



International Covenant on Civil and Political Rights

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Introduction

1. During the period under review, the State of Nicaragua made progress in the implementation of the civil and political rights established in the International Covenant on Civil and Political Rights. Article 46 of the Constitution states that “in the national territory all persons shall enjoy the protection of the State and recognition of the rights inherent in the human person, unrestricted respect, promotion and protection of human rights, and the full exercise of the rights set forth in the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man; the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, of the United Nations; and the American Convention on Human Rights, of the Organization of American States”. This shows that the rights evaluated here are included and implemented in the supreme law of Nicaragua. The following progress has been made in the period under review.

Substantive provisions of the International Covenant on Civil and Political Rights

Article 1

The right of peoples to self-determination

2. The right to self-determination has a general normative framework in which the main instrument is the Constitution of Nicaragua and the relevant amendments thereto; article 1 states that national self-determination is an inalienable right of the people and a cornerstone of the nation; national sovereignty resides in the people, which exercises it through democratic instruments, freely deciding on and participating in the construction and improvement of the economic, political, cultural and social system of the nation (Constitution, art. 2). Articles 3 and 4 of the Constitution establish the nation’s commitment to peacebuilding and human development and its opposition to any form of oppression or discrimination.

3. Another fundamental principle of the nation is respect for the self-determination of peoples; its international relations are based on friendship and solidarity among peoples and reciprocity among States, while political, military, economic, cultural and religious aggression of any kind, or intervention in the internal affairs of other States, are prohibited. Nicaragua is an independent, free, sovereign, unitary and indivisible State and a participatory and representative democratic Republic (Constitution, arts. 5–7).

4. National sovereignty resides in the people, which exercises that sovereignty through direct or participatory democracy, choosing its representatives “by universal, equal, direct and secret suffrage, no other person or group of persons being able to arrogate to themselves that power or right of representation; or by plebiscite or referendum” (Constitution, art. 2). The Nicaraguan people is “multi-ethnic in nature” (Constitution, art. 8) and its territory is divided for administrative purposes into autonomous regions on the Atlantic Coast, departments and municipalities. The city of Managua is the capital and the seat of the four branches of the State (Constitution, art. 12).

5. The inviolability of human life, security, equality before the law, freedom of conscience, thought and religion, the right to private property, due process, asylum and refuge and the prohibition of servitude and slavery are recognized in articles 23 to 45 of the Constitution; and the rights of the Caribbean Coast communities in title IV, chapter VI. The social function of the various forms of public, private, associative, cooperative and community property is recognized in article 5. The preservation, conservation and recovery of natural resources and the environment are established in article 60, in order to guarantee the right to live in a healthy environment. Natural resources are a national heritage and their conservation, development and rational exploitation is the responsibility of the State (Constitution, art. 102).

6. Executive Decree No. 1-194 created the Ministry of the Environment and Natural Resources, which coordinates and directs the State’s environmental policy. Act No. 217, the Environment and Natural Resources Act, governs the conservation, protection,

improvement and restoration of the environment and natural resources, ensuring their rational and sustainable use. Decree No. 9-996 regulating the Environment and Natural Resources Act, establishes that the Ministry is the competent authority for regulation, standard-setting, monitoring and control in matters of environmental quality, sustainable use of renewable natural resources and environmental management of non-renewable resources, as well as for administrative sanctions for non-compliance with environmental regulations. The Criminal Code governs offences against the environment and natural resources.

7. The State recognizes the existence of indigenous peoples and peoples of African descent and their right to their own identity within a unitary and indivisible State (Constitution, art. 5). The Statute of Autonomy of the Caribbean Coast of Nicaragua and the Act on the Communal Property Regime of the Indigenous Peoples and Peoples of African Descent of the Caribbean Coast of Nicaragua and the Bocay, Coco, Indio and Maíz Rivers recognize their collective right to their lands and the right to free, prior and informed consultation, based on the Constitution (arts. 5, 89, 91 and 181), the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on Indigenous Peoples.

8. In realization of these rights, the State of Nicaragua has to date granted title to 23 communal territories, covering the equivalent of 31.16 per cent of the national territory (37,841.99 km² out of 121,428 km²), thereby providing legal security of tenure. Work continues on the demarcation of and granting of title to 4 per cent of the territory of Alto Wangki (Jinotega), starting with the process of consultation with indigenous communities. By 2018, the State had granted communal property title to 304 ancestral communities, i.e., a total of 39,531 families, or 227,185 persons in all. The administration process was carried out in consultation with the communities.

9. In Nicaragua, the communities take the lead; they decide on the implementation of public and private investment projects; examples of this are the Tumarín Project, the approval of oil prospecting and the Interoceanic Canal project; the procedure used in the last example was consultation to obtain the free prior informed consent of the Rama Kriol territory. Following the approval of nine communities in the territory (arrived at by means of communal assemblies), the procedure was launched on the basis of the Consultation Plan for the Free Prior Informed Consent of the Territory of the Rama Kriol to the implementation of the Great Interoceanic Canal Project of Nicaragua and Associated Infrastructure. The customary law of the Rama Kriol people is recognized in the administration of their affairs, and the partnership-dialogue-consensus model puts their rights, duties and best interests first in the implementation of the canal and infrastructure project; the representatives of the communities signed a prior consent agreement on the use of communal land in the execution of the project, which was officially published on 9 May 2016.

Article 2

Guarantee of the rights recognized in the Covenant and the principle of equality

10. The Constitution, as amended in 2014, is the basis of the Nicaraguan legal order; chapter I, on individual rights, of title IV, on the rights, duties and guarantees of the Nicaraguan people, sets forth civil rights and liberties aimed at guaranteeing the full enjoyment of human rights; chapter II of title IV, on political rights, establishes political freedoms in accordance with the provisions of the Covenant. Article 46 of the Constitution stipulates that all individuals in the national territory enjoy the protection of the State and recognition of the rights inherent in the human person, the unrestricted observance, promotion and protection of human rights and full applicability of the rights set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other treaties, thereby giving constitutional recognition to those international treaties. Articles 187 to 190 institute constitutional controls to ensure compliance with constitutional guarantees and to safeguard the Constitution itself.

11. Act No. 983 on constitutional justice was adopted, repealing Act No. 49, the *Amparo* Act, title XI of Act No. 350 on contentious-administrative jurisdiction, and articles

34 (5) and 35 (3) and (4) of Act No. 260, the Organic Act on the Judiciary. Act No. 983 establishes the constitutional oversight mechanisms applicable to constitutional justice, namely: (a) habeas corpus; (b) habeas data; (c) *amparo*; (d) application for constitutional review; (e) application for constitutional review with reference to a specific case; and (f) application for constitutional review in a case of omission; as described below.

12. Habeas corpus (arts. 14–30), protects freedom, physical integrity, security and other related rights, when these are threatened or violated by action or omission of an authority or a private individual; applications are considered by the Criminal Division of the Court of Appeals; they may be lodged at any time on any day. An executing officer takes whatever action is necessary for the effective protection of the rights and guarantees requested, draws up a report on the action taken and sends it forthwith to the Criminal Division, which will make a determination. If the court dismisses the appeal or does not recognize the appellant, a complaint may be filed within 10 days with the Constitutional Division, which must rule within 24 hours.

13. Habeas data (arts. 31–42) protects constitutional rights relating to private and family life; honour and reputation; and informational self-determination, i.e., the remedy can be used to gain access to personal information held by any public or private entity or to object to or demand the modification, suppression, blocking, inclusion, supplementing, rectification or cancellation, and the updating, of personal data thought to be erroneous or to violate constitutional rights. Applications are considered and adjudicated by the Constitutional Division of the Supreme Court, which has the power to suspend the action ex officio or at the request of a party. The time limit for appeal is 30 days from exhaustion of administrative remedies, following which there are 5 days in which to rectify any omissions in the application and then 15 days in which to answer the appeal and provide the information requested (failing which the applicant's claims are held to be accurate). The application is then referred for consideration and judgment, with the sentence to be handed down within 45 days and compliance within 5 days.

14. *Amparo* (arts. 43–60) aims to protect the rights and guarantees contained in the Constitution against any order, act, decision, action or omission by any official, authority or agent, that violates or attempts to violate the rights and guarantees enshrined in the Constitution. The competent body to hear and adjudicate appeals in *amparo* is the Constitutional Division of the Supreme Court, but to ensure that the remedy is accessible throughout the country, an appeal in *amparo* may be received by the various Civil Divisions of the Appeal Court to be found in every jurisdiction in the country. The application may be lodged in the appellant's domicile, thereby bringing justice closer to the people. The Civil Divisions of the Courts of Appeal have the power to suspend the act ex officio or at the request of a party. The time limit for appeal is 30 days from notification or communication of the order, act or decision that marks the exhaustion of administrative remedies. Once the appeal has been filed, the Civil Divisions of the Court of Appeal may order rectification of the application within 5 days. If the appeal is not admitted, the appellant may apply to the Constitutional Division of the Supreme Court and, once the certified documents have been received, will have 15 days to appear and lodge an appeal in *amparo* on grounds of arbitrary decision. Once the appeal is admitted by the Constitutional Division, the respondent and the Office of the Attorney General of the Republic will be notified within 5 days, and will be given 15 days to appear, give their views and submit a report (failure to report or late submission gives rise to the presumption that the appellant's claims are accurate). The appellant then has 10 days to appear, on pain of forfeiting *amparo*. The *amparo* application is referred for consideration and judgment, after which sentence must be passed in 45 days.

15. The application for constitutional review (arts. 61–74), is a mechanism for evaluating legislation in the abstract. Its purpose is to review a law, decree or regulation that is contrary to the Constitution. The competent body to hear and process the application, draft a judgment and issue a resolution, is the Supreme Court plenary. There is a period of 10 days for the correction of omissions, failing which the application will be deemed not submitted. The respondent, i.e. the most senior authority of the body that originally issued the provision in question, and the Counsel General's Office are then notified and have 20 days to appear, submit a legal report and their views. Once the 20 days have elapsed, a judge is appointed to draft the judgment within 30 days and there are then 60 days in which to discuss and adopt the judgment (which has the force of *res judicata*).

16. The application for constitutional review in a specific case (arts. 75–78) is an incidental oversight mechanism to evaluate the constitutionality of the rules applied in judicial proceedings. It can be requested by any of the parties in the proceedings or by the court itself. The competent authority is the judiciary in the first instance and the Supreme Court plenary for confirmation. This remedy is available for use in the course of judicial proceedings before sentence is passed. It is an incidental mechanism to evaluate the constitutionality of the legal provisions applied in judicial proceedings, whereby the judicial official conducting the proceedings will rule on the constitutionality or otherwise of the provision applied in the case. The ruling will be sent to the Supreme Court plenary, for it to ratify or not the finding of unconstitutionality: it has 30 days to assign the task of drafting a judgment and 30 days to discuss and adopt the judgment.

