



International Convention on the Elimination of All Forms of Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-second session

SUMMARY RECORD OF 1859th MEETING

Held at the Palais Wilson, Geneva, on Tuesday, 26 February 2008, at 3 p.m.

Chairperson: Ms. DAH

later: Mr. AVTONOMOV

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION
SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE
CONVENTION (agenda item 7) (*continued*)

Tenth to fourteenth periodic reports of Nicaragua (CERD/C/NIC/14; list of issues and written replies of the State party, unofficial documents circulated at the meeting, in French and Spanish)

1. *At the invitation of the Chairperson, the Nicaraguan delegation took places at the Committee table.*
2. Ms. MARTÍN GALLEGOS (Nicaragua) said that, in order to deal with the backlogs accumulated in the submission of its periodic reports to the human rights treaty bodies, the Government of Nicaragua had established the priority objective of updating its reports and institutionalizing the process for preparing reports by creating the Unit for Monitoring International Conventions in the Ministry of Foreign Affairs and the Inter-Agency Committee on Human Rights (CERD/C/NIC/14, para. 3).
3. She recalled that, in August 1995, when the last periodic report of Nicaragua had been submitted, the Committee had expressed a number of concerns, to which she intended to respond point by point.
4. With regard to the Committee's questions concerning the status of the Convention in Nicaraguan domestic law, she said that Nicaragua had made significant administrative and legislative progress in giving effect to the Convention. On the legislative side, the Constitution guaranteed equality of rights and obligations for all Nicaraguans, without distinction, and regardless of birth, nationality, political opinion, race, gender, language, religion, origin, economic status or social condition. Many constitutional provisions guaranteed and protected the rights of all Nicaraguans against racial discrimination, and the Constitution of Nicaragua was one of the most progressive in the world in that regard. The Convention had the status of ordinary law and could be invoked before the courts. In order to fulfil its obligations under the Convention, Nicaragua had enacted a law creating the Office of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities (*ibid.*, para. 4), the 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, the 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, the decree creating the Atlantic Coast Council and the decree instituting National Garifuna Day.
5. Nicaragua had also enacted general laws containing special provisions for protecting the rights of indigenous peoples, including the General Act on Education, the Code of Children and Adolescents, the General Act on the Environment and Natural Resources, the Act on the Promotion of the Integral Development of Youth, the General Health Act, the Act on Amendments and Additions to the Criminal Code (*ibid.*, para. 82) and the reform of migrant legislation.
6. As for the Committee's concern about the failure to implement the provisions of article 4 of the Convention, she explained that the adoption, in November 2007, of amendments to the Criminal Code had made it possible to base the definition of discrimination and incitation to discrimination on article 27 of the Constitution of Nicaragua, which provided that all persons were equal before the law and had the

right to equal protection. The offence of discrimination and incitation to racial discrimination had been classified as a criminal offence in the new Criminal Code, which had been adopted by the National Assembly and would enter into force after its publication in the *Official Gazette*.

7. With regard to the realization of economic, social and cultural rights in Nicaragua, which had been of concern to the Committee, she stressed that her country was one of the poorest in Latin America: 46 per cent of Nicaraguans were living below the poverty line and 15 per cent were living in extreme poverty. The socio-economic gap between the Pacific and Atlantic regions was a reality stemming from Nicaragua's history and culture but it was also due to more recent events, such as hurricanes Mitch and Felix, which had ravaged most of the economic infrastructure. Despite everything, those events had made it possible to bring about changes in the affected regions and to put in place new development and integration strategies in the autonomous regions, thanks to targeted investments in infrastructure. Recently, the mortality rate had fallen considerably in Nicaragua and life expectancy had risen from 42.2 years to 72.8 years in five years. That situation was the result of economic and social changes, in particular the urbanization of society, better education and increased access to health care.

