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on Civil and Political
Rights**

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**CONSIDERATION OF THE REPORTS OF STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Third periodic report

NICARAGUA^{*} ^{}**

[20 June 2007]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

** Annexes may be consulted in the files of the Secretariat.

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ABBREVIATIONS AND ACRONYMS

APN	Journalists' Association of Nicaragua
CENIDH	Nicaraguan Centre for Human Rights
CEPAD	Consejo Evangélico Pro-Alianza Denominacional
CNA	Children and Adolescents Code
CONAPINA	National Council for the Comprehensive Care and Protection of Children and Adolescents
CCP	Code of Criminal Procedure
DAEM	Office for Registration and Control of Firearms, Ammunition, Explosives and Other Related Materials
DAI	Department of Internal Affairs
DAS	Department of Trade Associations
DGME	Department of Migration and Alien Affairs
ECPAT	End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes
ENDESA	Nicaraguan Demographic and Health Survey
ENTIA	National Survey of Child and Adolescent Labour
FAO	Food and Agriculture Organization of the United Nations
FECODENI	Nicaraguan Coordinating Federation of NGOs Working with Children
FJR	Rural judicial facilitator
ILO	International Labour Organization
INEC	National Statistics and Census Institute
INIM	Nicaraguan Women's Institute
INJUDE	Nicaraguan Institute for Youth and Sports
INRA	Nicaraguan Institute for Agrarian Reform
INSS	Nicaraguan Social Security Institute
IPADE	Institute for Development and Democracy
IPEC	International Programme on the Elimination of Child Labour
MARENA	Ministry of the Environment and Natural Resources
NGO	Non-governmental organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OAS	Organization of American States
PAHO	Pan-American Health Organization
PDDH	Office of the Procurator for the Protection of Human Rights
RAAN	Autonomous Region of Atlántico Norte

RAAS	Autonomous Region of Atlántico Sur
SPN	National Prisons System
TIE	Entry and exit card
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UPN	Journalists' Union of Nicaragua
WHO	World Health Organization

EXECUTIVE SUMMARY

The Constitution of the Republic of Nicaragua is the principal general legislative framework for the protection of human rights. The consolidated report on the application of the International Covenant on Civil and Political Rights, which covers a period of 20 years, describes in detail the progress made in Nicaragua in legislative and administrative matters relating to civil and political rights such as the rights to life, self-determination, physical integrity, and personal freedom and safety, as well as to procedural guarantees, the freedoms of thought, conscience and religion and of opinion and expression, the rights to participate in public affairs and not to be subjected to torture, and the right to equality before the law.

Judicial system: The Judiciary Act was adopted in 1998; it reorganized the Judiciary and its component parts: the Supreme Court of Justice, the Office of the Attorney-General of the Republic, the Office of the Public Prosecutor, the Office of the Public Guardian, the Office of the Procurator for the Protection of Human Rights, the National Prisons System, the National Police, and the Department for Dispute Settlement.

Right to life: The Promulgation of the Constitution definitively abolished the death penalty; the American Convention on Human Rights had been ratified, and its Protocol on Abolition of the Death Penalty was ratified in 1999.

Introduction of the system of juvenile criminal justice: Following the ratification of the Convention on the Rights of the Child in 1990, the Women and Children Units were established in 1993, and the National Assembly approved the Children and Adolescents Code in 1998; these moves marked progress in the introduction of the system of juvenile criminal justice. The National Plan for the Comprehensive Care of Children and Adolescents was also put into effect.

Appointment of special procurators: The promulgation of the Act establishing the Office of the Procurator for Human Rights in 1995 was followed by the establishment of the Office of the Special Procurator for Children and Adolescents, the Office of the Special Procurator for Women, the Office of the Special Procurator for Indigenous Peoples and Ethnic Communities, the Office of the Special Procurator for Persons with Disabilities, the Office of the Special Procurator for Persons Deprived of Their Liberty, and the Office of the Special Procurator for Civic Participation. The Office of the Special Procurator for Children and Adolescents has helped to highlight commercial sexual exploitation as one of the worst forms of violation of the human rights of children. Programmes and projects have been introduced to eradicate this problem.

Establishment of juvenile courts: These courts were established in accordance with the Children and Adolescents Code as an imperative need in the legal processing of criminal offences involving children. The first juvenile court was established in Managua in November 1998.

Adoption of the Code of Criminal Procedure in 2001: This marked a step forward in the administration of justice with the move from the inquisitorial system to the accusatorial system and the introduction of fundamental guarantees to improve the administration of justice in Nicaragua. A new draft criminal code containing such improvements as the criminalization of torture and racial discrimination is currently under discussion.

The Journalists' Association Nicaragua (Establishment) Act was drafted and adopted in 2001 in order to establish a professional association for journalists and guarantee the right to freedom of expression.

The **Civil Service and Administrative Careers Act** was adopted in 2003 in an effort to provide increased job stability for employees of ministries and other public institutions.

Since November 2003 the National Prisons System has been governed by the **Prisons Regime and Enforcement of Sentences Act** and its Regulations. This Act and the Constitution of the Republic and the National Police Act incorporate and confirm the provisions of the International Covenant on Civil and Political Rights and the Convention against Torture, which has been ratified by Nicaragua,

The **Civic Participation Act**, adopted in October 2003, is designed to promote the full exercise of civil rights in political, social, economic and cultural matters by creating and operating institutional mechanisms to facilitate a smooth interaction between the State and society and thus help to consolidate freedom and the participatory and representative democracy established in the Constitution.

The Constitution acknowledges the country's multiracial character and guarantees the specific rights of its indigenous peoples. The **Statute of Autonomy of the Atlantic Coast Regions of Nicaragua** was adopted, and 2003 saw the appointment of the Special Procurator for Indigenous Peoples and Ethnic Communities. The National Assembly is currently considering a bill on the indigenous peoples of the country's Pacific, central and northern regions.

