



**International Covenant on Civil and
Political Rights**

Distr.: General
19 February 2009
English
Original: French

HUMAN RIGHTS COMMITTEE

Ninety-fourth session

SUMMARY RECORD OF THE 2577th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 17 October 2008, at 10 a.m.

Chairperson: Mr. RIVAS POSADA

CONTENTS

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT
(*continued*)

Third periodic report of Nicaragua

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT
(agenda item 7) (*continued*)

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

1. *At the invitation of the Chairperson, Mr. Lara Palacios, Mr. Robelo Raffone, Mr. Cruz Toruño, Mr. Somarriba Fonseca and Ms Lovo Hernández (Nicaragua) took places at the Committee table.*

2. Mr. LARA PALACIOS (Nicaragua) thanked the Committee for its low-keyed response to Nicaragua's accumulated delay of over fifteen years in submitting its periodic reports. The Government of Reconciliation and National Unity was deeply concerned to promote and protect the human rights and fundamental freedoms of all Nicaraguans and to abide by the obligations incumbent upon Nicaragua under the various international instruments to which it was a party. Accordingly, in an effort to make up for lost time, it had established an International Agreements Monitoring Unit within the Ministry of Foreign Affairs, and an Inter-institutional Committee on Human Rights made up of representatives of public institutions and civil society. The Government was confident that those institutional mechanisms would enable it to monitor its fulfilment of international obligations, and also its implementation of the recommendations of conventional bodies, which it regarded as a potentially useful aid to the formulation of public development policies, especially policies designed to meet the needs of marginalized and vulnerable groups in society.

3. Between 1990 and 2007, i.e. during the period covered in the third periodic report, Nicaragua had introduced a series of legislative and institutional reforms as part of its implementation of the Covenant. Those reforms had enabled it to modernize and consolidate its democratic system, thereby ensuring that all Nicaraguans, without distinction, could enjoy the benefits of the rule of law.

4. The Constitution was the general framework for Nicaragua's system of law. The fundamental principles formulated therein coincided with a number of the principles set forth in international human rights instruments. The Constitution expressly recognized that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Inter-American Convention on Human Rights and the Universal Declaration of Human Rights had constitutional rank.

5. Since 1990, Nicaragua had considerably altered its system of law by adopting statutes designed to protect basic rights such as access to justice, the protection of the law, and the right to equality before the law. Beginning in 1998 it had embarked on the task of modernizing and overhauling its justice system, consisting of the Supreme Court of Justice, the Public Prosecutor's Office, the Office of the Attorney-General of the Republic, and the National Police. The Judiciary Act had been adopted in 1998 and its implementing regulations in 2004. The Judicial Profession Act and its implementing regulations had been adopted more recently, in June 2008. The entry into force of those two Acts had made it possible to safeguard the independence and impartiality of the judiciary and ensure that judges were appointed on their merits.

6. A further stride forward had been made in January 1999, with the establishment of the Office of the Public Guardian as an arm of the judiciary. The object of the innovation had been to further the establishment of the rule of law and ensure the equality of all persons, due process and the right to a defence by supplying free legal representation services to persons who did not have the means to pay the fees charged by a lawyer in private practice.

7. On 24 March 1998, the National Assembly had adopted the Children and Adolescents Code, based on the provisions of the Convention on the Rights of the Child, which Nicaragua had ratified in April 1990.

8. In 2000, State institutions in the country's isolated rural areas had been few and far between, and this had been a factor contributing to insecurity and impunity. Accordingly, the judiciary had given priority to the task of consolidating a system of justice based on democratic principles and civic participation. March 2003 had seen the introduction of the Rural Judicial Facilitators Programme under a cooperation agreement between the Organization of American States and the Supreme Court of Justice. The function of rural judicial facilitator had subsequently been given official sanction by the adoption of Law No. 406 (the Code of Criminal Procedure) and its reform of Law No. 260 (the Judiciary Act), under which those facilitators had been designated an auxiliary corps serving the administration of justice. Their responsibilities were to provide local people with guidance and support, to disseminate legal information, and to act as arbitrators or mediators in disputes between individuals. It was important to note that 20 per cent of all rural judicial facilitators were women. Their strategy was to work for equal status in relations between men and women, and their efforts encouraged victims, most of whom were women, to overcome their fear and lodge complaints. It was also essential to recall that the facilitators supported and strengthened customary law, working in collaboration with *wihita* (judges) in the Autonomous Regions of Atlántico Norte and Atlántico Sur, especially among the Mískito and Mayangna ethnic groups.