17. The application for constitutional review for omission (arts. 79–87) is an oversight mechanism to ensure the supremacy of the Constitution. Its purpose is to verify that the legislative branch has promulgated a law when expressly required to do so by the Constitution, and in compliance with the conditions set forth in the relevant constitutional provision. The competent body to hear the application and adjudicate is the Supreme Court plenary. Following submission of the application 10 days are allowed for rectification of any omissions, failing which it will be deemed not submitted. The respondent and the Office of the Attorney General of the Republic will then be notified and will be given 20 days to appear, give their views and submit a report. When the 20 days have elapsed a judge will be appointed to draft a judgment within 30 days, and 60 days are then allowed to discuss and adopt the judgment, and 180 days for the National Assembly to launch the legislative process.

18. Nicaraguan law guarantees compliance with article 2 of the Covenant and has legal mechanisms allowing individuals to obtain redress in the event of a violation of the fundamental rights and guarantees established in the Constitution and the Covenant. The Nicaraguan State recognizes the individual, the family and the community as the source and purpose of its activity, and it is organized in such a way as to guarantee the common good, undertaking to promote the human development of each and every Nicaraguan. In this sense, article 5 of the Constitution establishes that the principles of the Nicaraguan nation are freedom, justice, respect for the dignity of the human person, political and social pluralism, recognition of the identity of indigenous peoples and peoples of African descent within a unitary and indivisible State, recognition of the various forms of property, free international cooperation, respect for the self-determination of peoples, Christian values, socialist ideals, solidarity, and the values and ideals of Nicaraguan culture and identity, while the political and civil rights and freedoms established in article 2 of the Covenant are enshrined in the Constitution.

Articles 3 and 26

Equality between men and women in the enjoyment of human rights and non-discrimination

19. Under article 27 of the Constitution, “all individuals are equal before the law and have a right to equal protection. There shall be no discrimination on grounds of birth, nationality, political belief, race, sex, language, religion, opinion, origin, or economic or social status.” The Constitution ensures the protection of foreigners, who have the same obligations and rights as Nicaraguans, with the exception of political rights or others established by law. The State is the guarantor of the constitutional rights of all persons within its territory.

20. In order to avoid any type of discrimination, the State adopted Act No. 648, the Equal Rights and Opportunities Act, the purpose of which is to promote equality and equity between women and men in the enjoyment of human rights, civil, political, economic, social and cultural rights; it also established general principles and public policies aimed at guaranteeing the effective exercise of true equality in the application of the law to women and men, in order to ensure the full development of women and establish the basic mechanisms whereby all State administrations and other branches of the State, and regional and municipal authorities, shall ensure effective equality between women and men. The National Council for Equality, which is coordinated by the Nicaraguan Institute for Women, was established to assist with the design, formulation, implementation, monitoring and

evaluation of the Equality Policy and with compliance with the provisions of the Act, alongside the Office of the Special Advocate for Women of the Office of the Human Rights Advocate. The State implemented strategies to strengthen the leadership and empowerment of 78,295 women community leaders, councillors, mayors, deputy mayors, women with productive economic ventures and women public servants, and also developed policies and instruments for the incorporation of good gender practices in State institutions, allocating funds for this purpose.

21. The State promoted and consolidated the gender equality policy, a cross-cutting policy, as recognized by the World Economic Forum, which, in the Global Gender Gap Report 2018, ranked Nicaragua fifth alongside the Nordic countries: Iceland (first; 85 per cent), Norway (second; 83.5 per cent), Sweden (third; 82.2 per cent), Finland (fourth; 82.1 per cent), Nicaragua (fifth; 80.9 per cent); in the equity index globally, Nicaragua has moved up four places to sixth place; it is therefore the country with the highest level of gender equity in the Americas. It also ranks fifth in terms of the number of women in the parliament and first in terms of the number of women in ministerial posts. The proportion of public positions held by women is 59.7 per cent in the judiciary, 56 per cent in the executive and 45.7 per cent in the parliament, while 44 per cent of mayors, 55.55 per cent of deputy mayors and 50 per cent of municipal councillors are women. In terms of equity, there have been solid gains with regard to women's role in social, cultural, political and economic growth.

22. Employment opportunities have been guaranteed in State institutions without distinction as to sex or race, through the assignment of posts to men and women on an equal basis; the creation of a body responsible for coordinating, advising on and evaluating the application of the gender perspective in each relevant State entity established under the Act (Gender Units); the creation of educational programmes in the various modalities and levels of the national education system, promoting equitable and equal representation of the genders; and the inalienable duty of men and women to care for and feed their children, under State oversight.

23. Act No. 870, the Family Code, was adopted and promulgated, strengthening special protection measures for women victims of violence and the obligation to report domestic or family violence. Full implementation of Act No. 779, the Comprehensive Act against Violence against Women and on Amendments to Act No. 641, the Criminal Code, and amendments thereto, was ensured through the training of justice sector officials and the application of the gender perspective at all stages of criminal justice proceedings. For the purposes of implementation, infrastructure for seven specialized courts has been put in place, together with a Special Criminal Division on Violence and Criminal Justice for Adolescents in the Court of Appeals of Managua; 14 judges specializing in violence have been appointed by the National Council on Judicial Administration and the Legal Profession, as well as 3 judges in the Managua Special Division on Violence; 99 police units for women and children have been set up and 99 female specialist investigators have been appointed, in order to ensure a direct presence in each of the country's 153 municipalities.

24. As to women's access to justice, 69,605 criminal cases were processed and 43,287 (62 per cent) resolved. The courts have interdisciplinary teams of psychologists and social workers to support women victims of violence. Sixty-five sentences were handed down in cases of femicide, all with a verdict of guilty, thereby demonstrating that there is no impunity. The Institute of Forensic Medicine conducted 167,009 expert appraisals as part of investigations into offences against life, health and physical, mental and sexual integrity, thereby ensuring equal treatment in support for women (2014–2018). The Supreme Court's Judicial Observatory for Gender-based Violence was strengthened in order to follow up on and monitor the application of precautionary and protective measures, judicial decisions and judicial statistics relating to the offences established in Act No. 779. For its part, the Government of Reconciliation and National Unity (the Executive) granted microcredits to 1,553 women at risk of violence or victims of violence, fostering their personal growth and that of their businesses and contributing to their full recovery. Indigenous craftswomen from the North Caribbean Coast were provided with workshops, and with nurseries to grow tuno, timber and fruit trees.

25. The State, through the Family Code (art. 2 (g) and (h)), instituted the protection of family relations and the joint participation of the father, mother and children in household

responsibilities, with both father and mother expected to develop values of love, solidarity, respect, mutual aid, responsibility and absolute equality. It recognizes equality and protects marriage and stable de facto law unions, and promotes the protection of families. With regard to the legal institution of marriage, the Family Code (art. 54) provides that men and women who have reached 18 years of age may lawfully enter into marriage, and that adolescents aged between 16 and 18 years of age may also enter into marriage with the authorization of their legal representatives; children under 16 years of age are prohibited from entering into marriage or de facto unions (Family Code, art. 57 (a)).

26. Divorce is regulated by title IV of the Family Code, which provides for divorce by mutual consent (arts. 159–165) and divorce at the request of one of the parties (arts. 171–184). In both cases the spouses' rights to the care and maintenance of, and responsibility for, children, persons with disabilities or persons declared legally incapable are protected.

27. With regard to schooling, Nicaragua has inclusive policies in terms of gender equality and also with regard to indigenous and Afrodescendent communities, ensuring linguistic and social relevance based on the world view of the indigenous peoples, in accordance with national law. An egalitarian education is encouraged, with the participation of children and adolescents from all social sectors and economic levels, and of differently abled students. A total of 32,078 preschool, special, primary and secondary school teachers have been trained in methodological strategies for dealing with students with auditory, intellectual, visual and motor disabilities, autism spectrum disorder, attention deficit disorder and hyperactivity, promoting non-discrimination within the education system and quality education for all children and adolescents.

28. In 2014–2018, to boost primary and secondary school enrolment and retention, social programmes were put in place for students from less developed areas, who were provided with 2,772,631 school kits; 1,995,806 pairs of shoes; 20,000 bicycles and 11,541,635 books; in addition, 5,370,168 students were provided with school meals under the Food and Nutrition Security Strategy. In 2014 distance-learning secondary education was launched in rural areas with the opening of 447 centres, with the aim of bringing education closer to rural children and adolescents who live in vulnerable areas and who historically have not had access to education; there are now 522 centres.

29. The Constitution (art. 16) states that Nicaraguan nationals are “those born in the national territory, except children of foreigners on diplomatic service and those of foreign officials in the service of international organizations or sent by their governments to work in Nicaragua, unless they opt for Nicaraguan nationality; children of a Nicaraguan father or mother; children born abroad to a father or mother who was originally Nicaraguan, provided that they apply after reaching the age of majority or on emancipation; children of unknown parents found in Nicaraguan territory, without prejudice to the legal consequences of establishing their filiation; children born to foreign parents on board Nicaraguan aircraft and boats, if they so request”. Additionally, the Family Code and Act No. 908 on the Late Issuance and Correction of Civil Registry Acts guarantee children's right to a name, an identity and a nationality, and to be registered immediately at birth free of charge, a provision that benefited 20,782 children aged under 12 in 2014–2018.

30. On the question of the elimination of traditional practices and customs that violate the dignity and personal integrity of women and girls, there are no such practices or customs in Nicaragua. However, the State is promoting new models of training for Nicaraguan households, and the Ministry of the Family, Children and Adolescents has established a new Early Childhood Policy, with guidelines encouraging new approaches to child-rearing: parenting skills and the encouragement of early learning in the family setting, and the prohibition of all forms of corporal punishment or humiliating treatment as a means of correcting behaviour or instilling discipline, in schools and residential childcare facilities. A total of 160,978 home visits were conducted (2014–2018).

Article 4

Protection of human rights in states of emergency

31. Article 185 of the Constitution allows for the suspension of rights and guarantees for reasons related to national security, economic conditions or a natural disaster. The suspension may be in all or part of the national territory and applies for a specific period of

time, which may be extended if the grounds for suspension continue. Article 186, however, specifies certain rights and guarantees that must not be suspended under any circumstances. Article 150 (9) stipulates that suspensions must be issued by presidential decree in a meeting of the Council of Ministers and sent within 72 hours to the National Assembly for ratification within 45 days; the National Assembly may also amend or reject it.

32. The modalities for implementing a state of emergency are regulated in Act No. 44, the Emergency Act, which has constitutional rank. The legislation regulates the President's extraordinary powers and citizens' legal protections during the state of emergency. The official declaration of the state of emergency must state why it was declared, which rights and guarantees are suspended, whether it applies in all or part of the national territory and how long it will last. The state of emergency commences when the declaration is published in any of the mass media.

33. To protect citizens, appeals in *amparo* for rights and guarantees not suspended by the State decree, and the remedy of habeas corpus for persons detained in relation to the state of emergency, remain valid. Similarly, abuses, serious offences and minor offences committed by the authorities during the state of emergency are investigated and punished in accordance with relevant laws.

