



# Convention on the Rights of the Child

## Committee on the Rights of the Child

### Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

### Initial reports of States parties due in 2006

#### Nicaragua \*

[17 June 2008]

### Comprehensive information on the measures taken to implement the provisions of the Optional Protocol

1. This report was prepared according to the guidelines on reports to be submitted by States parties in accordance with article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The information requested from each institution can thus be more clearly presented.

### Introduction

2. The Government of Nicaragua hereby submits to the Committee on the Rights of the Child its initial report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The report provides comprehensive information on the measures taken, progress made and difficulties encountered in implementing the Optional Protocol.

### Legal status of the Optional Protocol in domestic law and its applicability in domestic jurisdictions

3. Nicaragua ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in March 2003.

4. The previous Criminal Code did not define the offences set forth and defined in the Optional Protocol, since that Code came into force over 100 years ago. Therefore, the National Assembly decided to draw up a new, modern Criminal Code, in line with the Constitution, the Code of Criminal Procedure, the Code on Children and Adolescents and existing legislation.

5. In 2006, the National Assembly approved the chapter on offences against sexual freedom and integrity in the new Criminal Code, which defined the following offences: sexual exploitation, paid sexual acts with adolescents, pornography involving minors and the promotion of sex tourism. It more clearly defined the offence of human trafficking for the purpose of commercial sexual exploitation and criminalized the sale of children and adolescents.

6. The Code on Children and Adolescents contains provisions applicable to the offences set forth in the Optional Protocol.

### Governmental departments or bodies competent for the implementation of the Optional Protocol and their coordination with regional and local authorities, as well as civil society, the business sector, the media, etc.

7. The National Council for the Comprehensive Care and Protection of Children and Adolescents was established pursuant to the Code on Children and Adolescents. This body promotes political consensus between government institutions and civil society with a view to coordinating and monitoring the implementation of the national policy on the comprehensive care of children and adolescents. It is composed of government institutions, the Nicaraguan Federation of Non-Governmental Organizations Working with Children and Adolescents (CODENI, which brings together 52 NGOs), private enterprise and representatives of children and adolescents.

8. The role of the Council includes submitting proposals for amendments to the law to the relevant bodies with a view to bringing the law into line with the Code on Children and Adolescents. Its executive secretariat coordinates a team backed by government institutions and NGOs that has successfully lobbied the National Assembly to include in criminal legislation new offences related to commercial sexual exploitation, in accordance with the definitions of offences in the Optional Protocol.

9. The government institutions represented on the National Council and other institutions have set up specialized bodies and units to

address the problem of sexual violence in all its forms. Their tasks include the development of activities, programmes, projects and training aimed at eradicating such violence.

10. The Ministry of Education coordinates a network of school counsellors to advise students and parents on the prevention of sexual offences and commercial sexual exploitation, as well as on other important issues.

11. The Ministry of the Interior coordinates the National Coalition against Trafficking in Persons, which is made up of government institutions, civil society organizations and international NGOs and which implements measures to effectively identify, warn, protect and rehabilitate victims and punish perpetrators of this crime. The Ministry of the Interior, through the Directorate-General of Migration and Alien Affairs, has launched extensive training schemes nationwide on this issue and has tightened controls on children and adolescents leaving the country.

12. The National Police has various departments and special women's units to deal with reports of domestic violence and sexual offences against women, children and adolescents. Special mention should be made of the Legal Cooperation Directorate, where a human trafficking unit has been set up, and the Youth Affairs Directorate, which has set up crime prevention committees and constantly encourages coordination between institutions and civil society, local residents' organizations and youth leaders.

13. The Ministry of the Family, Adolescents and Children is the administrative authority responsible for putting into practice the special protection measures for children and adolescents who are at social risk.

14. The Public Prosecutor's Office, as a body at the service of the general public and victims of crime, has made considerable progress in developing the criminal justice system; it has established a special unit for children and adolescents and a special unit for dealing with crimes of gender-based violence.

15. The Public Prosecutor's Office works with law enforcement officers to identify cases of sexual exploitation in any form and to act immediately without damaging the evidence. With regard to punishing the crime of human trafficking, the Public Prosecutor's Office has focused its efforts on operational coordination with the special crimes unit of the Legal Cooperation Directorate, incorporating agreements into various units' strategic plans in order to achieve positive outcomes in cases that have gone for trial and to clarify those under investigation.

16. The Ministry of Health oversees the Directorate for the Comprehensive Care of Women, Children and Adolescents and coordinates comprehensive care programmes.

17. The primary function of the Office of the Special Procurator for Children and Adolescents, part of the Office of the Procurator for the Defence of Human Rights, is to receive, process and act on all reported violations of the human rights of children and adolescents committed in State institutions.

18. The Nicaraguan Institute of Tourism is coordinating with the tourist industry a plan to combat commercial sexual exploitation. Since 15 April 2004, Nicaragua has had a Code of Conduct in place.

### **Dissemination of information, education and training about the provisions of the Optional Protocol**

19. The Ministry of Education, via the network of school counsellors under the Lifelong Education Programme, runs nationwide awareness-raising campaigns as part of the parenting classes programme. Meeting places for students are promoted with the support of student councils.

20. The Ministry has circulated 47,500 copies of a booklet on how to prevent human trafficking, aimed at children and adolescents, which seeks to provide clear and accurate information on the institutions they can turn to in the event of acts related to commercial sexual exploitation.

21. The Ministry of the Family has a help desk that gives advice on child abuse and the commercial sexual exploitation of children and adolescents. The help desk has a toll-free, 24-hour emergency telephone number (133).