9. In 2001, the Public Prosecutor's Office had been separated from the Office of the Attorney-General of the Republic. The two had formerly been a single agency representing both society in general and the State, an arrangement which had meant that there was no assurance of impartiality in the event of divergent interests. The Public Prosecutor's Office had thus become the institution directly mandated to initiate criminal prosecutions on society's behalf, while the Office of the Attorney-General of the Republic had been made responsible for representing the State in legal matters and defending its interests. Following this institutional reorganization, the Code of Criminal Procedure had been enacted. Upon its entry into force, the inquisitorial system that had been in use for over a century had been replaced by an adversary system, and the principle of public trials had been introduced, putting an end to secret, closed proceedings.

10. Law No. 212, the Office of the Procurator for the Protection of Human Rights (Establishment) Act, had been adopted in 1996. The Office functioned like a committee of the National Assembly, working to promote, protect and uphold constitutional safeguards and human rights. A number of other special procurators' offices had been established on the same model: there were now Special Procurators for children and adolescents, women, indigenous peoples and ethnic communities, persons with disabilities and persons deprived of their liberty, as well as a Special Procurator for Civic Participation.

11. In November 2003, the National Assembly had enacted Law No. 473, the Prison Regimes and Enforcement of Sentences Act, which had established the regulations and standards governing the operation of the national prison system, especially in the matter of the enforcement of sentences and measures relating to the rehabilitation and social reintegration of persons deprived of their liberty and security in prisons, among other things.

12. On 23 August 1996, the National Assembly had enacted Law No. 228, the National Police Act. The Act defined the National Police as an armed professional body, civilian and apolitical in nature, that was subject to the authority of the President of the Republic. The mission of the police was to protect the lives, integrity and safety of persons, to protect the free exercise of their rights and freedoms, to prevent lawbreaking and prosecute offenders, to preserve Nicaragua's public and social order, to ensure that public and private property remained inviolate, and to provide the judiciary and other components of the justice system with support as required. The National Police had succeeded in dealing heavy blows to organized crime involving international drug trafficking, and those achievements had had a significant effect on people's feelings of safety, not only within Nicaragua but beyond its borders. The police also did preventive work among marginalized urban communities through social programmes and recreational activities designed to prevent juvenile violence, including the good-citizenship and national-security programme in particular. In point of fact, Nicaragua, in contrast to many other Central American countries, was not confronted with the problem of juvenile networks or gangs involved with organized crime, and considered itself one of the safest countries in the region. The National Police had also succeeded in winning the public's confidence, thanks to the disciplinary measures it had taken, transparently and firmly, against any of its officers who had engaged in misbehaviour or been guilty of abuses.

13. The Committee had expressed concerns about violations committed by the National Police (abuse of authority, excessive force and searches without a warrant) and complaints about incidents of torture and ill-treatment of detainees. In 2007, the National Police had received a total of 363 such complaints, of which 35.5 per cent had been found to have merit. Of the 712 officers allegedly implicated, 221 had been disciplined. There had been 56 complaints about searches without a warrant, and 15 of them had been found to have merit. There had been 227 complaints about excessive force, of which 95 had been found to have merit, and 165 police officers had been subjected to disciplinary measures.

14. Nicaragua was currently developing an adapted legal framework for implementation of the International Covenant on Civil and Political Rights. The key component of that framework was the Civic Participation Act, which had been adopted in October 2003. The Act was designed to enable all citizens to participate on a footing of equality in the conduct of public business and the management of the State. There were various avenues for the expression of civic participation, such as the formation of people's juries in the administration of justice, a requirement that all draft legislation must be submitted for popular consultation, and open municipal councils. Under the Act, the Office of the Procurator for the Protection of Human Rights was responsible for promoting civic participation.

15. On 14 February 2008, the National Assembly had adopted Law No. 648, the Equal Rights and Equal Opportunity Act, the aim of which was to promote equality

and equity between men and women in the exercise of their civil, political, economic, social and cultural rights. The Government was organizing extensive awareness campaigns designed to make people realize that any violation of women's rights was a violation of fundamental rights. The campaigns sought to eliminate stereotyping, restore women's rights, and promote change in the negative behaviour patterns that constituted an obstacle to equality. Women themselves were being given training in national and international legal standards in an effort to enable them to exercise their rights more effectively, with the assistance of national and local institutions. Two far-reaching campaigns aimed at combating domestic violence were currently under way, while others were being conducted with a view to recruiting more women into public administration and facilitating access by women to elective offices.