34. In accordance with article 9 of the Emergency Act, the President of the Republic is obliged to inform both the Secretary-General of the United Nations and the Secretary-General of the Organization of American States. During the period covered by this report (2008–2019), the President of the Republic has not issued any decrees to suspend rights or guarantees, despite the major violence that took place during attempts to overthrow the Government from 18 April 2018.

35. Terrorism-related legislative measures were adopted following evaluations of compliance with the 40 recommendations of the Financial Action Task Force. Those evaluations had raised questions about the State's lack of practical application (prosecution) and the limited operational capacity of the competent authorities in addressing the offences of terrorism and terrorist financing. Act No. 977 was adopted on 16 July 2018 with a view to ensuring the effectiveness of mechanisms to combat money-laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction by bringing them in line with international standards. Following that reform, the Financial Action Task Force of Latin America, at its meeting in December 2018, upgraded the rating of Nicaragua for compliance with international standards on defining and penalizing the offence of terrorist financing.

36. The persons accused of terrorism in the context of the events that began in April 2018 were prosecuted under article 399 of Act No. 641, the Criminal Code of Nicaragua. They could not be prosecuted under the new Act No. 977, which did not enter into force until July 2018, since according to the Constitution and the principle of legality established in the Criminal Code, laws do not apply retroactively, except in the area of criminal justice when the new law favours the defendant. The charges against the accused persons are consistent with criminal offences that they have committed and that are defined as such in the Criminal Code of the Republic of Nicaragua.

Article 5

Safeguarding the rights recognized in the Covenant

37. To ensure that the rights enshrined in the International Covenant on Civil and Political Rights cannot be, and are not in fact, misinterpreted or restrictively interpreted in Nicaragua, article 46 of the Constitution expressly recognizes the Covenant, thus giving it constitutional status. Citizens can claim rights or have them restored by using the various mechanisms and remedies established in the Nicaraguan legal system.

38. Article 138 (12), second paragraph, states that, as soon as an international treaty is approved by legislation, it has legal effect inside and outside Nicaragua. The International Covenant on Civil and Political Rights, which has constitutional rank, thus has the same effects as the fundamental regulations and rights enshrined in the Constitution, and any laws, regulations or other provisions that are inconsistent with the Covenant are invalid.

39. Article 182 of the Constitution states: “The Constitution is the fundamental charter of the Republic [and] all other laws are subordinate to it. Laws, treaties, orders or provisions that are inconsistent with the Constitution or distort its provisions shall be without effect.”

40. In this regard, the Supreme Court has ruled that “for an international treaty to have the force of law, it must have been approved by the legislature Whenever an international treaty contains provisions that are contrary to laws in force, but not contrary to the Constitution, those laws are tacitly revoked as soon as the ratified treaty is published in the Official Gazette.”

Article 6

Measures taken to prevent arbitrary deprivation of life

41. Article 23 of the Nicaraguan Constitution states that “The right to life is inalienable and inherent to the human person. There is no death penalty in Nicaragua.” Thus, according to the Constitution, the death penalty does not exist in Nicaragua. Furthermore, Nicaragua is a signatory to the American Convention on Human Rights (1969) and the Optional Protocol to the International Covenant on Civil and Political Rights (1990), which state that the death penalty must not be re-established by States that have abolished it. On 2 September 2008, the State of Nicaragua adopted Decree No. 58-2008 ratifying the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

42. Thanks to its Sovereign and Public Safety Strategy, Nicaragua has no drug cartels or criminal gangs within its borders and the lowest homicide rate in Central America. The United Nations Development Programme (UNDP), in its Regional Human Development Report 2013–2014 for Latin America, indicates that Nicaragua has become a benchmark for public security thanks to a community-based security policy, which has led to a fall in the rate of homicides. Between 2014 and 2017, Nicaragua had an average homicide rate of 7.5 homicides per 100,000 inhabitants, a quarter of the Central American average. Between 2014 and 2018, there was an average of 478 homicides (comprising murders, parricides, femicides and other homicides) a year, representing an average annual reduction of 7.5 per cent. The figures fell by 11.6 per cent in 2014, 0.2 per cent in 2015, 13.5 per cent in 2016 and 4.9 per cent in 2017. The trend was reversed in 2018, when the homicide rate increased by 42 per cent (as a result of the attempted overthrow of the State). The police’s average clearance rate for homicides is 77 per cent given that, out of the annual average of 478 homicides, an average of 366 cases are taken up each year by the Public Prosecution Service.

43. Act No. 641, the Criminal Code, protects the right to life and contains provisions to punish those who commit homicide. Title I of the Criminal Code covers “offences against human life, physical integrity and personal security”. There is also a specific regulatory framework for the prevention of violence against women, established by means of Act No. 779, the Comprehensive Act to Combat Violence against Women and Act No. 952 amending Act No. 779. Specific reference is made to femicide, among other offences, and prison sentences for perpetrators have been increased to a maximum of 30 years. There is a State policy to ensure the application of the legal framework for the protection of women by strengthening institutions in the justice system. Those institutions incorporate a gender perspective into the investigation process with a view to preventing impunity.

44. The Public Prosecution Service has drawn up a protocol on criminal prosecution with a gender perspective to guide the prosecution process, while the judiciary has courts and units that specialize in gender-based violence, ensuring that there is specialist support for such cases so that victims are properly protected. There were some 300 recorded cases of homicide against women between 2014 and 2018, representing 12.5 per cent of total homicides over the period. The number of women homicide victims was highest in 2014, at 84. In 2018, there was a downward trend, with 43 victims recorded, 41 fewer than in 2014. Between 2014 and 2018, the average reduction was 33 per cent. Of the 300 homicides against women, 32.3 per cent (97) were femicides, 35.4 per cent (106) murders, 5.0 per cent (15) parricides and 27.3 per cent (82) other homicides. The police’s clearance rate for women homicide victims rose from 61 per cent in 2014 to 85 per cent in 2017. So far in 2018, 72 per cent of cases have been resolved.

45. Article 7 of Act No. 228, the National Police Act, states that the conduct of the National Police is determined by the United Nations Code of Conduct for Law Enforcement Officials, and sets out fundamental principles for police action, including the rational use of force. In the exercise of its functions, the National Police uses non-lethal incapacitating weapons, weapons with non-lethal ammunition and deterrent weapons (stun guns and tear gas) to minimize the risk of death or injury. Police officers use force or firearms only in exceptional cases and in a manner that is proportionate to the type of resistance they encounter. Act No. 510, the Special Firearms, Ammunition, Explosives and Other Related Materials Monitoring and Regulation Act, published in the Official Gazette No. 20, on 25 February 2005, and Decree No. 28-2005 regulating Act No. 510 authorize the use of certain types of firearms, ammunition and accessories only by the Nicaraguan army, the National Police and the National Prison Service, and only as required, in line with regulations.

46. To safeguard the right to life, in compliance with the American Convention on Human Rights and the Nicaraguan Constitution, which provides that “the right to life is inalienable”, the State began in 2007 to promote and strengthen its policy of free health care at public health facilities. Since then, health-care staff numbers have been increased, new facilities have been built and high-cost medicine has been introduced. In addition to its Family and Community Health Model, the State also has a National Sexual and Reproductive Health Strategy, and a National Early Childhood Policy that protects the physical, mental, social and spiritual development of children of up to 6 years of age. The Ministry of Health has developed a medical protocol regarding the care of pregnant women whose health is at risk, the number of maternity homes has been expanded to 178 and community midwives have increasingly obtained certification and adopted modern technology. These measures ensure that pregnant women receive skilled care, resulting in safe births and immediate care for newborns. As a result, the number of maternal deaths as a result of childbirth fell from 125 in 2006 to 47 in 2018. The United Nations awarded its America 2011 prize to the Ministry of Health in recognition of its maternity homes strategy.

47. Nicaragua is pro-life. The State protects the rights of the unborn, thus complying with the American Convention on Human Rights and the provisions of the Constitution, article 23 of which states that the right to life is inalienable. For Nicaragua, abortion is not a family planning method or a method to control the country’s birth rate. As part of its policy to prevent unwanted pregnancies, advocates from the Ministry of Health give talks in schools and communities, teaching young people about the importance of using contraception and the risks of early pregnancy and abortion, and giving them an opportunity to ask experts about related concerns. This provides them with appropriate sex education, alerting them to the scourge of unwanted pregnancy in order to do away with this problem in society and in families.

Article 7

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and medical and scientific experiments without consent

48. Article 36 of the Constitution prohibits torture and ill-treatment, stating: “All persons are entitled to respect for their physical, psychological and moral integrity. No one shall be subjected to torture or to cruel, inhuman or degrading procedures, punishment or treatment. Violation of that right constitutes an offence and is punishable by law.” Article 486 of Act No. 641, the Criminal Code of Nicaragua currently in force, defines torture as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused, except that torture shall not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”. The same article stipulates prison sentences of 7 to 10 years for the use of physical or mental torture as part of criminal investigations, as a form of intimidation or personal punishment, as a preventive measure or punishment for an offence, or for any other purpose. Furthermore, article 4 stipulates the following: “The State shall ensure that every person found to be responsible for a serious or minor criminal offence has the right to be treated with respect for the inherent dignity of the human person. No penalties or security measures involving torture or inhuman, cruel, shaming or degrading procedures or treatment may be imposed.”

49. Under the Criminal Code, any public authority, civil servant or government employee who subjects another person to any kind of physical or mental torture as part of criminal investigations, as a form of intimidation or personal punishment, as a preventive measure or punishment for an offence, or for any other purpose, will be sentenced to 7 to 10 years in prison and 8 to 12 years of general disqualification. Furthermore, any official who is aware of any such conduct and has the power to prevent it but does not do so will be sentenced to 5 to 7 years in prison and special disqualification from his or her post or public office for 5 to 9 years. The same penalty applies to officials who do not have the authority to stop such conduct and fail to report it to the competent authority within 48 hours of becoming aware of it.

50. Concerning the treatment of defendants, the Code of Criminal Procedure states that all persons indicted or charged have the right “not to be subjected to torture, other cruel or inhuman treatment or treatment that is degrading to their personal dignity” (art. 95 (5)). The Code also prohibits “the use of torture, cruel, inhuman or degrading procedures or treatment or any other form of pressure that violates human dignity in police investigations” (art. 227, para. 2). Article 16 provides that evidence must be lawful: “Evidence shall be valid only if it has been obtained by lawful means and incorporated into the proceedings in accordance with the provisions of this Code.” Evidence obtained through torture or ill-treatment is therefore inadmissible.

51. Article 39 of the Constitution stipulates that the National Prison Service is humanitarian in nature and seeks to rehabilitate inmates for their reintegration into society. According to Act No. 473 on the Prison System and the Enforcement of Sentences, the National Prison Service is founded on recognition of the dignity of the person and respect for human rights. The Act states that inmates may not be subjected to torture or to cruel, inhuman or degrading treatment or punishment under any circumstances. Physical or psychological abuse and any procedure that may harm a prisoner’s human dignity are also prohibited (art. 7). The administrative procedure for reporting acts of torture and ill-treatment by prison officials is set out in the Act and its implementing regulations, which state that, “without prejudice to their right to submit requests and complaints to the competent authorities, inmates may also address such requests and complaints to the prison governor if they are strictly within the remit of the prison administration”.