22. The Ministry of the Interior, through the Directorate-General of Migration and Alien Affairs, has installed in its headquarters a guidance and information system accessible via closed-circuit television, which broadcasts non-stop messages against human trafficking and illegal migration and measures to prevent disappearances.

### **Dissemination of the Optional Protocol and the appropriate training offered to all professional groups working with and for children and all other relevant groups (immigration and law enforcement officers, social workers, etc.)**

23. The Directorate-General of Migration and Alien Affairs, in coordination with the Ministry of the Family, the Nicaraguan Institute of Tourism and the National Police, encourages all its employees to periodically attend courses on issues related to commercial sexual exploitation, particularly of children and adolescents, in order to identify and prevent related offences.

24. A knowledge of domestic legislation, the Convention on the Rights of the Child and its optional protocols, as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, has proved useful for handling cases of sexual exploitation in all its forms.

25. The Public Prosecutor's Office has entered into strategic alliances with NGOs to ensure that all prosecutors nationwide receive training in commercial sexual exploitation, with the support of Save the Children and the International Programme on the Elimination of Child Labour (IPEC) of the International Labour Organization (ILO).

26. Prosecutors around the country have been trained to deal with allegations of offences of this nature and have attended workshops in Nicaragua itself, as well as in Costa Rica (San José) and El Salvador, on investigating cases of sexual exploitation, sponsored by ILO-IPEC and the United States Embassy in Nicaragua.

27. The gender unit of the Public Prosecutor's Office, working in conjunction with the Ministry of the Family, gives talks to staff of the Office to help them in their investigations, as their participation in judicial proceedings is crucial.

28. The executive secretariat of the National Council for the Comprehensive Care and Protection of Children and Adolescents, with the support of ILO-IPEC and within the framework of the project to support the prevention and elimination of the commercial sexual exploitation of children, runs a series of mini-programmes to bring information on the offences set out in the draft criminal code adopted by the National Assembly to the attention of teachers and school counsellors.

29. In 2006 a national forum was organized on dealing with offences against sexual freedom and integrity, with particular emphasis on minors. The forum sought to strengthen the capacity of those working in the justice system to deal with such offences by examining the new definitions of offences in the new Criminal Code.

### **Mechanisms and procedures used for the periodic evaluation of the implementation of the Optional Protocol and the main challenges encountered**

30. The implementation of the Optional Protocol has not yet been evaluated. One of the main obstacles is that it is not yet applicable in criminal cases under Nicaraguan law.

### **Compatibility of the implementation of the Optional Protocol with the general principles of the Convention on the Rights of the Child**

31. The draft criminal code, which includes some of the offences set forth in the Optional Protocol, is in line with those general principles. So too are the Code on Children and Adolescents, institution-building activities in Nicaragua and awareness-raising and training activities at all levels.

32. The implementation of the Optional Protocol has bolstered the activities already being carried out to give effect to the rights set forth in the Convention on the Rights of the Child in relation to the definition of a child, illicit transfer, adoption, economic exploitation, illicit use of narcotic drugs, sexual exploitation and abuse, abduction, sale of or traffic in children and other forms of exploitation.

33. The provisions of the Optional Protocol have served to reinforce the new definitions of offences that will come into force when the new Criminal Code is adopted, establishing protection for victims up to the age of 18.

34. Knowledge and awareness of the details of the offences listed in the Optional Protocol have led to greater efforts being made to prevent the illicit transfer of children and adolescents. The Directorate-General of Migration and Alien Affairs trains staff at all border posts, as well as other officials in the vicinity, on how to carry out exit controls.

35. With regard to the provisions of the Optional Protocol concerning adoption, Nicaragua has not only incorporated illegal adoption in the new Criminal Code, but has also reformed the Adoption Act, thereby strengthening the National Adoption Council.

36. The offences listed in the Optional Protocol apply in particular to child victims of economic exploitation. The Ministry of Labour is making efforts, through the National Commission for the Eradication of Child Labour and the Labour Inspectorate, to eradicate this problem.

### **Involvement of governmental and non-governmental organizations/bodies in the drafting and dissemination of the report**

37. The report was coordinated by the executive secretariat of the National Council for the Comprehensive Care and Protection of Children and Adolescents. The drafting process involved consultations with government institutions, criminal justice system officials, various sectors of society and NGOs who played an important role and made a valuable contribution.

38. Moreover, the consultations were widely publicized so that the general public could make observations and contribute to the drafting of the report. The exercise provided an opportunity to make a fuller assessment of the progress made and to prepare for the drafting of Nicaragua's fourth periodic report on the measures adopted to implement the Convention on the Rights of the Child, which will be submitted at the end of 2010.

### **Progress made in the enjoyment of the rights set forth in the Optional Protocol**

39. The following progress has been made:

(a) Offences related to commercial sexual exploitation in all its forms have been included in the new criminal legislation, in accordance with the Code on Children and Adolescents and the international instruments ratified by Nicaragua, particularly the Convention on the Rights of the Child and its Optional Protocol;

(b) Institutions have been strengthened and specialist staff have been trained. The offences have been widely publicized in Nicaragua. Ongoing and specialized rights-based training has been provided nationwide for judges, prosecutors, public defenders, police officers and staff from the Directorate-General of Migration and Alien Affairs, particularly those at border posts, to give them a better idea of how, in their various roles, they can defend, promote and safeguard the rights of children and adolescents.

## **Factors and difficulties affecting the degree of fulfilment of the obligations under the Optional Protocol**

40. It should not be forgotten that part of the population of Nicaragua is living in poverty or extreme poverty. Reports and accusations of the corruption of minors, pimping, procuring and indecent assault continue to be filed with the criminal justice system.