16. In May 2007, the National Assembly had adopted the Access to Information Act, the aim of which was to safeguard and regulate access to existing information. Under the Act, all State departments and agencies were required to establish access to information offices and set up Internet sites to provide information about their services. Anyone who was denied access to information could petition the Administrative Litigation Division of the Supreme Court of Justice for redress. In the event the Court's decision was not given effect, the petitioner could initiate a criminal prosecution directly under article 564 of the Criminal Code.

17. On 13 November 2007, the National Assembly had adopted a new Criminal Code to replace its 1974 predecessor, which had essentially been based on Nicaragua's first Criminal Code dating back to 1837. In accordance with the Covenant, a number of fundamental principles recognized in international human rights instruments, such as the principle of legality, respect for human dignity and the protection of victims, had also been adopted. New offences had been defined, including in particular violation of the sanctity of the home, and any official who searched a private home without a warrant was liable to a term of imprisonment of three to five years. Another new offence was crimes against humanity, a category that included acts of torture, forced disappearance, and human trafficking for purposes of slavery, sexual exploitation or adoption. New offences with a bearing on the right to work included discrimination based on birth, nationality, political conviction, race, ethnic origin, sexual orientation, gender, religion, opinion, economic situation, disability or physical condition. Under the new Criminal Code, denial of constitutional rights and safeguards, such as discrimination, denial of freedom of expression or denial of access to information were also punishable offences. It was essential to note that under article 564 of the Code, a victim of any of the above-mentioned offences could initiate a criminal prosecution directly, without requesting the intervention of the Public Prosecutor's Office.

18. Despite budget constraints that made it impossible to address all society's needs, the Government of Nicaragua was giving priority to the elimination of poverty and the realization of economic and social rights, which had been trampled under foot during sixteen years of neoliberal governments. It was also implementing policies and programmes aimed at enabling people to exercise fundamental rights that were essential for life, with particular emphasis on the most urgent needs such as access to free health care, food, drinking water, sanitation, education, employment and housing. The Human Development Plan for 2009-2012 was currently the subject of a broad consultation process involving all sectors of society.

19. The Government was well aware that the implementation and effective exercise of civil and political rights were indispensable for the development of peoples. For that reason, it wished to reaffirm before the international community that it was determined to promote, apply and safeguard human rights as a means of fostering peace, social justice, equality and respect for life.

20. The Government was particularly grateful to the United Nations for its generosity in supporting the International Agreements Monitoring Unit. The Unit had sent a series of preliminary questions to the Inter-institutional Committee on Human Rights, and the written replies had been brought to the Organization's attention. Unfortunately, it had not been possible to translate those replies into the working languages, as they had been received too late. The members of the delegation wished to offer their apologies.

21. Nicaragua's ratification of the second Optional Protocol to the Covenant had been approved by Parliament on 11 September 2008, in line with the constitutional prohibition of capital punishment. The rights formulated in the Covenant could be directly adduced before national courts, in accordance with article 46 of the Constitution, which provided that on Nicaraguan soil, every individual was entitled to the protection of the State and recognition of the rights inherent in human beings, as well as the rights enshrined in the Universal Declaration of Human Rights and international human rights instruments. To take one example, in 2005, the deputy judge of No. 6 District Court in Managua had sentenced a person to five years' imprisonment for robbery and to two and a half years' imprisonment for attempted robbery. Counsel for the defence had then lodged an extraordinary appeal with the Supreme Court of Justice petitioning for annulment of the sentence on the grounds that the defendant's constitutional safeguards had been violated and citing article 14, paragraph 1 of the Covenant, which provided that all persons were equal before the courts and tribunals, and that everyone was entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The justices of the Criminal Division had accepted the argument of counsel for the defence and had overturned the sentences.

22. With respect to the Committee's views regarding communication No. 328/1988 (*Zelaya Blanco v. Nicaragua*), the Committee had concluded that Nicaragua was to blame for presumed human rights violations and had recommended that the victim should be compensated. In response, Nicaragua had stated that Mr. Zelaya Blanco had been invited to submit his claims to the national courts, but had refused to do so. In the same matter, the Committee had asked Nicaragua to carry out an investigation into the author's allegations of torture and ill-treatment, and had urged it to ensure that similar violations did not recur in the future. It was important to note that acts of torture and cruel, inhuman or degrading treatment or punishment were prohibited in Nicaragua by the Constitution and the law. Moreover, Nicaragua was a party to the Convention Against Torture and its Optional Protocol, which it had ratified in September 2008. Concerning measures to eliminate similar violations, under the new Criminal Code acts of torture were criminal offences, and confessions obtained by torture were not admissible in court.

23. The Committee had expressed concern about cases of extrajudicial executions of street children and young people that had allegedly occurred in Nicaragua. Other United Nations bodies had considered those allegations and had found them groundless.