52. Act No. 745 on Enforcement, Benefits and Judicial Oversight of Criminal Penalties states that all detained persons must be treated equally and with dignity (art. 3) and that the State must guarantee their physical, moral and mental integrity, ensuring they are not subjected to torture or to cruel, inhuman or degrading procedures, punishment or treatment.

53. Nicaragua ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2005 through Decree No. 30-2005, and on 14 March 2007 it signed the Optional Protocol to that Convention. Through the Office of the Human Rights Advocate, Nicaragua protects people’s human rights, ensures oversight of State authorities, receives complaints regarding human rights violations, issues recommendations on reparation and adopts measures for the restitution of rights. Presidential Decision No. 04-2012 made the Office responsible for setting up the national preventive mechanism to comply with the State’s obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations guidelines on national preventive mechanisms.

54. The National Police receives complaints against police officers through the Directorate of Internal Affairs. It may then impose administrative penalties, such as dismissal or demotion, or the lowering of an officer’s grade. The education system for the National Police consists of three subsystems. Respect for human rights is one of the cross-cutting themes of those systems and human rights is a compulsory subject.

55. Article 22 of the Code of Criminal Procedure states that “any person who becomes aware of an offence subject to public prosecution may report it orally or in writing to the Public Prosecution Service or the National Police”. Title VI of the Criminal Code establishes the civil liability that exists for serious and minor offences. The procedure for determining civil liability in a criminal court, once a sentence has been passed, is set out in the Code of Criminal Procedure.

56. Regarding the State’s mechanisms for monitoring medical and scientific experiments on human beings, Act No. 423, the General Health Act (art. 8, (6) and (7)),

states that no patient may be subject to experimentation involving either drugs or diagnostic, therapeutic or prognostic procedures without being duly informed about the experimental nature thereof and the risks involved, and without the prior written consent of the patient or, where necessary or where the patient is unable to grant consent, of the person legally responsible for giving consent. Article 7 (17) of the Regulations to the General Health Act states that health facilities must warn a patient, a family member or a guardian if they wish to perform biometric experimentation affecting the patient's care or treatment, prior written informed consent being mandatory.

57. Article 43 (2) of the Constitution states that "Nicaraguans shall not be extradited from the national territory". Nicaragua does not extradite its nationals under any circumstances.

Article 8

Prohibition of slavery, servitude, forced labour and trafficking in persons

58. The Constitution prohibits slavery, servitude, forced/mandatory labour and trafficking of any kind (art. 40) and grants every citizen the right to freely choose and exercise a profession or trade and to choose a place of work without any requirements other than an academic qualification and the need for the work to fulfil a social function (art. 86). Article 44 of the Labour Code grants employees the right to change job after duly notifying their employer. Regarding forced domestic labour, Nicaragua has ratified the ILO Domestic Workers Convention, 2011 (No. 189).

59. As part of efforts to harmonize the legislation of Central American and Caribbean countries, Nicaragua promulgated Act No. 896 against Trafficking in Persons in 2015. The purpose of the Act is to prevent and investigate trafficking in persons, prosecute and punish the perpetrators, protect and provide comprehensive care for victims, and protect persons involved in investigations and criminal proceedings, including nationals transferred outside the territory, as well as foreign nationals irrespective of their migration status. The Act defines the offence of trafficking in persons very broadly, with penalties applying whatever the purpose of the trafficking. The language used and the forms of exploitation mentioned go beyond the minimum international standards. The Act protects both men and women as possible victims of the offence and envisages prison sentences of 10 to 15 years as well as administrative penalties. Under no circumstance does the victim's consent remove or mitigate the criminal liability of the perpetrator. The sentence is increased to 19 to 20 years when the victims are children, adolescents, older persons, indigenous persons, persons of African descent or persons with disabilities. The Act sets out strategies to provide victims with primary and secondary care, to integrate them in society and to repair the harm caused.

60. Concrete protection measures introduced by the aforementioned Act include the establishment of the National Coalition Against Trafficking in Persons and the Single National Register of Information on Trafficking in Persons. The Coalition brings together 25 government bodies, municipal bodies and children's organizations and has 17 active departmental panels. It makes proposals on matters such as public policy and inter-institutional procedural protocols. Between 2014 and 2018, the Coalition conducted 8,619 prevention and awareness-raising activities attended by 467,863 people, and it trained 44,232 public officials (21,364 men and 22,868 women). It also established a diploma course for judicial officials on the international return of children and adolescents. As a result of these prevention activities, there were fewer victims, fewer complaints of trafficking in persons and fewer cases brought to trial. During the period in question, 30 cases were recorded, 64 persons investigated and 22 cases brought to trial, with 20 persons convicted and 2 acquitted. There are currently eight cases under investigation. A total of 73 victims (13 male, 60 female) were rescued, of whom 10 were children, 28 were adolescents and 35 were adults.

61. Regarding labour as part of a criminal penalty, the non-custodial penalties envisaged in the Criminal Code include work for the benefit of the community, which cannot be imposed without the consent of the convicted person. This kind of activity involves unpaid physical or intellectual work lasting between one day and one year that benefits society, does not harm the dignity of the convicted person and does not involve working for more

than eight hours a day. For every day of work performed by persons detained in the country's prisons, one day is deducted from their sentence. During pretrial detention, the time worked is credited against the sentence on the basis of two days of deprivation of liberty for every day worked. The prison monitoring and enforcement judge ensures that the sentence imposed is effectively served, monitors how the penitentiary regime is applied and ensures that sentences and security measures comply with the constitutional and legal aims thereof, as indicated in Act No. 745 on Enforcement, Benefits and Judicial Oversight of Criminal Penalties.

Article 9

Right to liberty and security of person

62. Nicaragua is implementing a community-led, gender-focused citizen and human security strategy based on the individual, community and family security model, under which all State institutions have been taking multidisciplinary, comprehensive, balanced, educational and preventive measures and promoting rehabilitation, treatment, social reintegration, the recovery of public spaces and the restoration of the right to live in a safe and healthy environment.

63. The right to liberty and security of person is enshrined in article 25 of the Constitution. Article 3, in full alignment with article 25, provides that "no one shall be deprived of his or her liberty except for the reasons established by law and in accordance with a legal procedure". That procedure is established in Act No. 406, the Code of Criminal Procedure, which came into force in 2001. Deprivation of liberty was already provided for in Nicaraguan legislation. The Code of Criminal Procedure establishes that in cases where the perpetrator is caught in flagrante delicto, any person may make an arrest. The National Police may arrest a person without a warrant when he or she is caught committing a punishable act. The officer in command of a police station may issue an arrest warrant where there is a reasonable probability that an offence punishable by deprivation of liberty has been committed, otherwise a court order is required. These forms of arrest are legal and legitimate. With a view to preventing and punishing unlawful and illegitimate forms of deprivation of liberty, including abduction, such acts are defined as offences under title II of the Criminal Code (Act No. 641), on offences against liberty.

64. Under article 34 of the Constitution, detainees awaiting trial have the right to be informed of the reasons for their arrest from the outset of custody. Articles 95, 231 and 232 of the Code of Criminal Procedure lay down the procedure to be followed: detainees must be informed of the charges being brought against them, their families must be informed of their arrest, they have the right to be assisted by a lawyer of their choice and to be examined by a doctor before being brought before a judge, and they must be placed under the competent authority within a maximum of 48 hours following the arrest, among other safeguards.

65. Under Act No. 228, the National Police Act, and its regulations, which are set out in Decree No. 26-96, police officers must comply with and ensure compliance with the law, preserve human life and protect and preserve property that is in any way threatened. They are competent to investigate criminal acts and, depending on the severity of the act, to arrest the perpetrator, who must be informed of the reasons for his or her arrest and of his or her rights in detail and in a language that he or she understands, after which he or she must be brought before the competent judge within the constitutional time limit. The mechanisms that apply during detention are set out in articles 134 and 135 of the Code of Criminal Procedure. If a person is charged with a serious offence, a verdict or a sentence must be pronounced within three months of the preliminary hearing; for less serious offences, the time limit is one month. Some criminal proceedings are given complex treatment, depending on the nature of the acts being investigated, the severity of the offences, the complexity of the investigation, the amount of evidence and the number of victims and defendants. Regarding the period of time during which persons suspected of acts of terrorism may be detained without charge, in the Nicaraguan legal system the length of the proceedings is not adjusted based on the nature of the offence; the procedures and time limits are set out in the Constitution, the National Police Act and the Code of Criminal Procedure.

66. In Nicaragua there is no provision for incommunicado detention and all detainees are allowed to be visited by family members. Articles 45 and 189 of the Constitution provide for recourse to the remedy of habeas corpus in respect of persons whose liberty, physical integrity and safety may have been, or are at risk of being, undermined. The Code of Criminal Procedure provides that district courts and courts of appeal are competent to hear appeals against rulings and decisions relating to deprivation of liberty, and that the Criminal Division of the Supreme Court is competent to review the decisions of courts of appeal in that regard.

Article 10

Rights of persons deprived of their liberty

67. Article 36 of the Constitution provides: “All persons are entitled to respect for their physical, psychological and moral integrity. No one shall be subjected to torture or to cruel, inhuman or degrading procedures, punishment or treatment. Violation of that right constitutes an offence and is punishable by law.” Article 39 of the Constitution provides that sentences have a re-educational function, that the prison system is humanitarian in nature and has the fundamental objective of rehabilitating inmates with a view to their reintegration into society and that the graduated prison system “promotes family unity, health, educational and cultural achievement and productive waged employment for inmates”.

68. Persons deprived of liberty are held in the national prison system, although a small proportion are currently being held on a temporary basis in police cells. The National Police has 468 holding cells at the national level, with the capacity to hold 2,777 detainees and an average overpopulation rate of 1.6 per cent, which represents a substantial reduction in overcrowding. Detainees are held in different cells according to their legal status and their sex. Children are not held in police cells. Food is provided by the police station but, with a view to improving conditions for detainees, family members are allowed to bring food in every day, if they so wish. Family visits are allowed twice a week in departmental police stations and once a week in police stations in the districts of Managua. Medical care is provided according to the health needs of the detainee in cooperation with health centres, hospitals and the Institute of Forensic Medicine. Specialist care must be authorized by the judge in the case. Other services provided to detainees in police cells include legal assistance for detained Nicaraguans and consular assistance for foreign detainees.