41. It is also important to note that government institutions need additional resources from the national budget. As it is, they have to turn for support to international cooperation agencies and civil society organizations working for children's rights.

## **Budget allocated to the various activities of the State party related to the Optional Protocol**

42. The following are the institutions most closely linked to the implementation of the Protocol:

- (a) Ministry of Education: Lifelong Education Programme;
- (b) Ministry of the Interior: National Coalition against Trafficking in Persons;
- (c) Directorate-General of Migration and Alien Affairs;
- (d) National Police;
- (e) Ministry of the Family: Special Protection Directorate;
- (f) Public Prosecutor's Office (with its two specialist units).

## **Principal legislative, administrative and other relevant texts and judicial decisions and relevant research**

43. These include:

- (a) Offences defined in the Criminal Code;
- (b) Reform of the Adoption Act;
- (c) Decision to establish the National Coalition against Trafficking in Persons and its publicity materials;
- (d) Booklets;
- (e) National Lottery tickets that carry warnings about human trafficking and advice on how to prevent it (Directorate-General of Migration and Alien Affairs);
- (f) National Police manuals.

## **Age limit used for defining a child in the definition of each of the offences enumerated in article 3, paragraph 1, of the Optional Protocol**

44. Nicaraguan criminal law defines the sale of children and child pornography as offences. These offences are included in the new Criminal Code. The age limit used to define a child is 18.

## **Penalties which apply to each of these offences and the applicable aggravating or attenuating circumstances**

45. The penalties applicable under current criminal legislation to the offences of the sale of children and pornography are set out in Act No. 641, containing the Criminal Code, adopted by the National Assembly on 13 November 2007.

### *Article 167. Rape*

Anyone who has or allows carnal access or who inserts in the victim, or forces the victim to insert, a finger, object or instrument for sexual purposes, by way of the vagina, anus or mouth, using force, violence, intimidation or any other means that deprive the victim of free will, reason or feeling, shall be sentenced to imprisonment for a period of 8 to 12 years.

Perpetrators and victims of this crime may be persons of either sex.

### *Article 168. Rape of children under the age of 14*

Anyone who has or allows carnal access with a person aged under 14 or who, for sexual purposes, inserts or forces the victim to insert a finger, object or instrument, by way of the vagina, anus or mouth, with or without consent, shall be sentenced to imprisonment for a period of 12 to 15 years.

### *Article 169. Aggravated rape*

The prison sentence shall be for a period of 12 to 15 years when:

(a)The perpetrator of the offence takes advantage of a relationship of superiority, authority, kinship, dependency or trust with the victim, or of sharing the family home on a permanent basis with the victim;

(b)The rape is committed in collusion with two or more individuals;

(c)The victim is particularly vulnerable because of a physical or mental illness or disability affecting their ability to resist, or the victim is pregnant or aged over 65; or

(d)The victim's health is seriously impaired as a result.

If two or more of the circumstances provided for in this article apply, the maximum penalty shall be imposed.

#### *Article 170. Statutory rape*

Anyone who is married or in a stable de facto union or who is of age and who, without violence or intimidation, has or allows carnal access with a person aged between 14 and 16 shall be sentenced to imprisonment for a period of two to four years.

#### *Article 171. Aggravated statutory rape*

When statutory rape is committed by a person who is responsible for the education or spiritual guidance, protection or custody of the victim or who has a relationship of authority, dependence or familiarity or shares the family home on a permanent basis with the victim, the penalty shall be imprisonment for a period of 5 to 10 years.

#### *Article 172. Sexual abuse*

Anyone who engages in lewd acts with or improper touching of another person, without their consent, or obliges them to engage in such behaviour using force, intimidation or any other means that deprive them of free will, reason or feeling, or taking advantage of the victim's inability to resist, without accomplishing carnal access or other acts classed under the offence of rape, shall be sentenced to imprisonment for a period of five to seven years.

If, when the offence is committed, any of the circumstances of aggravated rape apply, the sentence shall be imprisonment for a period of 7 to 12 years. If two or more of the aforementioned circumstances apply, or if the victim is a child or adolescent, the maximum penalty shall be imposed.

In no circumstances shall the victim be considered to have given consent if the victim is under the age of 14 or has a mental disability or illness.

#### *Article 173. Incest*

Anyone who has carnal access with an ascendant, descendant or collateral in the second degree of consanguinity aged over 18, while aware of the blood relationship and with consent, shall be sentenced to imprisonment for a period of one to three years. The above shall not preclude any penalties imposed for other offences.

In this case, forgiveness by the victim shall give rise to abatement of the criminal proceedings.

#### *Article 174. Sexual harassment*

Anyone who, repeatedly or taking advantage of a position of power, authority or superiority, demands or requests, for themselves or for a third party, any sexual act in return for promises, whether explicit or implicit, of preferential treatment or threats concerning the current or future status of the victim, shall be sentenced to imprisonment for a period of one to three years.

When the victim is under the age of 18, the penalty shall be imprisonment for a period of three to five years.

#### *Article 175. Sexual exploitation, pornography and paid sexual acts with adolescents*

Anyone who induces, provides, promotes or uses persons aged under 16 or a disabled person for sexual or erotic purposes, forcing them to witness or participate in an act or show in public or in private, even if the victim consents to witness or participate in such an act, shall be sentenced to imprisonment for a period of five to seven years, or four to six years if the victim is aged between 16 and 18.