8. In Nicaragua, education was a constitutional right enjoyed by all Nicaraguans, without any discrimination. The General Act on Education had entered into force in 2006 and had created the Regional Autonomous Education System (SEAR) (*ibid.*, para. 49 (b)), which recognized the rights of indigenous peoples and ethnic communities of the Caribbean coast to intercultural education in their mother tongue and to the study of Spanish as a national language. Nicaragua also had a National Education Plan (*ibid.*, para. 227), aimed at maximizing educational supply through the improvement of pedagogical infrastructure, nutritional supplements, reinforcement of bilingual education and priority attention to the poorest areas of the Caribbean coast.

9. SEAR had defined the major action strategies for the period 2003-2013 with regard to education in the autonomous regions. It was being implemented in 30 schools in the four municipalities of the Caribbean coast. The languages of bilingual intercultural education were Miskito, Ulwa, Creole and Garifuna.

10. Health was also a constitutional right. The General Health Act (*ibid.*, para. 202) allowed the autonomous regions to develop their own public health model, in accordance with their traditions, cultures, usages and customs. The Autonomy Statute (*ibid.*, para. 200) enabled autonomous regional governments to administer health services in coordination with the Ministry of Health, based on the needs of indigenous populations and ethnic communities.

11. The Regulations pertaining to the Autonomy Statute of the Two Regions of the Atlantic Coast of Nicaragua (*ibid.*, para. 337) allowed indigenous peoples and ethnic communities to enjoy a form of decentralized government in the legal, political, administrative, economic and financial spheres. Indigenous peoples and ethnic communities could thus participate effectively in the elaboration and implementation of national development plans and programmes in their region in order to harmonize them with the interests of the communities of the Atlantic coast. Likewise, the Autonomy Statute enabled the autonomous regions to administer their health, education, culture, basic services, transport and infrastructure programmes in coordination with the competent State ministries. They could also elaborate their own economic, social and cultural projects; encourage the rational use and enjoyment of their water, forests and communal lands; protect their ecological systems; promote

the study, advancement, development, preservation and dissemination of their traditional cultures and historic, artistic, linguistic and cultural heritage; and promote the national culture in the communities of the Atlantic coast.

12. As for the Committee's concern about communal land area compared to that of private land in the autonomous regions, in particular the right to extract minerals and existing inequalities with regard to sharing profits from the exploitation of natural resources in the autonomous territories between the regional and the centralized authorities, she noted that Nicaragua had made considerable progress with regard to land demarcation and titling. Of the six indigenous communities of the Caribbean coast and northern region, five had received titles to their property. By adopting Act No. 445 on the Communal Property Regime for Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast (*ibid.*, para. 337), the State had recognized the communal systems of land ownership and of the enjoyment and use of the water and forestry resources on communal land.

13. At the administrative level, Act No. 212 had created the Office of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities, which had a branch in each autonomous region. That Office played a fundamental role in the promotion and defence of the rights of indigenous peoples because it was authorized to receive complaints from persons who believed their rights had been violated by State officials. As an example, in 2007, the Office had received 521 complaints from persons and groups living in the autonomous region of Atlántico Sur.

14. Meanwhile, pursuant to Act No. 290, the President of the Republic had created the Development Council for the Atlantic Coast (*ibid.*, para. 348), chaired by a member of the ethnic Creole group from the autonomous region of Atlántico Norte. The Council served as a link between the central Government and the regional authorities and carried out actions to promote the interests, welfare and development of the autonomous regions.

15. The President of the Republic had encouraged the active participation of leaders from the autonomous regions in governmental bodies in order to ensure that they were involved in the formulation of public policies and decision-making at various levels.

16. The Nicaraguan Government had set itself other objectives in the field of human rights, including the elimination of poverty through initiatives, such as the "Zero Hunger" programme, targeted at the most vulnerable groups in Nicaraguan society. In order to promote the full exercise of their economic, social and cultural rights, the Government had declared that education and health care, as well as medications, would be free for all.

17. Nicaragua had made significant progress towards multiculturalism and racial and ethnic pluralism, as noted in the report of the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, based on his visit to Nicaragua in 2004.