24. In the matter of the victims of the pesticide Nemagon, Special Law No. 364, the Nemagon Victims Compensation Act, had been adopted in October 2000. The aim of the Act was to regulate and facilitate the processing of lawsuits brought by persons whose physical or mental health had been affected by the use of pesticides containing DBCP, i.e. Nemagon. A number of cases had already been settled in favour of the victims, who had obtained compensation of up to \$30 million or more for pain and suffering and physical injury, as well as exemplary damages.

25. In the matter of alleged cases of threats towards and attacks on journalists by persons linked to the State authorities, the Office of the Procurator for the Protection of Human Rights had considered three complaints and made recommendations aimed at ensuring that such violations would not recur in the future. With respect to the situation of members of human rights organizations who had allegedly been ill-treated, threatened and defamed by government authorities, it should be noted that Nicaragua had a legislative framework within which complaints of that kind could be followed up, the facts investigated and perpetrators punished. The country's domestic law respected and protected the rights of all citizens, whether individuals or corporate entities, including in particular freedom of association, the right of peaceful assembly, the right to take part, under conditions of equality, in the conduct of public affairs and management of the State, and the right to formulate petitions, denounce irregularities and engage in constructive criticism.

26. Issues relating to the right to strike and official records of strikes that had been declared legal were governed by the Constitution and the Labour Code. The police were empowered to authorize or deny permission for gatherings on public roads and to intervene to restore order where citizens' rights were being infringed. Excessive use of force was an offence under domestic legislation.

27. In 2007, Parliament had enacted Law No. 623, the Responsible Parenthood Act, which was based on the principle of the overriding interests of the child and was designed to protect the rights of children by promoting responsible parenthood, making no distinction between children born within marriage and those born outside of marriage. The Ministry of the Family had jurisdiction to initiate the necessary administrative procedures in the event of the death or absence of the mother or father. It was currently putting the finishing touches on a policy and plan of action for the entry into force of the Act.

28. Lastly, the situation of the indigenous populations of the Atlantic coast regions had already been considered by the Committee on the Elimination of Racial Discrimination early in 2008. The Government had implemented a series of initiatives designed to promote the economic and social integration of the autonomous regions in the context of a development plan entitled "The Road to the Caribbean". Moreover, those regions had high priority under various anti-poverty programmes. With respect to the specific case of the Awas Tingni community, the members of the delegation would provide the Committee with an updated written summary of the information they had previously submitted on the elimination of racial discrimination.

29. It was to be hoped that a constructive dialogue with the members of the delegation would enable the Committee to formulate recommendations that would help Nicaragua to make continued progress in implementing the Covenant and to pursue the task of scrutinizing and revising its policies for the benefit of all Nicaraguans.

30. The CHAIRPERSON thanked the head of the delegation for his opening statement. The effort that had gone into the preparation of the State Party's report and written replies was commendable. However, the report had been submitted very late, and the Committee's task had thereby been made more difficult, as it had been unable adequately to monitor the evolving situation with respect to the State Party's implementation of the rights formulated in the Covenant. The members of the delegation were invited to reply to the issues in the first part of the list (Nos. 1-15), devoting particular attention to aspects that had not been addressed in the opening statement.

31. Mr. LARA PALACIOS (Nicaragua), replying to issue No. 7, said that the Government had made an extensive effort to raise public awareness of the fact that violence against women must be recognized as a violation of fundamental human rights. Over and above the public health and safety issue, which warranted priority concern in itself, violence against women was a criminal offence. Under article 155 of the new Criminal Code which had been adopted on 11 November 2007, domestic violence was defined as any use of physical or psychological violence between spouses, partners, or persons who were or had been involved in a stable emotional relationship. Furthermore, it was also an offence to use force or intimidation against one's own children or those of a spouse or partner, except as a disciplinary measure, or against a forebear or disabled person who was subject to one's guardianship or custody. The chapter of the Criminal Code that dealt with injury to persons contained all provisions relating to violence against women, including domestic violence and sexual violence, whereas formerly those provisions had been scattered through various statutes. The normative framework for the effort to combat violence against women also included guidelines for handling cases of domestic and sexual violence and Ministry of Health Decree No. 67/96.

32. The special police station units for women and children had been supplemented with a special domestic violence unit within the Public Prosecutor's Office. A fully developed system for combating domestic violence effectively had thus been established. The National Police had continued to set up the special units to deal with cases of domestic and sexual violence. Thanks to the 32 units currently in operation in all parts of the country, the problems of domestic and sexual violence had acquired higher visibility and had become a significant subject of public discussion.

