atlantic coast. She would be interested in knowing how many property titles had been granted since the delivery of the Court's judgement in 2000. She asked what specific measures were being taken to address the high poverty levels of the indigenous communities living on the Atlantic coast and requested additional information on indigenous peoples' current level of participation in electoral processes. Lastly, she wished to know how active the indigenous party Yatama was in Parliament and in raising awareness of political rights among the indigenous population.

35. Mr. BHAGWATI, referring to question 14, asked whether the President, when appointing judges, was required to consult with civil society organizations and to uphold the majority opinion of such organizations. It would be disturbing if that was not the case, since it would mean that the President had absolute power to make judicial appointments. The delegation

should comment. He enquired whether the Judiciary Act was still in force or whether it had been superseded by newer legislation enacted in 2008. He wished to know what improvements were reflected in the new legislation and to what extent it ensured the independence of the judiciary.

36. He asked what the functions and composition of the Office of the Public Guardian (report, para. 396) were and whether the Office was an independent body. He also requested information on the functions, composition and manner of appointment of members of the Office of the Procurator for the Protection of Human Rights and the Office for Peaceful Settlement of Disputes.

37. He invited the delegation to explain the legal aid scheme. He specifically wished to know whether it was administered by a statutory body and, if so, what provisions governed it. He had been concerned to learn from the State party's written replies that a number of judges had been dismissed. He wished to know which body had the power to dismiss judges and what procedure was followed in order to ensure that the judges in those cases received a proper hearing.

38. Sir Nigel RODLEY drew attention to question 23 and asked what measures had been taken to reform Nicaragua's electoral legislation in order to comply with the Inter-American Court of Human Rights judgement in the Yatama v. Nicaragua case. He would be grateful for additional information concerning the "Rosita" case brought against nine professionals, all women, who had been active in campaigning to repeal the new anti-abortion law following an incident in which a 14-year-old girl who had been raped had been unable to obtain an abortion under the new law. He was concerned at the repressive nature of the charges brought against the women and at the delays encountered in the case. It was disturbing that the Office of the Procurator for the Protection of Human Rights should appear to be leaning towards the anti-abortion side of the debate.

39. Ms. WEDGWOOD asked why the new Sandinista Party and the Conservative Party had been prohibited from participating in municipal elections. She wished to know what kind of opportunity for contestation had been given to the parties before they had been ruled unsuitable for the ballot.

40. A central issue for the Committee was that of the protection of human rights defenders, who acted as deputies of the international community and, in the case of Nicaragua, as keepers of the region's own constitutional traditions. She sought assurances from the Government that clear instructions would be given to prosecutors and police not to molest human rights defenders, including those involved in the "Rosita" case, unless the latter were committing a malum in se offence. It was a misuse of criminal law to bring criminal charges against human rights defenders solely for the purpose of disabling them.

The meeting was suspended at 5 p.m. and resumed at 5.20 p.m.

41. Mr. LARA PALACIOS (Nicaragua) said that the principles of judicial independence and impartiality were embodied in both the 1998 Judiciary Act and the 2004 Judicial Service Act. Beginning in 2004, discussions had been held with a view to developing regulations governing judicial careers. After a long and difficult process, consensus had been achieved in the judicial sector. In June 2008, the Supreme Court had adopted the Judicial Service Regulations, which provided for a merit-based selection process in order to fill judicial posts.

42. Supreme Court justices were appointed by the National Assembly. The Attorney-General and the Procurator for the Protection of Human Rights were appointed not by the President but by the legislature. In all cases, a merit-based system involving a competitive examination was used to fill posts, and incumbents could be dismissed only on grounds prescribed by law under the relevant service regulations.

43. Turning to the issue of freedom of expression, he said that he would supply written information on the proceedings in the case concerning the poet Ernesto Cardenal and would confirm whether or not Nicaraguan law had been respected. Concerning the attacks on journalists, he said that the person who had been convicted in the cases of the journalists María José Bravo and Rony Adolfo Olivas Olivas were serving prison sentences. In the latter case, however, it had not been established that the killing had been related to the victim's profession as a journalist. He would inform the Committee in writing of the results of the investigations into the attacks against the residence of Vilma Núñez de Escorcía.