18. Mr. DE GOUTTES (Rapporteur for Nicaragua) welcomed the many documents and detailed replies to the list of issues received from Nicaragua. He noted that, since August 1995, when the Committee had last considered a periodic report from Nicaragua, a petition had been submitted to the Committee in February 2006, under the early warning and urgent action procedure, in which the indigenous community "Awastingni" had complained of threats against their land titles, the delimitation of their land and the lack of protection of their traditional, sacred sites in the Atlantic

region of Nicaragua. At the Committee's request, a Nicaraguan delegation had appeared before the Committee on 22 February 2007 to furnish explanations and provide further information on the situation of that community. In August 2007, however, the latter had again submitted a complaint to the Committee containing disturbing information concerning the communal lands. The community had called, *inter alia*, for the demarcation and titling of Awas Tingni land and requested a visit from a Committee expert, if possible, to provide assistance or mediation with a view to finding a solution to the ongoing problem. As a result, on 24 August 2007 the Committee had sent another letter to the Permanent Mission of Nicaragua to the United Nations Office at Geneva containing several questions and requesting a reply by 30 September 2007. Although the current periodic report contained elements of useful replies in that case, additional, updated information might be needed from the delegation during consideration of the report.

19. He noted that the total population of Nicaragua was estimated at more than 5 million, comprising 77 per cent Mestizo, 9 per cent African-American, 4 per cent Amerindian and 10 per cent European. He pointed out, however, that the Special Rapporteur on contemporary forms of racism, in his mission report of 2005, had distinguished four groups in the Nicaraguan population, namely, Mestizos (of mixed Amerindian and White descent), representing 69 per cent of the population; Whites (17 per cent); Blacks (9 per cent), including Garifuna and Creole; and Amerindians (5 per cent), subdivided into six ethnic groups: the Miskitos, the Sumus-Mayangnas, the Ramas, the Matagalpas, the Chorotegas, the Maribios and the Nahuatlans.

20. With regard to refugees, the report stated that the number of refugees of Salvadorian origin – 290 – had decreased in recent years but there still remained some 1,300 former Salvadorian refugees whose situation had not been regularized and who continued to live in precarious conditions (*ibid.*, para. 16). He asked whether the draft law on refugees establishing a National Commission for Refugees (*ibid.*, para. 20) that would guarantee the rights of refugees and ensure that they were not subject to discrimination had been adopted by the General Assembly yet and whether the National Commission for Refugees had been put in place.

21. He noted, moreover, that the rate of emigration of Nicaraguans had increased considerably in recent years (*ibid.*, para. 21), in particular the migration of men, women and teenagers from rural areas of Nicaragua to the United States of America and Costa Rica. It seemed that such emigrants were encountering many problems of discrimination, sociocultural adaptation and access to jobs and social services. Many of them had been sent back or expelled, particularly from Costa Rica, the United States of America and Honduras, as shown in the table in paragraph 23 of the report. In order to remedy that situation, a number of agreements, laws and migrant amnesty measures had been negotiated with other countries of the Americas. For its part, Nicaragua had enacted a reform of the Migrant Traffic Control Act (*ibid.*, para. 26), which applied to migrants who transited its territory on their way to the United States, mainly from Peru, Ecuador and Columbia. He asked for further details on the enforcement of the law and on measures taken to regularize the situation of temporary migrant workers.

22. As for the country's economic situation, he noted that Nicaragua was still one of the poorest of Latin American countries, after Haiti and Bolivia. That situation had been aggravated by a series of unfortunate events that had afflicted the country: civil wars, natural disasters including hurricane Mitch in 1998 and hurricane Felix in 2002, together with the country's high level of indebtedness. According to available information, as the Nicaraguan delegation had noted, 45 per cent of the

population were living below the poverty line and 15 per cent were living in extreme poverty. The indigenous populations were apparently the most disadvantaged and there was a very marked socio-economic gap between the Pacific and Atlantic regions. The unemployment rate was about 5.2 per cent but the underemployment rate was as high as 30.9 per cent.