33. The amendment to the Criminal Code prohibiting therapeutic abortion (issue No. 8) had been the outcome of a consensus among the country's various political parties. Nicaragua remained one of the most tolerant western hemisphere countries in terms of its legislation on abortion. There had been no significant change in the incidence of maternal mortality due to abortions in recent years. According to statistical data from 2007, only 4 per cent of all cases of maternal mortality were caused by abortion, the main causes being haemorrhage (59 per cent of all cases), and hypertension (31 per cent). Studies conducted by the Ministry of Health indicated that 69 per cent of all cases of maternal mortality had occurred in six regions (Matagalpa, Jinotega, Managua, Chontales, Atlántico Sur autonomous region and Atlántico Norte autonomous region). As of June 2007, the number of cases of maternal mortality had been down by 12 per cent compared to 2006, and that decline had coincided with the implementation of the country's maternal mortality reduction plan. In 2006, most maternal mortality had been due to direct obstetric causes. However, the incidence of maternal mortality due to indirect

obstetric causes or other causes had increased in 2007, indicating a need to step up screening for women at risk, the introduction of family planning services, and more effective coordination with agencies dealing with domestic violence. In 2007, 72 per cent of all cases of maternal mortality had been reported from rural areas. Most of them had involved teenage girls with little or no education; poisoning, suicide and hypertension had been the main causes of death. In 70 per cent of all cases of maternal mortality, the woman had received at least one prenatal examination, albeit at a late stage in most cases. Even so, the incidence of maternal mortality had stabilized in a number of public institutions that had historically been characterized by high rates, including those in Atlántico Norte autonomous region, Atlántico Sur autonomous region, and Chinandega.

34. Inspections conducted at the country's various prison establishments with a view to assessing the situation of their inmates had revealed that conditions were unsatisfactory, especially at Bluefields Prison. Infrastructure deficiencies, including a lack of drinking water and sanitary facilities, inadequate food and overcrowding tended to cause disease and rioting. The Government had taken steps to increase the budgetary resources allocated for prison administration and thus improve conditions. A number of renovation and construction projects were under way or under study, including in particular renovations at the Tipitapa, Chinandega, Estelí, Granada and Matagalpa prisons and the construction of new facilities at Estelí, Chinandega, Bluefields and Bilwi. Plans for the construction of separate wings for women and adolescents in a number of prisons were also being developed. Renovation work at police stations, including the construction of custody cells, was under way at Puerto Cabezas, and a study was being conducted on sanitation and water supply systems in the country's prisons with a view to obtaining a clear picture of the situation. The Ministry of Finance, which was currently preparing the draft budget for 2009, had been instructed to raise the allocation ceilings for prison establishments in order to ensure that all those projects could be implemented.

35. The term "donados" was used to designate prison inmates who received no support from their families and consequently were fully looked after by the prison system, which supplied their basic needs, i.e. food and clothing, provided them with training services with a view to their reintegration into society, and helped them with administrative procedures aimed at enabling them to obtain the benefits to which they were entitled by law, including in particular the termination of their sentences. The situation of such "donados" could undoubtedly be better, but currently the main problem was that there were inadequate numbers of personnel to deal with them. Various civil society organizations and public agencies were helping to offset the shortage of prison personnel by providing those inmates with moral and legal assistance: the Office of the Special Procurator for Persons Deprived of their Liberty, the Office of the Special Procurator for the Protection of Human Rights, volunteer associations, law firms and law students. In 2006, there had been 1 110 "donados", while in 2007 there were 1 024.

36. The CHAIRPERSON thanked the members of the delegation for their replies and invited Committee members to ask additional questions.

37. Mr. JOHNSON LÓPEZ commended the State Party for its efforts to construct a true democracy and strengthen the meaningful exercise of human rights. The task was the more difficult because of the fact that Nicaragua, where one of the region's most violent dictatorships had held sway for several decades, had an extensive past

history of flagrant human rights violations. The State Party was to be commended for its adoption of a decree providing for approval of the second Optional Protocol to the Covenant, and it would be helpful to know more about the situation pending its ratification. With respect to gender equality, the adoption of Law No. 648, the Equal Rights and Equal Opportunity Act, on 14 February 2008 had been a noteworthy stride ahead, no less than the initiatives of the Office of the Special Procurator for Women, including in particular those aimed at enhancing participation by women in the conduct of public affairs. However, the Committee would have liked to be able to judge the practical results of those measures from statistical data. Similarly, statistics would have been useful in gauging the actual impact of the measures to enhance low-income women's access to justice which had been referred to in the written reply to question No. 5.