Anyone who promotes, finances, manufactures, reproduces, publishes, markets, imports, exports, disseminates or distributes material for the purpose of sexual exploitation, by any means, be it live, mechanical, digital, audio-visual, or on computer-based, electronic or other media, the image or voice of a person under the age of 18 participating in sexual or erotic activity, whether real or simulated, explicit or implicit, or depicting their genitals for sexual purposes, shall be sentenced to imprisonment for a period of five to seven years and a fine of 150 to 500 day-fine units.

Anyone who, for the purpose of sexual exploitation, is in possession of pornographic or erotic material of the kind described in the previous paragraph shall be sentenced to imprisonment for a period of one to two years.

Anyone who performs a sexual or erotic act with a person aged between 14 and 18 of either sex, paying or promising to pay or to give the person a financial or other benefit in return, shall be sentenced to imprisonment for a period of five to seven years.

#### *Article 176. Specific aggravating circumstances in cases of sexual exploitation of adolescents in return for payment*

The penalty shall be imprisonment for six to eight years when:

- (a) The act is performed for financial gain;
- (b) The perpetrator or perpetrators are part of a group organized to commit sexual offences, except where the offence committed is one of organized crime;
- (c) Deceit, violence, abuse of authority or any means of intimidation or coercion is involved;
- (d) The perpetrator of the offence takes advantage of a relationship of superiority, authority, kinship, dependency or trust with the victim, or of sharing the family home on a permanent basis with the victim.

If two or more of the circumstances stipulated apply, a penalty of imprisonment for a period of seven to nine years shall be imposed. The maximum penalty shall be imposed if the victim is disabled or aged under 14 years.

#### *Article 177. Promotion of sex tourism*

Anyone who, within or outside the national territory, on an individual basis or through tour operators, advertising campaigns or the reproduction of texts and images, promotes the country as an attraction or destination for sex tourists, using persons under the age of 18, shall be sentenced to imprisonment for a period of five to seven years and a fine of 150 to 500 day-fine units.

#### *Article 178. Procurement*

Anyone who, for financial gain, induces, promotes, facilitates or encourages the exploitation and paid sexual activity of a person of either sex, obliges them to continue to participate in such activity, or recruits them for that purpose, shall be sentenced to imprisonment for a period of four to six years and a fine of 100 to 300 day-fine units.

#### *Article 179. Aggravated procurement*

The penalty shall be imprisonment for six to eight years and a fine of 300 to 600 day-fine units when:

- (a) The victim is under the age of 18 or has a disability;
- (b) Financial gain is a motive;
- (c) Deceit, violence, abuse of authority or any means of intimidation or coercion is involved;
- (d) The perpetrator of the offence takes advantage of a relationship of superiority, authority, kinship, dependency or trust with the victim, or of sharing the family home on a permanent basis with the victim.

#### *Article 180. Pimping*

Anyone who, by means of threats or coercion, seeks to be supported financially, even partially, by a person performing sexual acts for payment, shall be sentenced to imprisonment for a period of three to five years and a fine of 60 to 200 day-fine units.

If the victim is under the age of 18 or has a disability, the penalty shall be imprisonment for five to seven years and a fine of 200 to 400 day-fine units.

The same penalty shall be imposed if the perpetrator is married or in a stable de facto union with the victim.

#### *Article 181. Restrictions on mediation and other benefits*

When the victims of a sexual offence are children or adolescents, the perpetrator shall not be eligible for mediation or for the benefit of any suspended sentence.

#### *Article 182. Trafficking in persons for the purposes of slavery, sexual exploitation or adoption*

Anyone who, in the exercise of power or by means of threats, offers or deception, promotes, facilitates, induces or engages in the enticement, recruitment, hiring, transport, transfer, retention, harbouring or receipt of persons for the purposes of slavery, sexual exploitation or adoption, whether within or outside the national territory, even with the consent of the victim, shall be sentenced to imprisonment for a period of 7 to 10 years.

If the victim is under the age of 18 or has a disability, or if the perpetrator of the offence is a relative, guardian or the person responsible for the education, protection, custody or spiritual guidance of the victim, or shares the victim's home on a permanent basis, or holds a position of trust, the penalty shall be imprisonment for a period of 10 to 12 years.

Anyone who sells, offers, hands over, transfers or accepts a child or adolescent, whether for payment or reward or not, for the purpose of sexual exploitation shall be sentenced to imprisonment for a period of 8 to 12 years. The same sentence shall be handed down to anyone who offers, holds, acquires or agrees to the sale of a child or adolescent for the purpose of illegal adoption.

### **Article 183. Common provisions**

When the perpetrator of the offences of aggravated rape, aggravated statutory rape, sexual abuse, sexual exploitation, paid sexual acts with adolescents and pornography, the promotion of sex tourism, aggravated procurement, pimping or trafficking in persons for the purpose of sexual exploitation or slavery is the father, mother or legal guardian of the victim, a special additional penalty of disqualification from exercising the rights derived from the parent-child relationship, guardianship or custody shall be imposed for the

duration of the prison sentence.

Incitement, conspiracy and solicitation to commit the offences of sexual exploitation, paid sexual acts with adolescents and pornography, the promotion of sex tourism, procurement, pimping or trafficking in persons for the purpose of sexual exploitation or slavery, as set out in the previous chapters, shall be given a lesser sentence; the maximum penalty shall be the lowest limit stipulated by law for the offence in question, and the minimum shall be half of that.