23. However, he noted some improvement in the economic indicators, owing to international assistance, the more rigorous management of public funds, the growth of certain job sectors, such as maquilas, and the recent launch by the Sandinista Government of a major social programme known as “Zero Hunger”. Extreme poverty and unemployment, which particularly affected young people, had led to an increase in crime and violence, the appearance of gangs of children (*maras*) and drug trafficking. The Sandinista Government was making concerted efforts to fight such delinquency and corruption.

24. With regard to the political and social situation in Nicaragua, he noted that the accession of Daniel Ortega to the presidency in November 2006 had marked a turning point, given that his policies prioritized, among other things, education, health and the fight against hunger and poverty.

25. He noted with satisfaction the existence in Nicaragua of a National Commission for the Elimination of Racial Discrimination and an Office of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities, with responsibility for those communities, and welcomed the adoption of a series of laws and regulations that were compatible with the Convention, such as Act No. 162 on the Official Use of the Languages of the Indigenous Communities of the Atlantic Coast, the Autonomy Statute of the Two Regions of the Atlantic Coast and the Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of those regions. Efforts should still be made, however, to ensure better representation of indigenous and ethnic minorities in State bodies. According to information received from non-governmental organizations, the autonomous regions suffered from a “democratic deficit”, since indigenous minorities and those of African descent were clearly underrepresented in regional elections. The only politically active indigenous community was the Miskito community.

26. Noting with satisfaction that Nicaragua had ratified the six principal United Nations human rights conventions and would remain a member of the Human Rights Council until 2010, he expressed the hope that consultations on the possible accession of Nicaragua to International Labour Organization Convention No. 169 concerning indigenous and tribal peoples in independent countries, as mentioned in the report (*ibid.*, para. 172), would soon result in ratification. Moreover, he wished to know how the Nicaraguan Government planned to ensure follow-up of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007. Having read in the report that the Convention had the “status of ordinary law” (*ibid.*, para. 29), he asked the Nicaraguan delegation to explain the meaning of that term and indicate whether it meant that the Convention might not prevail in the case of a conflict with domestic law. Lastly, he asked whether the Nicaraguan Government planned to make the declaration provided for in article 14 of the Convention.

27. In the report on his mission to Nicaragua (E/CN.4/2005/18/Add.6), the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had observed, among other things, that despite the absence of institutional racial discrimination in Nicaragua and progress made in promoting democratic multiculturalism, racial prejudices and discriminatory practices against

indigenous peoples persisted and had often been used as weapons by various opposing factions in the country. According to reports by non-governmental organizations, indigenous peoples and communities of African descent continued to be invisible in the statistics, history books and public and cultural policies. For his part, the Special Rapporteur had found a deep ethnic, social and economic rift between the Pacific regions, populated mainly by Mestizos, and the Atlantic regions, inhabited mostly by indigenous peoples or communities of African descent. The Special Rapporteur was concerned by the insufficient protection given to communal property rights of indigenous peoples, primarily owing to the lack of proper demarcation of communal land and the granting of forestry or mining licences to multinational corporations without consulting the populations concerned. As a result, the Special Rapporteur and several non-governmental organizations had called for a new kind of relationship between the State and indigenous peoples, saying that steps should be taken to make regional autonomy a viable reality and that a national and global programme of action against racism should be developed, combined with legislation against racial discrimination and palliative measures.

28. With regard to articles 1 and 2 of the Convention, he noted that, according to non-governmental organizations, the National Commission for the Elimination of Racial Discrimination, established in 2001, had not yet begun its work. He asked the delegation to explain why not and provide information on the effectiveness of the Office of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities. Lastly, he requested more detailed information on the content and scope of the draft law amending the Criminal Code, adopted in November 2007, which provided a specific definition of racial discrimination and the corresponding penalties (paras. 73-76 of the report) and asked when the new law would enter into force.