44. According to the National Police, the striking transport workers who had been detained in March 2008 had been held not because of the strike itself but in order to restore law and order following violent acts, which had included the torching of cars in the street. Nevertheless, he would make further enquiries to establish whether any of the strike leaders had been arrested or detained directly because of the strike itself.

45. The plan for the implementation of the new Code of Criminal Procedure was being carried out throughout the judiciary. Under the plan, new institutions had been established and courts had been adapted to facilitate oral hearings. Relevant training had been provided.

46. The purpose of the Office of the Procurator for the Protection of Human Rights was to monitor the implementation of domestic and international human rights instruments. Citizens could contact the Office to lodge complaints of human rights violations by State officials, and the Office was authorized to investigate those complaints. State institutions were required to submit any reports requested by the Office and to implement its recommendations, which could include dismissal of the official in question. Implementation of the Office's recommendations was monitored by the Office of the Attorney-General.

47. The Department for Dispute Settlement had been established within the judiciary to resolve disputes between citizens through mediation, thereby easing the burden imposed by the heavy caseload on the courts. Its members were appointed by the Supreme Court and acted independently. Statistics would be provided to show the work that had been carried out by the Department.

48. He would transmit the Committee's concern regarding the nine women involved in the "Rosita" case to Nicaragua's highest legal authorities to ensure that the case was examined and resolved in accordance with the law.

49. Ms. LOVO HERNÁNDEZ (Nicaragua) said that the Citizen Power Councils were forms of organized social expression that existed at the local, district, municipal, departmental and national levels. Because of their broad membership, the Councils were represented within the Economic and Social Planning Council. Private employers' organizations and representatives of associations for disabled persons also participated in the work of the Councils.

50. The Conservative Party and the new Sandinista Party had been prohibited from participating in elections because they had not met the relevant requirements established in national legislation. Those requirements were imposed upon all parties, irrespective of ideology, and compliance was monitored by the Supreme Electoral Council.

51. The Atlantic coast regions, which had the highest concentration of peoples of African descent and indigenous communities, had a history of economic and social marginalization. The Government endeavoured to ensure that all civil, political, economic, cultural and social rights were enjoyed by all persons on an equal basis, in those regions and throughout all of Nicaragua. The Yatama political party had participated in various municipal, regional and national elections.

52. Reform of electoral legislation to ensure the participation of indigenous peoples was under way. However, that reform would take some time, since the Inter-American Court of Human Rights had imposed the challenging task of incorporating the customary rules and practices of indigenous communities into the new electoral law. Nevertheless, initial steps had been taken to establish an inter-institutional commission to deal with that matter, membership of which would include relevant State bodies and Yatama. Consideration would also be given to establishing remedies to challenge decisions taken by the Supreme Electoral Council that were deemed to violate domestic or international human rights standards.

53. The decision of the Inter-American Court of Human Rights concerned the Awas Tingni community alone; nevertheless, the Government had granted land titles to other indigenous peoples, on the basis of the rights established in the Constitution concerning the delimitation of communal lands. That practice was in line with the Government's policy of positive discrimination to ensure the equal treatment of all persons, including persons of African descent and indigenous communities.

54. Ms. WEDGWOOD asked what the specific requirements were that the two political parties had not met, thereby disqualifying themselves from taking part in the electoral process.

55. Ms. LOVO HERNÁNDEZ (Nicaragua) said that she would request the Supreme Electoral Council to provide details of the reason for the two parties' disqualification, and would forward those details to the Committee.

56. The CHAIRPERSON said that, while the Committee acknowledged the dynamic process of legislative and judicial reform under way in Nicaragua, it would be some time before the success of that reform could be assessed in terms of the extent to which human rights were protected. He summarized the main issues about which the Committee had expressed concern, which had included detention on the ground of non-compliance with civil obligations; excessive criminalization of medical staff carrying out abortions; abuse by prison officials and police; and matters relating to the right to physical integrity and to life. Given that 18 years had elapsed since the Committee had last issued concluding observations in respect of Nicaragua, continuation of the renewed dialogue between the State party and the Committee would be particularly important.

The meeting rose at 6.05 p.m.