69. The National Prison Service is governed by Act No. 473, the Prison System and Enforcement of Sentences Act, which establishes the regulations and general rules governing the operation of the Service. Article 7 of Act No. 473 provides: “The National Prison Service is founded on recognition of the dignity of the person and respect for human rights. Inmates shall not be subjected to torture or to cruel, inhuman or degrading punishment or treatment under any circumstances. Physical or psychological abuse and any other procedure that may harm a prisoner’s human dignity is prohibited.” There are eight prisons in Nicaragua. They are located in the departments of Estelí, Chinandega, Managua (a men’s prison in Tipitapa and a women’s prison), Granada and Matagalpa, and in Juigalpa and Bluefields. To avoid transferring women deprived of liberty out of their ordinary legal jurisdiction and to keep family units close together, the prisons have been equipped with the necessary facilities to ensure that women are held separately from the male prison population and the custody officers who work in women-only areas are all women except for the security and transfer personnel. Similar measures are taken in the case of juvenile prisoners, whose ages range from 15 to 18. In the prisons of Tipitapa and Granada, they are held in independent blocks that are completely separate from adult areas, while in the other prisons different areas and cells are designated for minors in order to ensure that they are kept separate from adults.

70. The Prison Service’s re-educational treatment model (Constitution, art. 39) is based on a graduated system, according to which prisoners progress through different conditions, or stages, gaining ever greater access to participation in different programmes and activities and having the possibility to move from a closed to an increasingly open regime, the ultimate goal being their social reintegration and the prevention of recidivism. Prisoners can take part in the following activities: various types of schooling (literacy programmes; primary, second and tertiary education); technical training, which provides them with a

useful tool that can help them to reintegrate into society and which includes courses on carpentry, joinery, mechanics, welding, plumbing, baking and handicrafts; sport, with 11 different types of sport available; cultural activities, which are intended to transmit and restore moral, ethical and socially acceptable values; prison work and community service as a form of social redress; preventive talks on sexually transmitted infections, HIV/AIDS, tuberculosis and other topics; talks on subjects such as human rights and the environment; health care; psychological support; voluntary religious worship; and family and spousal visits, which help to maintain and foster family unity.

71. To ensure compliance with Act No. 473, in accordance with the Code of Criminal Procedure and Act No. 745 on Enforcement, Benefits and Judicial Oversight of Criminal Penalties, prison monitoring and enforcement judges conduct visits to prisons to ascertain whether inmates' fundamental rights and their rights as prisoners are being complied with and to resolve, by means of enforcement pleas, petitions or complaints made by inmates in relation to aspects of the prison regime and their treatment that undermine their rights.

72. The use of force and firearms is subject to the principles of rationality and proportionality, and is limited to situations of self-defence or defence of a third party, where there is an imminent danger of death or serious injury.

Article 11

Prohibition of imprisonment on the ground of contractual obligations

73. Article 41 of the Constitution provides: "No one shall be imprisoned for debt. This principle does not restrict the ability of competent judicial authorities to issue warrants for failure to pay maintenance. It is the duty of all persons – nationals or aliens – to pay what they owe." Enforcement by committal in civil proceedings is therefore prohibited. The Family Code, which came into force in 2014, regulates the right to receive maintenance, which is defined as the goods necessary to a person's life. Maintenance is also considered to include services that are necessary to ensure a better quality of life, including health care, education, housing and cultural and recreational activities (art. 36). The obligation to provide maintenance is derived from family relationships and there is a procedure for its due application and interpretation. The Family Code, in book IV, title I, on maintenance, provides that the right to provide maintenance is personal, imprescriptible, inalienable, immutable and non-transferable. Maintenance is not subject to seizure and may not be offset against any type of debt. Without exception, maintenance is a privileged right and a priority over all other obligations incumbent on the provider and may not be pursued by the recipient's creditors (art. 307), so as to protect the subsistence of the family. For these reasons, enforcement by committal may be ordered in respect of the duty to pay maintenance, which is a family responsibility, not a civil responsibility.

74. In 2009, the State passed Interpretative Act No. 676 on the Application of Enforcement by Committal in respect of Loans with Personal Guarantees and Amending Article 13 of Act No. 146, the Commercial Collateral Act. Article 1 of Act No. 676 provides that, in accordance with article 41 of the Constitution and the single chapter of title IX, book III, of the Civil Code of Nicaragua, any preliminary or final ruling or decision that orders the application of enforcement by committal as the direct consequence of a failure to meet an obligation or to respect a time limit is void of any legal value and effect, and that any judge who acts in a manner contrary to the provisions of the Constitution, Act No. 676 or any other legal provision relating to enforcement by committal in civil matters commits the offence of breach of official duty (Criminal Code, art. 463).

Article 12

Free movement of persons

75. Article 31 of the Constitution provides that all Nicaraguans have the right to move freely and establish their residence in any part of the national territory and freely to enter and leave the country. Nicaraguan citizens may establish their place of residence anywhere in the country without conditions or formalities. Article 25 of the Civil Code provides that "a person's domicile is the place in which he or she has his or her habitual residence [and] a

person passing through a place is a transient". No legal steps need to be taken with the public authorities in that regard.

76. The residency conditions applicable to foreign nationals differ from those applicable to Nicaraguan nationals. Act No. 761, the Migration and Aliens Act, provides that foreign nationals who wish to obtain a residence permit must apply to the Directorate-General of Migration and Alien Affairs if they are in Nicaragua, or to the Nicaraguan foreign service through a diplomatic mission or a consular office if they are outside Nicaragua (art. 28). Residence permits can be temporary or permanent and may be granted to investors or on the basis of family ties, a spouse or a partner in a de facto union. Nicaragua has regulations on refugee status. Article 26 of Act No. 761 provides that the Directorate-General of Migration and Alien Affairs must provide refugee papers to foreign nationals granted refugee status through an administrative decision issued by the National Commission for Refugees, in accordance with Act No. 655, the Refugee Protection Act. Article 27 of that Act provides that the Directorate-General of Migration and Alien Affairs must provide legal papers to foreign nationals granted political asylum by the Executive in accordance with the international instruments ratified by Nicaragua.

77. With regard to entry and exit rights, Act No. 761, the Migration and Aliens Act, governs the entry of Nicaraguans and foreign nationals into the national territory and the stay of foreign nationals in Nicaragua. With regard to visas, Nicaragua has signed the Agreement on the Creation of a Single Central American Visa for the Free Movement of Aliens between El Salvador, Guatemala, Honduras and Nicaragua (CA-4). A visa may or may not be required depending on the origin and nature of the document being used for travel, for which reason three categories have been established: Category A: Nationals of category-A countries who hold any type of passport do not require a visa to enter Nicaragua; Category B: Nationals of category-B countries, depending on the type of passport they hold, will require an on-arrival visa or a border visa to enter Nicaragua; Category C: Nationals of category-C countries, depending on the type of passport they hold, will require a pre-authorized visa to enter Nicaragua. To be allowed entry into the country, their visa must have been issued with the authorization of the Directorate-General of Migration and Alien Affairs and they must meet the requirements set forth in applicable legislation. Visa categories A, B and C are governed by bilateral agreements, agreements recognized under CA-4 and visa waiver agreements that Nicaragua has concluded with other States, the United Nations and the Organization of American States.

78. With regard to travel documents, the Ministry of the Interior, through the Directorate-General of Migration and Alien Affairs, is responsible for the regulation, issuance and use of migration documents (Act No. 761, art. 75). The recognized forms of migration documents for nationals (Act No. 761, art. 70) are: (a) ordinary passports, the requirements for which are set out in article 19 of Decree No. 31-2012, the regulations to Act No. 761; (b) official passports, which are governed by article 22 of the regulations to Act No. 761; (c) service passports, the requirements for which are established in article 26 of Decree No. 31-2012; (d) diplomatic passports, the requirements for which are set out in article 25 of Decree No. 31-2012; (e) safe conduct passes (Decree No. 31-2012, art. 27); (f) group permits, which are valid for a limited time only and are issued only when there exists an agreement with the migration authorities of the country of destination; (g) border passes, which are issued to nationals living in border areas who wish to work or visit family in the neighbouring country, and which are valid only once; (h) neighbourhood permits, which may be issued to adult inhabitants of a specific area to authorize a one-off trip to the nearest town or village in the neighbouring country; (i) identity cards, which are public documents used to identify citizens that may also be used as travel documents in countries with which Nicaragua has ratified international instruments granting their citizens freedom of movement and migration.

79. Regarding exit permits, Act No. 761 provides that Nicaraguans must be in possession of a passport or another type of migration document valid for at least six months and issued in their name by the Directorate-General of Migration and Alien Affairs in order to leave the country. They must also present the relevant entry or exit card when entering or exiting the country through a border post.

80. With regard to deportation, if the Directorate-General of Migration and Alien Affairs determines that a foreign national has entered or is staying in the country irregularly, it may: (a) instruct the foreign national to regularize his or her migration status in the

country; (b) detain the foreign national and compel him or her to leave the country within a specified period; or (c) detain the foreign national and order that he or she be deported once the necessary documentation has been received (Act No. 761, art. 159). Migrants in an irregular situation are detained in facilities used exclusively for that purpose, called migrant centres, under the administration and in the custody of the authorities of the Directorate-General of Migration and Alien Affairs. The necessary security rules and measures must be applied until they are deported to their country of origin or provenance once they have been documented by the consulate of their country and have obtained their return ticket. At the end of the maximum period of stay in the migrant centre, the Directorate-General of Migration and Alien Affairs, at the request of the migrant or a governmental or non-governmental body that works with migrants, must hand over guardianship and custody of the migrant, subject to civil and criminal responsibility, after payment of a security deposit, in accordance with Act No. 761 (art. 161).

81. With regard to the penalties imposed on international carriers that bring persons lacking the necessary documents into the territory of a State, article 318 of the Criminal Code establishes the offence of smuggling of illegal migrants, under which any person who, for the purposes of people-smuggling, brings in, facilitates the departure or stay of, transfers, hires or shelters illegal migrants in full knowledge of their status will be punished with 5 to 8 years' imprisonment and 500 to 1,000 day-fine units. If the offence is committed as a result of negligence, the punishment is 3 to 8 years' imprisonment.

Article 13

Protection of aliens from arbitrary expulsion

82. Article 27 of the Constitution provides that the rights established in the Constitution are guaranteed for all persons who are within the territory of Nicaragua and are subject to its jurisdiction. Article 11 of Act No. 761, the Migration and Aliens Act, provides that foreign nationals have the same rights and enjoy the same individual and collective guarantees as Nicaraguans, subject to the limitations established by the Constitution and the law.

83. Article 12 of Act No. 761 establishes the obligations incumbent on foreign nationals, which include paying the same taxes and making the same social security contributions as Nicaraguans, in accordance with applicable legislation. They are also obliged to make the deposits required of them under Act No. 761 in accordance with their migration status; to inform the Directorate-General of Migration and Alien Affairs of any changes to their civil status, residence or the activities in which they are engaged; and to preserve, and be capable of producing at the request of the competent authorities, the identity papers issued to them by the competent authorities of their country of origin or provenance and the documents attesting to their migration status. Foreign nationals applying for a residence permit while in the country will be required to request extensions of stay until such time as they receive a certified copy of the residence decision and are registered in the National Register of Foreign Nationals. Non-resident foreign nationals may not engage in gainful work or activities on their own account, except such work or activities as may be authorized under special circumstances, for example artistic or sporting activities or public performances. For all migrant workers, authorization is granted or withheld in consultation with the Ministry of Labour.