29. As for article 4 of the Convention, he asked whether the new provisions of the Criminal Code, in particular articles 549 and 550, and Act No. 230 on amendments to the Nicaraguan Criminal Code penalized the dissemination of ideas based on alleged superiority or racial hatred and the financing of organizations advocating racism. He invited the delegation to provide the Committee with concrete examples of the implementation of the relevant provisions, together with statistics on the number of complaints, prosecutions and convictions recorded in that regard. The delegation might also clarify the provisions of Act No. 230 authorizing communal judges to apply customary laws, indicating whether the latter were compatible with international law and to furnish specific examples on that topic.

30. With regard to article 5 of the Convention, he asked about the status of the reform launched after the ruling against Nicaragua by the Inter-American Court of Human Rights in June 2005 for excluding the YATAMA party from regional elections in 2001; whether an effective judicial remedy had been established to permit appeals against decisions of the Supreme Electoral Council; and whether the necessary steps had been taken to ensure that indigenous communities and ethnic minorities could freely participate in elections.

31. Turning to the administration of justice, he noted the existence of many provisions and institutions that took into account the specific situation of indigenous peoples (*ibid.*, para. 85) but also pointed out that non-governmental organizations had reported malfunctions, including problems of partiality and corruption in the judiciary and police. Comments on those reports and concrete examples of cases judged under customary law would be welcome. Moreover, the delegation should provide explanations of the increasing insecurity, violence and impunity in rural areas

of the country, as described in paragraph 93 of the report, and allegations of human rights violations and abuse committed by the police in the autonomous regions.

32. As for political rights, he requested recent statistics on the composition of the autonomous regional councils of Atlántico Norte and Atlántico Sur, given that, according to some non-governmental organizations, indigenous peoples and people of African descent were still underrepresented in those regions.

33. With regard to the Awas Tingni community, he would like to know more about the progress of the special plan for the demarcation of that community's land and on steps taken to protect the community against actions and threats of certain groups who were hostile to the granting of title to its land and preservation of its traditional sacred sites.

34. As for the health of indigenous peoples, he asked for more information on follow-up to the regional health model created under the Autonomy Statute and on the National Health Plan 2004-2015. According to information received from some non-governmental organizations, indigenous peoples and minorities of African descent living in the autonomous regions were suffering from malnutrition and had a high rate of maternal and child mortality. Moreover, the medical infrastructure was very poor in the autonomous regions of Atlántico Norte and Atlántico Sur, and the communities were having problems because they lived far from health centres and had difficulty communicating with medical personnel. He invited the delegation to indicate whether steps had been taken to remedy that situation.

35. In reference to the right to education, he asked what results had been obtained from implementation of the General Act No. 582 of 2006 on education and the Regional Autonomous Education System (SEAR) 2003-2013 for the integral education of indigenous peoples and ethnic communities. He also wished to know whether the curriculum subcommittee mentioned in paragraph 234 of the report had actually been created and what had been the results of the Bilingual Intercultural Education Programme for adults in the various autonomous regions of the country. Lastly, he asked about the illiteracy rate in the autonomous regions.

36. Turning to article 6 of the Convention, he asked the delegation to provide information complementing that provided in paragraphs 268 to 287 of the report, indicating the number of complaints received by the Office of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities and the outcome of such complaints and to describe the mechanisms in place for the treatment of complaints of racial discrimination. It would be interesting to know whether the remedy of *amparo* provided for in article 45 of the Constitution could offer useful recourse in such cases.

37. As for article 7 of the Convention, he noted with interest the information furnished in the report on the promotion of bilingual intercultural education and the preservation of the languages, cultures and arts of indigenous peoples (paras. 305-335 of the report). He asked for further information, however, on measures taken to combat the persistence of prejudices and negative stereotypes in the media with regard to indigenous peoples and people of African descent, and concerning training and awareness-raising programmes on human rights and interracial and inter-ethnic tolerance, targeted at enforcement personnel. Lastly, he asked what steps would be taken to ensure the dissemination of Nicaragua's fourteenth periodic report and the Committee's final observations throughout the country.