38. A number of projects aimed at improving prison conditions had been mentioned. The Committee would like to have some details on practical measures to improve infrastructure in prisons, especially sanitary facilities. In the matter of the pesticide Nemagon, which was an issue that had long been of concern to the international community, especially human rights organizations, it would be useful to know what conclusions had been reached by the Committee responsible for following up the cases of persons affected, and, in particular, whether victims were receiving satisfaction and how they had been compensated.

39. Mr. SANCHEZ-CERRO said that it was gratifying to note that the human rights situation in the State Party had improved since the Committee's consideration of its previous report, and that the Government had endeavoured to realize a greater degree of compatibility between the country's domestic law and the Convention through a variety of legislative measures. Despite those efforts, however, there were still problems that warranted concern. According to non-governmental organizations, police brutality was still of frequent occurrence, especially during demonstrations or in connection with persons being held in custody. Measures should be taken to ensure that such practices would be abandoned, and rules should be adopted to ensure that victims of ill-treatment or torture could receive compensation. Human-rights advocates were subjected to pressure, threats, persecution and even aggression from the police. A few years previously, a former Director of the National Police had even stated in public that human-rights organizations were funded by drug cartels. The Committee wished to direct the State Party's attention to the problem in the hope that it would take appropriate measures to combat the practices in question and ensure the safety of human-rights advocates.

40. Reports from non-governmental organizations showed that violence against women had increased alarmingly—by over 300 per cent—in the course of the previous five years. In 2007, approximately 70 000 women, i.e. one woman in three, had reportedly been victims of domestic violence. Most of them were afraid to lodge a complaint, and there were no shelters where they could find refuge. The State Party was failing to provide the necessary assistance in that area, and the situation should be corrected.

41. With respect to the administration of justice, it was clear that the State Party did not fully safeguard the right of remedy, in view of the fact that the judiciary was notoriously not independent. That was a serious problem, one that vitiated the safeguards set forth in the Covenant, and accordingly, the State Party should take

steps to correct it. Lastly, the budgetary resources allocated for prison administration should be revised upward to ensure that prison conditions would be improved, especially with respect to inmates' food, medical care and hygiene.

42. Ms. MAJODINA noted that the only campaigns against sexist stereotypes, human trafficking and sexual exploitation appeared to be those conducted by non-governmental organizations. The population was not provided with any information about those problems. Moreover, there were very few women in senior or decision-making posts. According to some sources, the police regarded violence against women and children as a minor, non-punishable offence and did not take protective measures in accordance with the provisions of the Criminal Code, whereas such acts accounted for half of all complaints alleging domestic violence. In cases of sexual violence, too much time elapsed between investigation and prosecution. The State Party should ensure that its legislation and the measures set forth in directives for dealing with cases of domestic and sexual violence were more rigorously enforced. In addition, the police should receive training on women's rights and sexist violence, and a unit with responsibility for domestic violence issues should be established within the Public Prosecutor's Office.

43. According to the Ministry of Health, the total number of maternity-related deaths had declined since the prohibition of therapeutic abortion, but the maternal mortality rate, which was the more significant indicator, had risen. Furthermore, the list of direct obstetrical causes showed that a number of maternity-related deaths could have been avoided if a therapeutic abortion had been performed. In addition, some deaths might be attributable to the prohibition on abortion in cases where the immediate cause of death was a pre-existing condition that had been aggravated by pregnancy, and also in some cases of suicide. It would thus be useful to know how many women really had died or experienced severe health problems following an attempted abortion or pregnancy-related complications due to the fact that they had been unable to obtain abortions under medical supervision.

44. Mr. KHALIL asked what the maximum legal duration of pretrial detention was, and whether it was observed in practice. That duration had an impact on overcrowding in prisons, which remained a major problem, especially in the northern part of the country, where detainees were held in police stations, regardless of whether they were awaiting trial or had already been convicted. The members of the delegation had indicated that the numbers of persons in pretrial detention had declined, but that the prison population as a whole had grown. It would also be of interest to know whether the establishment of the Office of the Special Procurator for Prisons with responsibility for, *inter alia*, overseeing the treatment of inmates, had resulted in improved prison conditions, which were frequently so abysmal as to have sparked a number of riots in 2006.

45. The fate of the "donados", whose numbers had increased from 1,110 in 2006 to 1,204 in 2007, was a continuing source of concern. It was not clear why those persons remained in prison, in contravention of the Constitution, which provided that no one should be held in detention once he had served his sentence. Nor was it clear why the State Party attributed their situation to a shortage of personnel.