84. In the event of non-compliance with these obligations, title XV of Act No. 761 establishes legal mechanisms that allow for the deportation, expulsion and extradition of foreign nationals on legally established grounds. Article 171 of that Act provides that deportation is an administrative act whereby the Director-General of Migration and Alien Affairs orders the removal of a foreign national from the national territory for one of the following reasons: he or she has entered the country at an unauthorized crossing point; he or she has obtained leave to enter or stay in the country upon presentation of a false document or by means of a false declaration; he or she remains in the country after his or her right to reside or stay in the country has been lost or revoked; he or she has been convicted of a serious or less serious offence, provided that he or she has no affinity or consanguinity with a Nicaraguan; he or she is a danger to public safety and the public order; he or she has a proven record of vagrancy; or other reasons. Once a foreign national has been deported, he or she may not re-enter the national territory for a period of two years,

except in the exceptional circumstances established in Act No. 761 (art. 172). Deportation must be ordered and implemented through properly reasoned administrative decisions, in accordance with the Migration and Aliens Act (art. 173) and its regulations.

85. According to article 174 of Act No. 761, an expulsion order is an order issued by the Ministry of the Interior or a ruling handed down by the judicial authorities in accordance with the Criminal Code, under which a resident or non-resident foreign national is required to leave the national territory within the time limit laid down to that end because his or her activities are considered to undermine public order, public safety or national sovereignty. The grounds for expulsion are set forth in article 175 of the Migration and Aliens Act. Foreign nationals who have been expelled may not re-enter the national territory for a period of five years (Act No. 761, art. 176). Where a foreign national has been expelled because he or she committed an offence against a minor or assaulted or killed a woman, a differently abled person or an older person, he or she may not re-enter the country for a period of 10 years. The expulsion of a foreign national implies the loss of his or her legal migration status (Act No. 761, art. 177) and if criminal proceedings are brought the expulsion will take place once the resulting prison sentence has been served (Act No. 761, art. 178).

86. In Nicaragua, extradition is not granted in respect of political offences or ordinary offences connected therewith according to Nicaraguan definitions (Act No. 761, art. 179). Extradition is subject to the law and the international treaties ratified by Nicaragua. In the event of extradition of a resident foreign national, the Ministry of the Interior must first annul his or her residence permit.

87. The administrative decisions of the Directorate-General of Migration and Alien Affairs are subject to the remedies of judicial review and appeal (Act No. 761, arts. 181–182), which have a suspensive effect on deportation and expulsion orders. Appeals are admissible in the following cases: (a) the interests of the foreign national in relation to his or her legal migration status have been undermined; (b) the foreign national's application for legal stay has been rejected without justification; or (c) a deportation or expulsion order has been issued against the foreign national without justification.

88. With regard to refugees and asylum seekers, under article 42 of the Constitution Nicaragua recognizes and guarantees the rights to refuge and asylum, which provide protection only for persons persecuted for their struggle for democracy, peace, justice and human rights. According to article 26 of the Migration and Aliens Act, the Directorate-General of Migration and Alien Affairs must provide refugee papers to foreign nationals granted refugee status by the National Commission for Refugees, in accordance with Act No. 655, the Refugees Protection Act, which also governs the cessation, annulment and revocation of refugee status and the issuance of travel documents to refugees. Article 1 of the Refugees Protection Act establishes that a refugee is any person recognized by the competent authority as having refugee status on the ground that he or she, as the result of a well-founded fear of being persecuted for reasons of race, religion, nationality, gender, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, among other reasons. Refugee status is also granted to any person who, owing to circumstances arising in his or her country of origin or habitual residence during his or her absence, has a well-founded fear of persecution, in accordance with article 1 (a), (b) and (c). The provisions of Act No. 655 apply to such persons and they are therefore exempt from ordinary migration regulations. Refugee status will not be granted to any person who has committed a crime against peace, a war crime or a crime against humanity, as defined in international instruments; who has committed a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee; or who has been guilty of acts contrary to the purposes and principles of the United Nations.

89. The National Commission for Refugees was established to ensure that refugees receive proper assistance. It comprises representatives of the Directorate-General of Migration and Alien Affairs, the Ministry of the Family, Adolescents and Children, the Ministry of Foreign Affairs, the social agency for programmes of the Office of the United Nations High Commissioner for Refugees in Nicaragua, the Catholic Church and the Evangelical Church. Representatives of the following bodies also participate but have no voting rights: the Office of the Human Rights Advocate, the Standing Committee on

Human Rights, the Asociación Nicaragüense Pro Derechos Humanos (Nicaraguan Human Rights Association), the Nicaraguan Centre for Human Rights and the Office of the United Nations High Commissioner for Refugees (Act No. 655, art. 14).

90. With regard to asylum, article 27 of Act No. 761 provides that the Directorate-General of Migration and Alien Affairs must provide legal papers to foreign nationals granted political asylum by the Executive through the Ministry of Foreign Affairs, in accordance with the international instruments ratified by Nicaragua. The cessation, annulment and revocation of political asylum are governed in accordance with the international instruments ratified by Nicaragua.

Article 14

Equality before the law, guarantees of due process and principles of the administration of justice

91. In accordance with Act No. 260, the Organic Act on the Judiciary, the highest judicial body is the Supreme Court, which is composed of 16 judges elected by the National Assembly, together with the associate judges whose function is to administer justice in the country's various municipalities, departments and autonomous regions. The judiciary is organized by jurisdiction and administrative area. It has a pyramid-shaped organizational structure. At the base of the pyramid are the local courts. At the second level are the district courts, which are present in every department and in the autonomous regions of the Caribbean coast. In the department of Managua and in some other departments the size of the population warrants the existence of several district courts. At the third level of the pyramid are the courts of appeal, which are present in each judicial district, being located in the capital of one of the departments that make up the judicial district in question.

92. The National Council on Judicial Administration and the Judicial Service, composed of four Supreme Court judges who coordinate, plan and implement the administrative and financial policy of the judiciary, has been established. The primary functions of the Council include convoking and recommending the appointment of judges to the courts of appeal, applying the disciplinary code, investigating – with the support of the judicial inspectorate – reports of disciplinary offences committed by lawyers, notaries and judges, and approving the appointment, transfer and dismissal of administrative personnel.

93. The judicial service comprises the following professional categories: public defender, registrar, court clerk, appeal court clerk, process server, local-court judge, district-court judge, appeal-court judge and clerk to the Supreme Court. These officials work in the courts. All Nicaraguans have the right to join the judicial service, without distinction on grounds of sex, skin colour, political ideology or religious belief, or on any other grounds except merit and ability. In order to join the judicial service, it is necessary to pass the competitive examinations organized by the Judicial Service Committee in accordance with the Organic Act on the Judiciary and the Judicial Service Act. In the 2014–2018 period, the State made gender equality and the empowerment of women a priority in terms of public policy and introduced legal mechanisms to ensure that women have access to public office and decision-making positions.

94. The professional grade of members of the judicial service and other judicial officials is approved by the Supreme Court plenary, at the recommendation of the Judicial Service Committee. Promotions are not mandatory. Where an official is due to be promoted to a higher position, once it has been confirmed that he or she meets the requirements for the promotion, he or she will be offered the position and may choose to accept or refuse it. Vacant positions, before they are filled through a promotion or, where appropriate, by extraordinary appointment, are first offered to all members of the judicial service who fall within the right category of the corresponding job group. The resolution of the Council by which the vacancy is announced determines the period during which interested persons may submit an application. The position will be offered to the most senior applicant, in accordance with article 47 (3) of the Judicial Service Act, provided that he or she has not previously received a negative appraisal.

95. Careers within the judicial service may come to an end on account of death; permanent physical or mental incapacity that disqualifies the official from exercising his or her functions; retirement; resignation; dismissal; post-appointment disqualification; or any

other reason established in the Judicial Service Act. Ex-officials who re-enter the judicial service enjoy the career benefits accumulated at that time.

96. Judicial officials are civilly liable for any harm they cause, in accordance with applicable legislation. They will also be held responsible for any offences they commit in the exercise of their functions. Disciplinary sanctions against judicial officials are processed and resolved in accordance with the Organic Act on the Judiciary and the Judicial Service Act. The Judicial Service Act establishes degrees of responsibility and the corresponding penalties. The following penalties may be imposed on judicial officials for disciplinary offences committed in the exercise of official functions: censure; a fine not exceeding 10 per cent of the official's monthly salary; suspension without pay lasting between one month and one year; and dismissal.

97. Investigations and complaints relating to disciplinary offences allegedly committed by judicial officials are handled and resolved, at first instance, by the Disciplinary Committee of the Supreme Court, with the support of the judicial inspectorate, which follows a summary procedure, and at second instance by the Supreme Court plenary. Where the appropriate penalty for a disciplinary offence is the dismissal of the judicial official concerned, the Disciplinary Committee must issue a decision recommending that the Supreme Court should adopt such penalty. The Supreme Court will make the final decision without possibility of further remedy.

98. The military justice system, as an integral part of the system of courts of justice whose highest authority is the Supreme Court, is governed by the Office of the Auditor-General and is composed of the military courts provided for by the law. Military courts are competent to judge cases and execute judgments only in relation to matters that fall within their area of jurisdiction. They are composed of members of the Nicaraguan army, who act in accordance with constitutional safeguards and principles. The military justice system is competent only to hear cases involving serious or minor military offences committed by members of the Nicaraguan army and defined in the Military Criminal Code. The military courts also have the power to impose judicial disciplinary penalties on any person taking part in military judicial proceedings or who violates or disturbs the order during a trial, in accordance with the provisions of the law.

99. In its Global Gender Gap Report 2017, the World Economic Forum recognized that Nicaragua had made considerable progress towards gender equality and ranked it first for gender equity in the Americas. Nicaragua ranks sixth at the global level, being one of only six countries to have closed the gender gap by more than 80 per cent. It also ranks second for political empowerment, having achieved gender equality among ministerial positions in 2014 and having increased the proportion of members of parliament who are women to 46 per cent, which is the fifth-highest rate in the world. In the judiciary, the proportion of female judges serving in the Supreme Court and the courts of appeal has risen to 31 per cent and 47 per cent, respectively. Moreover, 64 per cent of judicial service positions are held by women. At the national level, the State has promoted the political empowerment of women as an element of development in local governments. The principle of parity was applied during the municipal elections of 2017, which resulted in the election of 65 women to the position of mayor and 88 women to the position of deputy mayor. That means that 153 of the 306 offices available in local government are now occupied by women.

Article 15

Principle of non-retroactivity of the law

100. In Nicaragua, the law does not have retroactive effect, except in criminal cases when it favours the defendant. The principle of non-retroactivity is enshrined in article 2 of the Criminal Code (Act No. 641), according to which, if a new law comes into effect after a serious or minor offence has been committed, the law that is more favourable to the defendant will be applied in the specific case being tried. The principle of non-retroactivity also applies in the case of convicted individuals who have not yet served all or part of their sentence; acts committed while a temporary law is in force shall be judged in accordance with that law, unless the subsequent law unambiguously indicates the contrary. Article 3 of the Criminal Code stipulates that if a new law that is favourable to a convicted person enters into force before that individual has served his or her sentence, the competent judge or court is to amend the penalty or security measure handed down, in accordance with the

new law; it also indicates that if the basis for the conviction was an act characterized as a serious or minor offence by the previous law but the new law does not regard it as such, the competent judge or court must order the immediate release of the defendant or convicted individual. In the event of any doubt as to which law is more favourable, the convicted individual must be heard.