## **Statute of limitations for offences**

46. The aforementioned offences lapse on the following grounds, as established in the Code of Criminal Procedure:

### *Article 72. Grounds*

The criminal proceedings are abated in the event of:

1. Death of the accused or defendant;
2. Expiry of the period of limitation;
3. Res judicata;
4. Withdrawal or abandonment of charges, in particular when they are not brought by the Public Prosecutor's Office, or of the suit in privately actionable offences;
5. Application of the principle of opportunity, subject to the provisions of this Code;
6. Fulfilment of the compensation agreements reached during mediation;
7. Expiry of the deadline for the conditional suspension of the criminal prosecution, without the latter being annulled;
8. Expiry of the maximum period of time allowed for the trial;
9. Victim's abandonment of the action, or forgiveness, where specifically authorized;
10. Amnesty.

### *Article 73. Interruption of the statute of limitations*

During the proceedings, the statute of limitations ceases to run if the accused escapes or if the court declares the accused to be incompetent as a result of a mental disorder. In the first case, the statute of limitations begins to run again once the accused is found; in the second case, the statute of limitations resumes its course once the accused is declared to have recovered his or her mental capacities.

## **Article 74. Effects of the statute of limitations**

The statute of limitations runs, is suspended or is interrupted separately for each of the participants in the offence.

### *Article 75. Non-suit*

The complainant may withdraw charges at any time during the proceedings. In this case, the complainant shall be definitively excluded from the trial, shall be liable for his or her own costs and shall be subject to the general decision on costs adopted by the court in its decision, except where otherwise agreed by the parties.

In the case of privately actionable offences, the plaintiff may also withdraw the suit, in which case he or she shall be liable for all costs, except where otherwise agreed with the defendant.

### *Article 76. Discontinuance*

Suits brought by the complainant shall be considered to have been discontinued, and the complainant shall be barred from participating in the proceedings in that capacity, where he or she, without just cause:

1. Fails to exchange information and evidence with the defence;
2. Is absent at the start of the trial;
3. Fails to make an opening statement;
4. Leaves the courtroom; or
5. Fails to make closing arguments.

In the case of privately actionable offences, the suit shall be deemed to have been discontinued when the plaintiff, without just cause, fails to appear at any pretrial hearings or brings about any of the circumstances stipulated as grounds for discontinuance by the individual bringing the prosecution.

Current criminal law defines the offences of sexual corruption of minors, pimping, procurement and human trafficking.

### **Definition of a legal person**

47. Public institutions (such as the State, province or municipality) and private bodies (companies and partnerships) have rights and obligations. A legal person must have its own identity, recognized by or constituted in accordance with the law. Its rights and obligations are different from those of the natural persons who comprise it.

48. A collective or legal entity comes into being when natural persons come together to create that entity. It is independent of the natural persons who comprise it and has its own legal personality.

### **Bilateral and multilateral agreements**

49. The National Adoption Council is a decentralized body that reports to the Ministry of the Family, and is charged with overseeing the technical aspects of adoption and implementing government policy on adoption in accordance with international and national instruments. The State party recently reformed its adoption law.

### **Measures taken when such offences are committed in Nicaragua's territory or on board a ship or aircraft registered in the State party; the alleged offender is a national of the State party or a person who has his/her habitual residence in its territory; the victim is a national of the State party; the alleged offender is present in its territory and it does not extradite her/him to another State party**

50. All these conditions are assessed in cases of offences covered by the Optional Protocol in view of the fact that the sale of children and pornography are punishable under the Criminal Code.

### **Extradition**

51. The relevant details on extradition in Nicaragua are given below, though it should be noted that the information is as yet incomplete.

52. In the absence of treaties or conventions signed and ratified by Nicaragua, the conditions, procedures and effects of extradition are governed by article 348 of the Code of Criminal Procedure, which also applies to any situations not covered by the respective treaty or convention.

53. Extradition can be active or passive and may apply to persons on trial or convicted as the perpetrators, accomplices or participants in crimes committed in or outside Nicaraguan territory. The Supreme Court decides whether or not to grant extradition and its decisions are notified to the requesting or requested State by the Executive. The Executive may, on receipt of a request from the Public Prosecutor's Office, ask the State in which the wanted person is located to take him or her into custody and to seize objects related to the offence. Under article 349 of the Code of Criminal Procedure, Nicaraguan nationals may not be extradited from Nicaraguan territory.

### **Seizure and confiscation of goods and proceeds, and closure of premises**

54. The National Police takes measures within the framework of the penalties laid down by the Code on Children and Adolescents.

### **Temporary or permanent closure of premises used to commit offences**

55. As far as administrative measures are concerned, the National Police works hand in hand with other government institutions, civil society and the Office of the Special Procurator for Children and Adolescents to close premises in which child victims of sexual exploitation or pornography have been found, as required by the Code on Children and Adolescents.

### **Protection of the rights of child victims**

56. Criminal proceedings are carried out in accordance with the Code of Criminal Procedure, which contains a chapter on the rights of victims. Criminal proceedings take place within an adversarial system, under which the National Police first investigates the alleged offence under the direction of the Public Prosecutor's Office. If charges are laid, the Office brings prosecutions and represents the interests of society and of the victims of crime, aided by prosecutors who specialize in the rights of children and adolescents.

57. The Office of the Procurator for the Defence of Human Rights, represented by the Special Procurator for Children and Adolescents, provides support in criminal proceedings in exercise of its oversight role.

### **Measures adopted to ensure that the best interests of the child are the primary consideration in domestic legislation governing the treatment of child victims by the criminal justice system**

58. With regard to special care for victims and survivors of domestic and sexual violence, the National Police procedures manual (2003) sets out the role of institutions and the procedures to be followed by officers of the Legal Cooperation Directorate, psychologists working for the special police units for women and children, and investigators in general, in securing the scene of the crime, carrying out investigations, maintaining the chain of custody, collecting facts and other evidence, providing specialist care for victims and assessing the danger posed by the offender.