46. Ms. PALM asked whether there were shelters for battered women, and if so, whether they were run by non-governmental organizations, possibly with State assistance, or whether they were public shelters, perhaps run by municipalities. Such facilities were indispensable, for in most cases a woman who lodged a

complaint about domestic violence could not return home. It was also essential for the police to receive training in how to receive, and support, women who were courageous enough to embark on such a difficult course of action. Statistics on that particular form of violence would be useful, especially if broken down by nature of aggression and relationship between victim and aggressor. The Committee would also like to know whether the State Party had conducted a study on the causes and consequences of violence against women, both domestic and sexual, or whether it had any plans to do so in an effort to combat the phenomenon more effectively. With respect to alleged extrajudicial executions of street children, the members of the delegation had indicated that such allegations were groundless, but had not specified who had reached that conclusion, nor how it had been reached.

47. Sir Nigel RODLEY invited the members of the delegation to comment on certain information relating to the prohibition of therapeutic abortion. As Ms. Majodina had remarked, maternal mortality had increased since that decision, and suicides and cases of poisoning also had to be taken into account. Some women, for example, had reportedly killed themselves by inserting pesticides into their vaginas. If that was true, there was reason to suspect that such cases were not really suicides, but rather attempted abortions that had proved fatal. Similarly, teenage pregnancies reportedly accounted for 30 per cent of all pregnancies, and in many cases were the result of rape. Other information indicated that doctors were placed in a difficult position, torn as they were between the legal prohibition and their obligation to terminate a pregnancy where the mother's life was in danger. Furthermore, it appeared from the State Party's written replies that 72 per cent of cases of maternal mortality occurred in rural areas, and that 21 per cent of them women with no education. There again, it was reasonable to ask what those figures really signified, for it was well known that when abortion was prohibited in a country, women who could afford to do so would go elsewhere to obtain pregnancy terminations. The prohibition of abortion could thus be regarded as a form of wealth-based discrimination.

48. Additional information on complaints about the police would be useful. The State Party had indicated in its written replies that 221 police officers had been punished, but with no indication of whether the guilty individuals had been subjected to criminal prosecution or administrative sanctions, nor how severe their punishment had been. In addition, it appeared that police officers had been punished for abuse of authority, excessive use of force and searches without a warrant, but never for torture or similar acts. It would be of interest to know whether that situation was due to the absence of provisions of law criminalizing those specific acts, or to the tendency of judges and prosecutors to rely on older definitions of offences, even where those concerned less serious acts, rather than the newer ones, with which they might not always be familiar.

49. Mr. AMOR said that the substantial progress achieved by Nicaragua since the Committee's examination of its second periodic report should be recognized. It would be of interest to know whether there had been any other cases besides the one that had been mentioned in which the Convention had been cited directly before a national court.

50. Concerning the issue of abortion, it would be helpful to know the reasons for the law's intolerance toward the practice; possible explanations might include the pressure of society, the weight of the Church, or a matter of political will. Statistics

on therapeutic abortion would be welcome. In view of the fact that the problem was more acute in rural areas, there might be reason to suspect a relationship with education. Statistics on girls' education, broken down by rural and urban area, would doubtless shed light on the phenomenon. More detailed statistical data on street children would also be useful.

51. It would be of interest to know what safeguards were enjoyed by persons in police custody, whether individuals' detention in custody was ever extended, and if so, whether the extension was ordered by a judge, and for what reasons. While Nicaragua had made laudable efforts to ensure that accused persons were brought to trial in timely fashion, it would seem that substantial delays still occurred, sometimes entailing excessively long periods of pretrial detention. It would be helpful to know what the average duration of pretrial detention was, as well as the numbers of detainees awaiting trial and total numbers of detainees.

52. Mr. LARA PALACIOS (Nicaragua) said that, with reference to the implementation of the second Optional Protocol to the Covenant, it was important to remember that capital punishment had been prohibited under the Constitution before the Protocol had been adopted. As no law ranked above the Constitution, it was impossible for a law reintroducing the death penalty to be adopted. The prohibition of capital punishment applied to domestic procedures as well as to extradition procedures. For example, when Nicaragua extradited an individual to a third State, it sought assurance that the individual in question was not at risk of being sentenced to death and executed.