101. The Military Criminal Code (Act No. 566) also includes this principle. Article 2 thereof indicates that the law does not have retroactive effect, except in criminal matters when it favours the defendant. It also states that even if not specified by the law itself, any military criminal law that comes into force subsequent to the commission of a serious or minor offence will have retroactive effect, when such is favourable to the defendant, even if an enforceable sentence has already been handed down and the convicted person is already serving his or her sentence at the time the law comes into force. In the event of any doubt as to which law is more favourable, the defendant must be heard.

Article 16

Right to recognition as a person before the law

102. Article 76 of the Civil Code of Nicaragua provides that “no association or corporation shall have legal personality unless it has been established or authorized by law”. Associations and corporations which enjoy legal personality may exercise all the civil rights relating to the legitimate interests of the entity in question. Associations which do not exist legally as juridical persons shall be deemed simple civil or commercial associations, depending on their purpose. The General Non-Profit Juridical Persons Act provides that persons wishing to be granted legal personality must submit an application to the National Assembly, providing the public deed of incorporation and an explanatory memorandum setting out the basis for the juridical person to be constituted, its importance and the consequences for the civil or religious life of the country. As provided in articles 6 and 7 of the Act, the National Assembly will grant legal personality by decree or otherwise return the application indicating the irregularities to be rectified (art. 10). Registration in the Registry of Juridical Persons is requested, indicating the date and number of the Official Gazette in which the decision to grant legal personality has been published. Organizations that obtain the status of a non-profit juridical person are required to comply with the objectives and purposes for which they were established according to their respective deeds of incorporation and statutes; their actions are regulated and overseen by the Interior Ministry’s Department for the Registration and Supervision of Associations, which is the regulatory body.

103. As for the withdrawal of legal personality, article 24 of the General Non-Profit Juridical Persons Act (No. 147) specifies that it may be withdrawn only by the National Assembly, following the same procedure by which it was granted, and after consultation with the Ministry of the Interior, and it establishes that legal personality may be withdrawn when the juridical person: (a) has been used for the commission of unlawful acts; (b) has been used to disturb public order; (c) has carried out activities inconsistent with the purposes for which it was established; or (d) has hindered supervision and oversight by the Department for the Registration and Supervision of Associations.

Article 17

Right to privacy, inviolability of the home and protection of private correspondence

104. Article 26 of the Constitution establishes the right of all persons to privacy, respect for their honour and reputation, the inviolability of their home, correspondence and communications of all types, and the right to be notified of any information about them held by public or private entities and of the reasons why such information is being held. The Code of Criminal Procedure establishes the grounds and procedures for the infringement of such rights by the authorities for the purpose of conducting investigations or obtaining evidence. The Attorney General of the Republic or the Director General of the National Police, subject to judicial authorization, may request: 1. – the interception of telephone communications or other types of telecommunications, in which case the request

must indicate the duration of the measure – which may not exceed 30 days – and the persons who will have access to the communications (Code of Criminal Procedure, art. 213 (3) and (4)); 2. – house searches, which may be conducted in a residence or its outbuildings, or in offices or other business premises, between 6 a.m. and 6 p.m. (Code of Criminal Procedure, art. 217 (1)); 3. – information held by any financial institution, whether public or private, on financial transactions (Code of Criminal Procedure, art. 211); 4. – interception of written, telegraphic or electronic communications, which will be carried out by the judge and the contents of which, to the extent that they relate to the offence, will be included in the investigation (Code of Criminal Procedure, art. 214); and 5. – reasonable and risk-free body searches (analysis of body fluids and other types of body search) carried out by experts from the Institute of Forensic Medicine, using technical or scientific procedures (Code of Criminal Procedure, arts. 236, 237 and 238).

105. The remedy of habeas data serves as a jurisdictional mechanism for the protection of the right to informational self-determination. It complements the constitutional control mechanisms established by Act No. 831 amending and supplementing Act No. 49, the *Amparo* Act.

Article 18

Freedom of thought, conscience and religion

106. The State protects freedom of thought, conscience and religion. Article 14 of the Constitution establishes that the State is secular and has no official religion, as a guarantee of the principle of equality and the consolidation of democracy, in order to ensure that public officials act for the benefit of the whole population regardless of their religious beliefs. Along the same lines, article 29 provides that “all persons have the right to freedom of conscience and thought, and the right to profess, or not to profess, a religion. No one may be subjected to coercive measures that might impair these rights or be compelled to declare his or her creed, ideology or beliefs.” This provision allows all citizens to freely choose their own beliefs. Historically, Catholicism has been the predominant religion in Nicaragua; in 2017, 40 per cent of Nicaraguans were Catholic; 32 per cent were evangelical or protestant, 25 per cent were atheist and 3 per cent belonged to other religions. This shows that the Nicaraguan people exercise their beliefs freely, according to the dictates of their own consciences.

107. Article 69 of the Constitution states that all people have the right to express their religious beliefs in private or in public, through worship, practices and teaching; this does not exempt them from complying with the law. The secular nature of education is reflected in the school curriculum and in teaching methods; however, the State also recognizes the right of private educational institutions to teach religion on an extracurricular basis (Constitution, art. 124). With regard to the rights of the communities of the Caribbean Coast, article 180 of the Constitution specifies that the State must ensure the preservation of their cultures and languages, religions and customs. The Criminal Code imposes penalties on anyone who prevents or disrupts the conduct of religious rites or ceremonies (art. 190); it also penalizes discrimination on religious grounds (art. 427).

Article 19

Right to freedom of opinion and expression

108. The Constitution guarantees the right to seek, disseminate and obtain information and ideas through a variety of means, without censorship of any kind. The right to impart information is a social responsibility; this right cannot be subject to censorship but may be subject to other responsibilities established by law. The media, in keeping with their social function, must contribute to the development of the nation (arts. 66, 67 and 68).

109. Act No. 200, the General Telecommunications Act, regulates the telecommunications and postal services and establishes the rights and duties of users and operators, subject to the conditions of quality, equity and security. Decree No. 19-2016 regulating Act No. 200 also provides in article 2 that the Nicaraguan Telecommunications and Postal Services Institute (TELCOR) is the regulatory body; it supports operational management of the media, issues licences, permits and concessions, and is responsible for

the registration of telecommunications service providers. The said Decree sets out the grounds on which the provision of services is terminated, revoked or cancelled (art. 68).

110. The State guarantees the full exercise of the right to freedom of expression; there is no prior censorship or applicable restriction of any kind. Journalists may monitor, investigate and criticize government policies and activities. Access to public information is guaranteed through offices set up for that purpose and the websites of State institutions. The independence and pluralism of the media are respected. The only two national newspapers in Nicaragua, and two local newspapers in the capital, are privately owned, as are all the television channels with the exception of Canal 6, which is State-owned. There are 377 authorized FM and AM radio stations; and 29 authorized free-to-air VHF and UHF television stations broadcasting a wide variety of content. There is mobile-phone network coverage in every municipality and 85 per cent of the population has access to a mobile Internet network.

111. On 16 May 2007, Act No. 621, the Access to Information Act, was adopted; this established the regulatory framework for ensuring citizens' rights to receive ongoing information about the institutional budget, wages, annual reports, appointments, tenders and contracts. The Act regulates access to the information contained in documents, archives and databases of State institutions, joint enterprises and State-subsidized companies, as well as private companies which administer and manage public funds. It should also facilitate investigations by journalists regarding the management of State property and assets, as well as citizens' monitoring and oversight of the public administration.

112. Anyone who, by word or action, harms the dignity of another person by damaging his or her reputation, image, standing or honour, or hurts the esteem in which he or she is held, will be penalized under the Criminal Code for the offence of criminal insult. If the information concerned is publicly disseminated, a heavier penalty will be imposed. Anyone who falsely claims that another person has committed or participated in a specific offence will be penalized for the offence of calumny. Article 53 of the Code of Criminal Procedure provides that such offences are privately actionable.

Article 20

Prohibition of propaganda for war and any advocacy of national, racial or religious hatred

113. Article 32 of the Criminal Code (Act. No. 641) criminalizes the conduct of anyone who, directly or indirectly, extols crime or glorifies the perpetrator of a crime or participants therein by means appropriate to ensure the effectiveness of the conduct before a group of persons. The instigation of acts of discrimination, understood to be acts impeding the exercise of a right or power laid down in the Constitution or in other laws, for any reason or based on any economic, social, religious, political, personal or other condition, is also penalized (arts. 427 and 428 of the Criminal Code).

Article 21

Right of peaceful assembly

114. The Constitution recognizes the right of peaceful assembly, the exercise of which does not require prior permission (art. 53). The "right of public assembly, demonstration and movement in accordance with the law" is also recognized (art. 54).

115. Article 7 of Act No. 872 on the Organization, Functions, Profession and Special Social Security Regime of the National Police provides that one of the functions of the National Police is to grant licences and permits for the holding of special events or activities that may affect the free movement of persons and vehicles or might disrupt normal coexistence within the population, establishing schedules, areas, routes, measures and special regulations.

Article 22

Right to freedom of association

116. Article 87 of the Constitution provides for full freedom of association. Workers may organize themselves voluntarily into unions established in accordance with the law. No worker may be required to belong to a particular union or to resign from one to which he or she belongs. Act No. 185, the Labour Code, defines a union as any association of workers or employers constituted for the representation and defence of their respective interests. No previous authorization shall be required for the constitution of unions. These matters are also governed by Decree No. 55-97, Union Regulations, and by Decree No. 93-2004 amending Decree No. 55-97.

117. A manual for establishing, updating and restructuring unions was published in 2008 for dissemination in order to educate and/or provide guidance for workers on organizing themselves in unions. The Register of Unions, which previously operated only in Managua, was decentralized and services are now provided nationally to facilitate and expedite registration, thereby incentivizing the establishment of unions.

118. One of the ILO conventions ratified by Nicaragua is the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), which regulates the right freely exercised by workers and employers, without any distinction, to organize themselves in order to promote and defend their respective interests and to join such organizations without prior authorization. The ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) was ratified on 25 August 2010.

119. The establishment of associations is regulated by the General Non-Profit Juridical Persons Act (Act No. 147), article 6 of which provides that legal personality is to be granted and withdrawn by National Assembly decree. Article 24 provides that legal personality may be withdrawn only by the National Assembly, following the same procedure by which it was granted, and after consultation with the Ministry of the Interior, when the juridical person has been used for the commission of unlawful acts or to disturb public order; when the number of members has fallen below the minimum fixed by law; when the juridical person has carried out activities inconsistent with the purposes for which it was established; or when it has hindered supervision and oversight by the Department for the Registration and Supervision of Associations.