59.The Code on Children and Adolescents lays down special protection measures for child victims of sexual exploitation, which the Ministry of the Family is responsible for implementing.

60.It is guaranteed that any doubts about a victim's real age will not hinder the initiation of criminal investigations, including those aimed at determining the victim's age.

61.The Public Prosecutor's Office and the National Police rely on the Institute of Forensic Medicine to determine the victim's age within the time limits set by law, so that the criminal proceedings are not held up.

### **Adaptation of procedures so they are child-sensitive, and the legal consequences for a child who commits an offence under the law applicable to her/him as a direct result of the practices prohibited under the Optional Protocol**

62.The Public Prosecutor's Office has a duty, from the moment an investigation is opened, to ensure that the child's best interests are paramount in criminal proceedings that involve child victims. The special police units for women and children are equipped to provide specialized help for child victims. The Public Prosecutor's Office, which employs prosecutors who specialize in children's and juvenile affairs, directs investigations and must do so in accordance with the Code on Children and Adolescents. However, the victim may still suffer further victimization, particularly when cases go to trial. Although specialists from the Ministry of the Family are on hand to help the victim, the latter is required to attend criminal proceedings, and, to date, no legal alternative to the victim's presence has been found.

63.As for the legal consequences for a child who commits an offence, the child is tried by special judges of the juvenile criminal justice system, in accordance with the Code on Children and Adolescents. The child is entitled to due process, including the right to a defence, the right to be heard, the right to physical and psychosocial examinations, the right to have cases heard within the stipulated time limits and the right to a verdict of guilty or innocent.

### **Keeping children informed throughout the legal process and indicating the persons responsible for this task**

64.The Public Prosecutor's Office, through its specialized units, attends to the needs not only of the victim, but also of the victim's family, by providing them with information on developments throughout the legal process.

65.It is explained to children what it means to be represented by the Office, what is expected from them and what their rights are during the proceedings. Specialists from the Ministry of the Family, supported by NGOs that work with children and specialize in this area of law, assist them during this judicial phase.

### **Allowing children to express their views, needs and concerns**

66.The Code on Children and Adolescents establishes the right of the child to be heard in any judicial or administrative procedure concerning them. If they are not heard, the entire proceedings are null and void. The child must be heard and allowed to address public hearings in proceedings in which he or she is present and invited to speak.

### **Provision of appropriate support services to child victims, including psychosocial, psychological and linguistic support at every step of legal proceedings**

67.The Ministry of the Family provides the necessary support with the help of specialized NGOs.

### **Protection of the privacy and identity of child victims**

68.The judge may restrict the access of the public and the media to a trial when a minor is giving evidence.

### **Safety measures adopted to protect child victims, their families, witnesses on their behalf, and individuals or organizations dealing with the prevention and/or protection and rehabilitation of child victims from intimidation and retaliation**

69.During criminal proceedings, victims may request protection against potential attacks on them or their families. The Ministry of the Family, with the help of NGOs like Casa Alianza or Dos Generaciones, lends support to children and adolescents.

### **Guaranteed access for all children to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible and to avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation**

70.The victim may apply for redress to the criminal court that passed sentence. No other formalities are required. The judge gives a final ruling on the application for redress and the amount to be awarded in damages, after accepting or rejecting, in part or in total, the victim's claims.

### **Assistance for child victims, including their full social reintegration and full physical and psychological recovery**

71. The Ministry of the Family, through the Special Protection Directorate, is responsible for regulating, addressing, supervising, monitoring and assessing judicial and psychosocial procedures and methods for dealing with all matters related to violations of the human rights of children and situations that call for special protection measures, including abandonment, mistreatment, sexual abuse, exploitation of children, drug addiction, disabilities, early pregnancy and adoption.

72. The Directorate's work is based on the provisions of the Convention on the Rights of the Child and the responsibilities conferred on it by the Code on Children and Adolescents and other legislation relating to the family.

**Measures, including those of a legislative, judicial and administrative nature, and the policies and programmes adopted to prevent the offences referred to in the Optional Protocol, and information on children concerned by these preventive measures and on the measures used to target children who are especially vulnerable to such practices**

73. Measures include those implemented by the National Police and the National Coalition against Trafficking in Persons, as well as those taken under the Lifelong Education Programme.

**Means used to raise awareness within the population at large about the offences prohibited under the Optional Protocol, particularly in schools, the media, government bodies and parents**

74. With regard to the prevention of these offences, the Lifelong Education Programme should be mentioned. The Ministry of Education's Values Directorate promotes course content and teaching strategies designed to instil and reinforce values such as tolerance, respect and fairness in pupils.

75. Important changes have been made to the curriculum. The ideas and pictures in primary school textbooks have banished the traditional view of the roles of men and women.

**Measures adopted, including those of a legislative, judicial and administrative nature, to effectively prohibit the production and dissemination of material advertising the offences described in the Optional Protocol, as well as the mechanisms established to monitor the situation**

76. The Code on Children and Adolescents contains the legislative measures that specify what is prohibited. The National Police imposes administrative penalties on offenders.

**Activities of the State party to promote international cooperation to address root causes**

77. Under the National Development Plan, once the extent of poverty in Nicaragua had been analysed and goals fixed for the coming five years, a funding strategy was to be drawn up. That strategy consisted in drawing up budgets sector by sector, using capital allocated under the macroeconomic programme agreed with the International Monetary Fund (IMF). This determined the baseline scenario, which assumes that the rate of expenditure (average annual expenditure) will continue to follow historical trends.