38. Ms. MARTÍN GALLEGOS (Nicaragua) described the context in which the decision had been handed down by the Inter-American Court of Human Rights in

the case of the Awas Tingni community, the outline of which was presented in paragraphs 147 to 169 of the report under consideration. That indigenous community had lodged a complaint claiming the right to its ancestral land and requesting that the court determine the modalities and timetable according to which third parties outside the community would be required to withdraw from the land and cease exploiting its forestry resources.

39. She explained that, in the framework of the implementation of that court decision, a plan for the delimitation and demarcation of the land concerned had been approved and then launched on 1 July 2007.

40. In 2007, the most important advance in implementing the decision of the Inter-American Court of Human Rights had been the establishment of a plan for the demarcation of the territory of Awaltara Luphia Nani, located in the Atlántico Sur Autonomous Region (RAAS). Through the placement of 30 markers, 16 communities had received about 241,000 hectares of additional land as a result of that decision. According to the timetable, they should receive title to the land during the second week of May 2008, which would be the first piece of land to be titled.

41. Mr. AVTONOMOV, referring to paragraph 101 of the report, asked about the alternative method of settling disputes in indigenous communities which obviated the need for the population to seek access to the courts, and whether rural judicial facilitators played a role in the settlement of disputes using those alternative methods. If so, he would like to know the extent of that role.

42. He asked whether the Convention had been invoked before national courts and, if so, whether it had been directly applied as a source of law. If not, why did judges not base themselves on that instrument in rendering decisions?

43. He also wished to know whether the law criminalizing acts of racial discrimination had been enforced by courts and resulted in convictions, and whether it provided protective measures for victims. Although the lack of complaints did not necessarily mean that no acts of racial discrimination had occurred, it could imply that individuals did not trust the courts, feared reprisals or could not afford the costs of a judicial proceeding. Statistics on that point would be very useful.

44. With regard to the case of the Awas Tingni community, he understood that the Inter-American Court of Human Rights had decided that Nicaragua should demarcate the ancestral land of that community and grant its members ownership titles. He asked for more information on the steps taken to remove third parties who were occupying the land illegally, together with non-indigenous people who were unlawfully exploiting the natural resources and carrying out forestry activities on that land.

45. Mr. CALI TZAY asked whether Nicaragua drew a distinction between the terms “indigenous peoples”, “ethnic groups” and “indigenous communities” or used them interchangeably.

46. He also wished to know why Nicaragua had not ratified ILO Convention No. 169 concerning indigenous and tribal peoples, since it was one of the most advanced countries in the region with regard to the recognition of the collective rights of indigenous peoples.

47. Referring to paragraph 68 of the report, he said that, according to information from trustworthy non-governmental organizations, some provisions of the draft law on the indigenous peoples of the Pacific, central and northern regions of Nicaragua, which had been approved by the Commission on Ethnic Affairs and Indigenous Communities of the National Assembly, were about to be revised without

consultation with the communities concerned, despite the Constitutional provision which required that indigenous peoples must be consulted on any decision affecting their interests. Could the delegation confirm or deny those allegations?

48. Regrettably, the report did not deal with indigenous traditional medicines and the latter had not received the support of the State although they were referred to in the General Health Act. In that regard, the lack of consistency between statements made by Nicaragua, theory, concrete facts and practice was unfortunate.

49. *Mr. Avtonomov took the Chair.*

50. Mr. PETER, referring to the criminalization of discrimination, asked why the new Criminal Code had not yet entered into force, although the revision of the text had begun in March 2007.

51. Paragraph 74 of the report stated that article 316 of the Criminal Code, on servitude and exploitation, stipulated a penalty of imprisonment and a fine equivalent to 90 to 150 days. Expressing surprise that the fine was not set in monetary terms but rather in days, he asked for clarification on the meaning of fines calculated in days.

52. As for racism and discrimination against women, he noted that, in the indigenous and Black communities in particular, the existing patriarchal system in Nicaragua meant, among other things, that most women were subjected to discrimination based both on the colour of their skin and on their gender. Since the problem affected the Creole and Black communities, he would like to know what the Government was doing to solve it, given that it combined racism with discrimination against women.