53. The Office of the Special Procurator for Women was a division of the Office of the Procurator for the Protection of Human Rights and worked in coordination with State institutions and civil society. It had taken measures aimed at achieving greater participation by women at the departmental and municipal levels, especially in rural areas. With respect to the representation of women in senior posts in the public and private sectors, the Government was endeavouring to ensure that at least 50 per cent of managerial posts were filled by women. To be sure, machismo, with its assumptions about gender roles, was still alive and well, but it was to be hoped that the Government's efforts would contribute to the task of changing people's habits of thought. Already more women were participating in the conduct of public affairs: the Government included four women ministers and six women deputy ministers, while in the judiciary, four Supreme Court justices were women. The Atlántico Sur Autonomous Regional Council had approved a parliamentary agenda and policy on gender equality, and also the establishment of a Secretariat for Women mandated to ensure that regional policies were implemented. The Public Prosecutor's Office had adopted directives aimed at breaking the cycle of violence against women. The Government had thus adopted eminently practical policies, but was hoping that changes in mindset would occur as well.

54. Rural judicial facilitator posts had been established in rural areas, where State institutions were sparse. The facilitators were active in 124 municipalities, serving as links to indigenous communities that applied customary law. Their action was one component of a programme aimed at improving access to justice for citizens who lived far from courts, especially women, who were one of the most disadvantaged categories in that respect. Judicial facilitators worked closely with the people, and their work was all the more effective because they were themselves part of the community. They helped offset the absence of professional legal

personnel in rural areas, where literacy and knowledge of the law were scarce commodities. In addition, a permanent dispute resolution unit had been established within the Office of the Special Procurator for Women. In the indigenous communities of the autonomous regions on the Caribbean coast, community judges were enabling women to secure access to justice more readily, especially women who lived in remote areas or had low incomes. In 2007, the Office of the Special Procurator for Women had organized training programmes in 232 rural police stations in an effort to enhance police officers' awareness of the right of access to justice, especially for battered women. There were also a number of private mediation and arbitration centres, which sought to promote dispute resolution methods other than legal action, in an effort to enable low-income persons to obtain their rights. Another advantage of such community-based methods was that they enabled people to avoid the excessive delays that might result from court backlogs.

55. With respect to compensation for victims of police brutality, it was important to bear in mind that the new Code of Criminal Procedure and the new Criminal Code had been adopted only comparatively recently, in 2001 and 2008 respectively. Changing a judicial culture was a long process. Training for the entire judiciary structure and legal professionals had been required. It was essential to recall that until only a short time previously, the system had been based on an inquisitorial procedure; the various persons concerned had had to become accustomed to the new oral adversary procedure. Recourse to civil lawsuits, for its part, was the subject of a full chapter of the new Code of Criminal Procedure. Whereas formerly the victim had had to wait until the criminal prosecution had been completed before bringing a civil suit, he or she could now seek compensation as soon as that procedure had been initiated. The members of the delegation would provide the Committee with statistical data on the issue in due course.

56. With respect to the enforcement of Law No. 364, the Nemagon Victims Compensation Act, which addressed the issue of compensation for persons affected by the pesticide marketed under the name Nemagon, inter-institutional commissions had been established to help victims press their claims effectively. The Act provided that the State would assist victims who did not have adequate resources to be represented by counsel before national and foreign courts. Victims' lawyers had deemed the Act useful, as it had served to expedite the process of obtaining compensation without having to resort to the civil courts. The latter procedure would have taken much longer and would have afforded a much smaller probability of success. In 2006, 1,750 victims of Nemagon had been hospitalized in public institutions. Out of 30 000 victims, 21 000 were represented by law firms, while the others had joined together in various independent organizations. Positive, albeit still preliminary, results had already been obtained, as in the Téllez case, in which five claimants had been awarded \$3.9 million in compensation for physical injury and pain and suffering. However, the outcome was still uncertain, as the transnational firms involved had appealed the decision. The Mejía case, which had been brought by 15 claimants, was also still unsettled. In March 2007, at the request of the victims and in accordance with the agreements between them and the National Assembly, the Committee on Evaluation had been reactivated to oversee the implementation of the agreements.

57. The matter of human rights violations committed by the National Police was addressed in the new Criminal Code, which had entered into force in May 2008. It contained a chapter on the abuse of power and excessive use of force by police

officers, and also, for the first time in Nicaragua's history, a definition of the crime of torture. However, it was still too early for statistics on cases arising out of such violations. To ensure that abusive practices would not be adopted, all police officers, regardless of rank and function, were required to take courses at the Police Academy, including instruction in human rights. Where it appeared that acts of violence and torture had been committed by police officers, the matter was not dealt with by the police; rather, it was made public and the guilty individuals were punished. Concerning battered women, it was undeniable that they required protection, but there were no shelters as yet.

58. The CHAIRPERSON thanked the members of the delegation and invited them to continue their dialogue with the Committee at the next meeting.

The meeting rose at 1 p.m.