78. The most common means of family planning is sterilization. It is impossible to calculate unit costs for this, because the great majority of these procedures are performed during childbirth or when Caesarean sections are carried out. There are no statistics on how often sterilizations are performed, and estimates may fall short of the true number.

79. Much primary health-care infrastructure lacks even the basic services needed if adequate care is to be provided (no water, electricity, latrines or toilets) and many hospitals are hopelessly antiquated. The main issues concern the regular supply of materials, laboratory examinations and the cost of hospitalization and medicines in each service.

80. Given the need to make public spending more efficient in order to increase public savings, and given that greater efficiency alone will not make it possible to meet the commitments undertaken thus far, a broader approach to funding was deemed to be a strategic necessity. This approach is based on tapping as yet unreleased funds, as well as managing funding in the pipeline from foreign aid agencies and exceptional funds available under special cooperation initiatives (such as the Millennium Account and the G-8 Multilateral Debt Relief Initiative), which were not included in the projections of the baseline scenario.

81. In order to calibrate public sector spending, the gap between the budget available for social services and the resources needed to achieve the country's development goals was measured. This comparison of the budget with the cost of reaching the Millennium Development Goals showed that, given the present budget restrictions, some of the goals could not be reached even if efficiency was improved drastically.

82. Given these circumstances, the social needs that emerged in consultations on the National Development Plan were prioritized in a revised scenario that identified the programmes that are strategically important, have the greatest social and economic impact and fall within the purview of the public sector.

83. If social services are to be expanded, a more generous budget is needed to improve coverage of basic services such as health, education, drinking water and housing, and to employ more teachers and health workers. The option of adjusting wage levels in line with the cost of the basic food basket may also need to be considered. The spending gap also reflects the budget increases needed to pay for social policies aimed at the most vulnerable sectors of society. For all these reasons, current expenditure would need to rise.

84. Similarly, under the revised scenario it is concluded that about half of any additional funding should be spent on roads, energy, ports, airports, drinking water and housing, so that it can quickly help increase the country's competitiveness. Giving priority to the creation of capital in the economy is linked to increasing the country's potential, and also to opening up the economy more to foreign

trade.

## **Protection of victims**

85. It falls to the Ministry of the Family to implement protection measures, depending on individual circumstances, and to guarantee the rights of the child.

86. *Special protection.* The Ministry of the Family sets in motion the special protection procedure for victims of human trafficking in the country once its officials, in coordination with the National Police and the Public Prosecutor's Office, arrive at the location where the victim was found and the person who had initial contact with the victim hands over responsibility to them. The Ministry is responsible for the victim pending a decision on repatriation.

### **Minimum services provided under the special protection procedure**

87. Upon repatriation, the victim is immediately housed in safe and adequate accommodation. In coordination with the relevant public or private bodies, temporary shelter is provided in a hostel or alternative lodgings that meet the necessary safety requirements. If the victim is accompanied by a family member, they are not separated as long as this does not run counter to the best interests of the child or young person. Victims have the benefit of:

- (a) A balanced diet;
- (b) Medical and psychological care;
- (c) Access to educational and leisure programmes; and
- (d) Information on their situation, tailored to their age, maturity, language and cultural characteristics. Their opinion is solicited and, to the extent that it is possible and in their best interests, taken into account.

88. Other measures are set out in the special protection procedure provided for in the Code on Children and Adolescents and other relevant legislation.

89. If the victim or potential victim of trafficking in persons is pregnant, in addition to the usual protective measures, she receives specialized care before, during and after giving birth.

90. Under no circumstances is the young mother separated from her child. The birth of a child in such circumstances must be registered promptly by the appropriate authorities, so that the child may be identified and afforded protection.

91. The Ministry of the Family registers data on child victims of sexual exploitation, detailing their status as a victim, the assistance offered and follow-up action. This is done in order to ensure that specialized assistance is provided throughout the protection procedure. The data registered in this way are confidential.

92. Within three working days of beginning the special protection procedure, the Ministry will request the relevant documents to enable it to carry out an identity check.

### **International cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation**

93. The institution providing special protection to a victim who is a Nicaraguan or presumed Nicaraguan national may contact the Ministry of the Family directly, without detriment to any contacts and coordination at a diplomatic or consular level.

94. For its part, Nicaragua's accredited diplomatic or consular representative in the country where a Nicaraguan victim is located contacts the Directorate-General for Consular Affairs, at the Ministry of Foreign Affairs, which, in turn, informs and coordinates actions with the Directorate-General of Migration and Alien Affairs. The latter then verifies whether it has data on the child or young person on file. If such information (passport, entries to and departures from Nicaragua, names of parents or person responsible) is available, it coordinates its work with the police and the Public Prosecutor's Office.

95. Once the identities of the victim and the victim's family members have been established, the Ministry of the Family or, where appropriate, its counterpart in the other country decides whether it is advisable to contact the victim's family members and, if so, facilitates contact between them and the victim, provided that this does not endanger the safety or harm the best interests of the child or young person.

96. As soon as the victim's nationality and identity have been confirmed, the process of deciding whether to repatriate the victim begins.

97. The foreign institution providing special protection to a child victim who is a Nicaraguan or presumed Nicaraguan national may contact the Ministry of the Family directly, without detriment to any contacts and coordination at a diplomatic or consular level.

98. With regard to foreign victims in Nicaragua, the Ministry of the Family deals with its counterpart in the State of which the trafficking victim is a national, or with the respective diplomatic or consular representative, via the Ministry of Foreign Affairs.