53. With regard to the Awas Tingni community, some non-governmental organizations had reported that local authorities at times encouraged non-indigenous persons to exploit the land, with the result that, when a demarcation process was about to be carried out, such persons were found to occupy the community's land. Moreover, some local inhabitants of the area had invited third parties to participate in slaughtering activities. He would like to know what the Government was doing to ensure that the status quo was maintained with regard to land occupation so that when the time came to implement the decision of the Inter-American Court of Human Rights, the situation was not found to have already been altered.

54. As for national unity, available information seemed to indicate that the country was divided and that there were many rifts based on race, language, religion and other factors. Since Nicaragua now had a Government of National Reconciliation and Unity, he wished to know what it was doing to reduce or eliminate those rifts.

55. Mr. MURILLO MARTÍNEZ said it would be useful, with regard to the decision of the Inter-American Court of Human Rights concerning the Awas Tingni community, for the Committee to have further details on the background of the case, which would allow members to better understand the context in which efforts had been made.

56. With regard to life expectancy, he asked whether any statistics had been disaggregated by ethnic group. In Latin America in general, the average life expectancy of indigenous peoples was lower than the national average. It would be interesting to know how things stood in the particular case of Nicaragua.

57. He stressed the importance of ratifying ILO Convention No. 169 and asked to what extent Nicaragua and envisaged taking additional compensatory measures

which, in the current case, would be fully within the spirit of the ILO Convention in respect of the recognition of the country's multi-ethnic character.

58. Mr. DIACONU said that one NGO had reported the existence of an indigenous population in the central region of the country that had not been mentioned in the report. He requested details on that indigenous population. He noted that there were no provisions in Nicaragua's Criminal Code that prohibited organizations which promoted racism or racist ideas. Under article 4 of the Convention, such organizations should be strictly forbidden by law.

59. The report discussed rural judicial facilitators whose functions included mediation and dissemination of legal knowledge to the population. He asked what powers the facilitators had with regard to the courts employing them. Could the facilitators draw the courts' attention to local customs that might have an impact on law enforcement or court decisions?

60. With regard to indigenous justice, he wished to know who carried out that justice and how it was administered. The report mentioned cases in which the Supreme Court of Justice had overturned measures that licensed the use of indigenous community land by national or foreign companies, thereby demonstrating that justice was indeed functioning and the law was being enforced. He wondered, however, why State bodies, having issued such authorizations, had not enforced the law from the beginning. Why did the Supreme Court have to intervene in order to quash decisions of State bodies?

61. Mr. LINDGREN ALVES said that the report was almost entirely devoted to the question of indigenous peoples and made particular reference to Mestizos and Creoles. He asked for an explanation of the difference between the two notions.

62. The report gave a detailed description of the composition of the indigenous population, which represented 8.6 per cent of Nicaragua's total population, according to the latest statistics presented orally at the current session. He would like to know the composition of the rest of the population.

63. Mr. THORNBERRY asked if Nicaragua, at the constitutional level, considered itself a multicultural and multi-ethnic society. Noting that Nicaragua apparently characterized itself as a Mestizo nation, he wished to know to what extent that idea was still current.

64. He asked whether any particular kinds of tension existed between the different ethnic groups in Nicaragua and whether any discrimination or distinction existed based on colour, language or religion.

65. In many countries, racism was caused by cultural factors, or its origins might be historical, giving rise to tensions based on identity. To what extent did that apply to Nicaragua? With regard to the demarcation of indigenous land, he asked what evidence was taken into account in the demarcation process, who could be asked to testify and what evidence was considered acceptable?

66. With regard to the recognition of indigenous communities, he asked what arguments could be used. Traditional occupation and utilization of land were grounds that were often put forward. Traditional occupation sometimes created entitlement under international law, and that principle also undoubtedly applied in Nicaragua. More generally speaking, he wished to know to what extent indigenous knowledge was taken into account in the process of recognition and demarcation of indigenous communities.

The meeting rose at 5.50 p.m.