120. Political parties in Nicaragua are regulated by Act No. 331, the Electoral Act, which establishes that they are juridical persons under public law constituted by Nicaraguan citizens. Act No. 331 regulates the form in which political parties are constituted and Act No. 790 reforming Act No. 331 sets out the requirements for obtaining legal personality.

Article 23

Protection of the family and marriage

121. Under the Constitution, the family is the fundamental nucleus of society and a key element of the National Human Development Plan. The State has adopted a Family Code updating the family-based legal model, which comprises principles for the protection, development and strengthening of the family as an obligation of the State, society as a whole and its individual members, through bonds of love, solidarity, assistance and mutual respect, in order to improve quality of life. Among the principles laid down in the Family Code are equality and the protection of marriage and stable de facto unions; protection of female heads of household; the obligation of State institutions to prevent and eradicate domestic violence; responsible fatherhood and motherhood, and the establishment of the family home, equality of rights, duties and opportunities in relationships between men and women through the joint participation of the father, mother and children in household responsibilities, and shared responsibility among all members of the family. Both spouses have equal rights and responsibilities (art. 79).

122. Men and women who have reached 18 years of age may lawfully enter into marriage; however, adolescents between 16 and 18 years of age may also enter into marriage with the authorization of their legal representatives. Marriage may be dissolved by mutual consent or at the request of one of the parties (Constitution, art. 72), and divorce procedures are regulated in the Family Code.

123. The State of Nicaragua, through the legislative branch, has set up 28 specialized family courts throughout the country, including 26 district courts and 2 local courts, thus increasing coverage and accessibility for Nicaraguan families. The specialized family courts are equipped with technical advisory councils made up of specialists in psychology and social work who assist the judges in taking decisions. In the period from 2014 to 2018, these courts decided a total of 143,784 family cases. Most of them were divorce cases, which generally also entail additional proceedings relating to child custody and child-rearing, spousal support, arrangements for visitation and other forms of contact, the use and occupation of properties and, quite frequently, the distribution of assets.

Article 24

Children's rights and their protection

124. Nicaragua has adopted and is currently implementing a State policy on strengthening Nicaraguan families and preventing violence, in order to ensure the protection and restitution of the human rights of families, women, children and adolescents, guaranteeing them a life free from violence. Nicaragua recognizes that, as soon as they are born, children have the right to nationality in accordance with the requirements and procedures established in the Constitution and relevant laws, to have their own name, to know their mother and father and to be cared for by them. The right of girls, boys and adolescents to preserve their identity, including their nationality, name and family relationships, in accordance with the law, is respected; if a child is illegally deprived of some or all of the elements of his or her identity, the State will ensure that appropriate assistance and protection are provided to re-establish them. The birth of children must be registered within the time frame established by the applicable law. The State will ensure that flexible and easily accessible registration mechanisms are available and will provide an initial birth certificate free of charge.

125. The main international instruments relating to the restoration and protection of children's rights that the State of Nicaragua has ratified and that have full legal force and effect within and outside national territory have been acknowledged and incorporated into the Nicaraguan Constitution and other laws concerning the restoration and protection of such rights.

126. Strategies are being set in place to promote care and support for children's development from the time of pregnancy, with the implementation of the Welfare Programme for Children Living in Extreme Poverty in Urban Areas, the Social Welfare Project and the Support Programme for the Implementation of the National Early Childhood Policy. The Family Code regulates matters relating to the return of children who have unlawfully been taken to foreign countries. The network of child development centres has been expanded from 60 to 270 nationwide. An early warning violence-prevention system has been introduced and family counsellors have provided support and care to 42,073 individuals. Over the last four years, 2,913 government employees working in the national social welfare system have received training; 1,169,979 pamphlets on caring for small children have been distributed to promote care and support for children's development from pregnancy to 6 years of age. The National Early Childhood Policy and rules established by the Ministry of the Family, Children and Adolescents promote new approaches to child-rearing and a total of 160,978 home visits have been conducted.

127. Act No. 896 on Combating Trafficking in Persons, adopted in 2015, defines specific, effective mechanisms for upholding, protecting and restoring people's rights to dignity, freedom, integrity, health, education and safety, as well as the unhindered development of the same, especially in the case of children and adolescents. This Act provided for the creation of the National Coalition against Trafficking in Persons, guaranteeing the rights and special protection of children and adolescents, and the guide for the detection and care of child and adolescent victims of commercial sexual exploitation in Nicaragua.

128. Act No. 779 and the Family Code set out penalties for the physical abuse of children and adolescents by their parents, guardians or any other person, who may not invoke the right to discipline as a defence; there are also regulations prohibiting teachers, the authorities, public officials and persons employed by or working for the education system from applying any abusive measure or punishment.

129. The State of Nicaragua, through its judiciary, has prioritized access to justice by women, children and adolescents, having expanded and strengthened 75 specialist courts dealing with violence, families and adolescents; the judicial facilitators system, and the women's and children's clinics and DNA laboratories managed by the Institute of Forensic Medicine. The Public Prosecution Service has adopted a procedural protocol for the special prosecutor for juvenile criminal justice, which represents a step forward for restorative juvenile justice. Regulations governing the specialized criminal justice system for adolescents and a manual on public defender services for adolescents are used to train State judicial officials in restorative justice and the prevention of double victimization.

130. Nicaragua has adopted the Brasilia Regulations Regarding Access to Justice for Vulnerable People. As a result, among other practices, children and adolescents receive support during judicial proceedings, judges do not wear robes, screens are used, inter-agency cooperation mechanisms have been set up and proceedings are conducted swiftly so that decisions can be made within a reasonable time.

Article 25

Political rights and the right to take part in the conduct of public affairs

131. Article 51 of the Constitution states that citizens have the right to vote and to be elected in periodic elections, and to seek public office subject to the restrictions established in the Constitution. This right is regulated by the Electoral Act, the Municipalities Act and the Equal Rights and Opportunities Act with the aim of ensuring greater participation, inclusion, representation, equity, proportionality and rotation between women and men.

132. During the general election in 2016, the municipal elections in 2017 and the elections to the regional councils of indigenous peoples and peoples of African descent in 2014, the free, direct and confidential participation of the Nicaraguan people in the exercise of their right to vote was guaranteed, as was the participation of 18 political parties. Commander Daniel Ortega Saavedra was elected President of the Republic in 2016, obtaining 72.44 per cent of the votes cast. The electoral process was monitored by the Organization of American States, which recognized the result. Progress was made in voter registration, with an increase of 17.74 per cent in the number of citizens registered on the basis of their identity cards for the municipal elections in 2017. The number of polling stations in urban and rural areas increased by 2 per cent, rising from 12,960 stations during the general election in 2011 to 13,206 stations during the municipal elections in 2017.

Article 27

Rights of ethnic, religious and linguistic minorities

133. The Constitution establishes that recognition of the identity of indigenous peoples and peoples of African descent within a unitary and indivisible State, and recognition of the various forms of property, are principles of the Nicaraguan nation. A dedicated chapter of the Constitution enshrines the rights of the communities of the Caribbean Coast. In particular, it provides that they are an indissoluble part of the Nicaraguan people, they enjoy the same rights and have the same obligations, and they are entitled to preserve and develop their cultural identity within the unity of the nation, to adopt their own forms of social organization and to administer their local affairs in accordance with their traditions. Within the constitutional framework and the relevant specialized laws, this just endeavour to restore the ancestral rights of the communities of indigenous peoples and peoples of African descent of Nicaragua, in solidarity with them, has been and remains a fundamental policy and priority of the Nicaraguan State.

134. The State recognizes and gives effect to the right of self-determination of the indigenous peoples and peoples of African descent of the Caribbean coast, that is, the right of peoples to decide their own forms of organization and governance, pursue their economic, social and cultural development, and structure themselves freely without external interference. It also recognizes communal forms of ownership, enjoyment, use and exploitation of the waters and forests of their communal lands; and their rights to freedom of expression and to the preservation of their language, art and culture. It recognizes the distinct forms of social organization of the communities of indigenous peoples and peoples

of African descent, which have their own governments and communal authorities. These communities come together in 24 indigenous and Afrodescendent territorial governments, which enjoy autonomy and exercise their powers pursuant to the Constitution; Act No. 28 concerning the Autonomy Statute of the Regions of the Atlantic Coast of Nicaragua; Act No. 445 on the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Coco, Bocay, Indio and Maíz Rivers; and Act No. 757 on the Decent and Equitable Treatment of Indigenous Peoples and Peoples of African Descent.

135. The last 12 years have seen significant progress in the recognition and restitution of the economic, political, social and infrastructure rights of the Nicaraguan people, in particular indigenous peoples and peoples of African descent. This progress, under the National Human Development Plan and the development strategy for the Caribbean Coast and Alto Wangki Bocay, is strengthening the role played by the multi-ethnic population of the Caribbean in promoting continued equitable human development that reflects its own identity.

136. The Caribbean and the Special Status Zone of Alto Wangki Bocay account for 49 per cent of the national territory. A total of 31.4 per cent of the national territory is titled under the communal property regime for 23 indigenous and Afrodescendent territories, 28.26 per cent of them in the autonomous regions of the Caribbean and 3.14 per cent in the area of the Special Status Zone of Alto Wangki Bocay. The titling process covers 304 communities with a total of 205,317 inhabitants.

137. The State ensures public safety for indigenous communities through the national police, the army and the Public Prosecution Service. The police authorities of the Caribbean coast coordinate closely at all times with government at the community, municipal, regional and national levels in order to prevent crime and protect the security of individuals and their property. The Nicaraguan army continues to execute its plan for regularizing relations between settlers and indigenous residents in communities of the Caribbean coast and has deployed small units to implement protection and security measures, seize illegally held firearms, and search for and capture individuals linked to organized crime, drug-related activities and ordinary offences. Ecological protection posts established by the army in coordination with the Ministry of the Environment and Natural Resources conduct missions to counter the unlawful trafficking of flora and fauna by promoting environmental and community education.

138. One of the strategic approaches taken by the Supreme Court is that of facilitating access to justice by Nicaraguan citizens without discrimination. Its aim over the next decade is to facilitate access to justice by expanding service coverage throughout the country and ensuring effective judicial access and protection under conditions of equality and non-discrimination, in order to provide a flexible and appropriate judicial response in protecting the rights of indigenous peoples, peoples of African descent and other vulnerable individuals. The State, acting in harmony with the cultural traditions of these communities, has recognized their own methods and practices for the administration of justice, as well as their communal authorities. As a result, 90 per cent of court cases are resolved under the discretionary prosecution principle by the application of alternative measures (agreements, mediation, reconciliation), with the communities themselves playing a leading role in conflict resolution.

139. In this regard, the judiciary has been at the forefront of strengthening the capacity of traditional authorities, through recognition of the agreements entered into by community members before the communal judge (*wihta*), and through the training provided to traditional authorities (such as *wihta*, elders, trustees and pastors) on a range of topics including gender-based violence, trafficking in persons, family, property, mediation and reconciliation.