99. Within 30 days of being notified of the case, the Ministry of the Family carries out an assessment of the child's social and family situation, including the following basic points:

(a)The suitability of the child's biological family or alternative carers is assessed with a view to possible repatriation. The safety of the victim and his or her family, alternative carers and the community is taken into account;

(b)The measures adopted by the Ministry of the Family and other public and private bodies to protect the returning victim and his or her family, relatives or friends aim to ensure that the victim receives the necessary medical and psychological treatment and help with social reintegration.

100.The assessment is passed on to the Directorate-General for Consular Affairs for authentication, and forwarded to the relevant consulate for the purpose of coordinating with the counterpart to the Ministry of the Family that is protecting the Nicaraguan victim. The assessment may be sent directly or via the Ministry of Foreign Affairs and the diplomatic or consular representation of the country where the victim is located.

101.The Ministry of the Family coordinates the preparation of the aforementioned assessment with its foreign counterpart or with the diplomatic or consular representation of the country of which the victim is a national.

102.The Ministry of the Family, in tandem with the Ministry of Foreign Affairs and the child protection bodies in the victim's country of origin, certifies that special protection measures are no longer needed, so that the victim can be transferred.

103.In cases where repatriation poses a serious risk to the safety of the victim or his or her family, efforts are made to find other temporary or permanent legal solutions that respect the laws of Nicaragua or of the country where the victim is located.

104.When the decision to repatriate is taken, the victim is prepared and notified in a manner in which he or she can understand.

105.Once the nationality of the child or young person has been ascertained, and the Ministry of the Family has announced the protection measure, the Nicaraguan Consulate prepares the child's or young person's documents and coordinates the repatriation process with the local authorities and the Directorate-General for Consular Affairs. When the decision to repatriate is confirmed, the victim is notified.

106.The Directorate-General for Consular Affairs notifies the Ministry's Special Protection Directorate and the Directorate-General of Migration and Alien Affairs of the date, border crossing, means of transport and name of the officer responsible for handing over the child or young person, as the case may be. Where possible, the transfer takes place during daylight hours on a working day.

107.The Special Protection Directorate provides the Directorate-General for Consular Affairs with the name and identity card number of the officer to whom the repatriated child or young person is to be entrusted.

108.The child or young person is welcomed by representatives of the Ministry of the Family and migration officials, who take the victim through immigration procedures.

109.The Ministry of the Family may request from its counterpart a copy of the victim's file, with the aim of following up on the protection procedure. The file remains confidential and is available only to staff assigned to the case.

110.The Ministry of the Family announces the protection measures called for in the assessment of the victim's social and family situation, referred to in article 11 of the Optional Protocol. It also sets in train the process of the victim's social reintegration, providing support to the family or the relatives of friends identified earlier.

111.In the case of foreign victims in Nicaragua, their nationality is ascertained and, once the Ministry of the Family has announced the protection measures, the accredited consulate in Nicaragua provides documents for the child or young person in question and coordinates his or her repatriation with the authorities of both countries. The immigration and security services of both countries, as well as their diplomatic or consular representatives, are then notified of the date, border crossing, time and name of the officers responsible for handing over and taking in the victim, who is informed of the transfer beforehand.

112.Once the date and time of the repatriation, and the means of transport, have been chosen, the Ministry of the Family lifts the protection measures and oversees the lifting of any other precautionary measures that may have been implemented. These measures are lifted when the child or young person leaves the country.

113.The Ministry of the Family provides its counterpart with a copy of the victim's file, for the sole purpose of following up on the protection procedure. The file remains confidential and is available only to staff assigned to the case.

114. The child or young person is welcomed by representatives of the child protection body in the destination country and by migration officials, who take the victim through immigration procedures. The child protection body announces the protection measures called for in the assessment of the victim's social and family situation, referred to in article 11 of the Optional Protocol. It also sets in train the process of the victim's social reintegration, providing support to the family or the relatives of friends identified earlier.

### **Detection, investigation, prosecution, punishment and extradition proceedings, and requests received from another State party for seizure or confiscation of goods or proceeds**

115.The criminal proceedings and the corresponding police investigations are carried out at the same time as the process of determining whether or not to repatriate and protect the victim. At all times, the primary consideration remains the best interests of the child, who is shielded from blame and revictimization. All necessary elements of due process are employed to this end, including the acceptance of pretrial evidence from the victim, protected witness status and, where possible, the questioning of expert witnesses at a single session.

### **Bilateral, regional and/or multilateral agreements, treaties or other arrangements which the State**

**party concerned is party to and/or any relevant domestic legislation in that respect**

116.Nicaragua has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. In addition, it set up the National Coalition against Trafficking in Persons, whose procedures manual was approved by the Ministry of the Family, the Ministry of the Interior, the Public Prosecutor's Office and the Ministry of Foreign Affairs.

117.Nicaragua has also ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

118.Also worthy of mention are the Constitution, the Convention on the Rights of the Child, the Code on Children and Adolescents, the Criminal Code, the Code of Criminal Procedure, the National Commission for the Progressive Eradication of Child Labour and the Protection of Young Workers, the ILO Convention, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

**Financial and other assistance**

119.The Public Prosecutor's Office has entered into strategic alliances with NGOs to ensure that all prosecutors nationwide receive training in commercial sexual exploitation, with the support of Save the Children and ILO-IPEC.

120.ILO-IPEC has provided support for training prosecutors at the national level, to help them deal with allegations of this kind of crime. Prosecutors from the Public Prosecutor's Office have also attended workshops in Costa Rica (San José) and El Salvador on investigating cases of sexual exploitation, sponsored by ILO-IPEC and the United States Embassy in Nicaragua.