Nicaragua ratified the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment** in 2005, and on 14 March 2007 it ratified the Optional Protocol to that Convention. On 30 March 2007 it acceded the **Convention on the Rights of Persons with Disabilities**, which constitutes a historic step forward by virtue of its provisions on the equality of persons with disabilities and on respect for their rights.

The adoption of these measures and the submission of the present report bear out the firm intention of the Government of Reconciliation and National Unity to recognize, promote and respect the human rights and fundamental freedoms of all Nicaraguans and to continue to make manifest progress in improving the country's legal and administrative framework.

I. INTRODUCTION

1. The Government of Nicaragua submitted its second periodic period on the application of the International Covenant on Civil and Political Rights (CCPR/C/42/Add.8) in 1988.
2. The Human Rights Committee considered that report at its 975th to 978th meetings, held on 4 and 5 April 1990, and issued its concluding observations (*Official documents of the General Assembly, forty-fifth session, Supplement No. 40 (A/45/40)*, ch. III, paras. 388-427).
3. The Government of Reconciliation and National Unity and the Ministry of Foreign Affairs, acting through its international agreements monitoring unit, which is the body responsible for coordinating the preparation and submission of reports on the management and execution of governmental and State policies promoting, guaranteeing and ensuring respect for human rights, and in conjunction the Inter-institutional Committee on Human Rights, made up of representatives of all the public agencies and civil society organizations which have pooled their efforts to contribute to the fulfilment of the duties and commitments of the Government and the State, present to the Human Rights Committee the sixth consolidated periodic report, which

describes the action taken by the State of Nicaragua in the period 1987-2006 to apply the provisions of the International Covenant on Civil and Political Rights.¹

4. Acknowledgement must be made of the active participation and support in the preparation of this consolidated report of the following institutions, State agencies and civil society organizations: the National Assembly, the Nicaraguan Association for Community Integration (ASNIC), the Nicaraguan Centre for Human Rights (CENIDH), the Consejo Evangélico Pro-Alianza Denominacional (CEPAD), the Office of the United Nations High Commissioner for Refugees (UNHCR) in Nicaragua, the National Council for the Comprehensive Care and Protection of Children and Adolescents (CONAPINA), the Supreme Court of Justice, the Department of Migration and Alien Affairs (DGME), the Nicaraguan Army and Navy, the Dr. José Dolores Fletes Valle psychiatric-social teaching hospital; the Institute for Development and Democracy (IPADE), the National Statistics and Census Institute (INEC), the Nicaraguan Women's Institute (INIM), the Ministries of Education, the Interior, the Family, Health, and Labour, the Development Office for the Autonomy of the Atlantic Coast of Nicaragua (ODACAN), the National Police, the Office of the Procurator for the Protection of Human Rights (PDDH) and, in particular, the Office of the Special Procurator for Prisons and the National Prisons System.

5. This report was prepared on the basis of the following documents: the Compilation of general comments and general recommendations adopted by human rights treaty bodies (HRI/GEN/1/Rev.8); the Compilation of guidelines on the form and content of reports due from States parties to the international human rights treaties (HRI/GEN/2/Rev.3); and the Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and reports on treaty-specific documents (HRI/MC/2006/3 and Corr.1).

6. This report has two parts: the present introduction, and the substantive provisions of the International Covenant.

II. SUBSTANTIVE PROVISIONS OF THE INTERNATIONAL COVENANT

ARTICLE 1

(Right of peoples to self-determination)

7. The State of Nicaragua has a general legislative framework for the protection of human rights, the chief instrument of which is the Constitution of the Republic, in force since 1987, and its various amendments. To date the Constitution has been amended at least six times.² Its fundamental principles are self-determination (art. 1), sovereignty and democracy (art. 2), peace (art. 3) and human development (art. 4).

¹ The present report combines in a single document the third, fourth, fifth and sixth periodic reports, which Nicaragua was due to submit on 11 June 1991, 1996, 2001 and 2006 respectively. The second periodic report and the summary records of the meetings at which the Human Rights Committee considered it will be found in documents CCPR/C/42/Add.8 and CCPR/C/SR.975-978. The initial report is contained in document CCPR/C/14/Add.2 and 3.

² The most recent amendment was the Constitution (Partial Amendment) Act (Act No. 527), adopted on 15 March 2005 and published in *La Gaceta*, Diario Oficial No. 68, of 8 April 2005.

8. The current Constitution is a legacy of the Nicaraguan Revolution of 1979, when there occurred a series of changes which brought about the overthrow of the Somoza dictatorship, during which Nicaraguan politics had been governed by two basic documents: the Fundamental Statute, and the Statute of Rights and Guarantees.

9. In Chapter I of the Constitution, where the fundamental principles are established, the first paragraph of article 5 stipulates “respect for the self-determination of peoples” as a principle of the Nicaraguan nation. And the fifth paragraph states: “Nicaragua bases its international relations on friendship and solidarity among peoples and reciprocity among States. Consequently, all forms of political, military, economic, cultural or religious aggression and intervention in the internal affairs of other States are prohibited and proscribed.”

10. Nicaragua is described as an “independent, free, sovereign, unitary and indivisible State” and, where its form of Government is concerned, as a “democratic, participatory and representative Republic” (arts. 6 and 7).

11. National sovereignty resides in the people, who exercise it by means of direct or participatory democracy, choosing their representatives “by universal, equal, direct and secret ballot, and no other person or group of persons may arrogate that power or right of representation. The people may also exercise it directly by means of referendums and plebiscites or any other procedures established by the Constitution and the laws” (art. 2).

12. The Nicaraguan people is “multi-ethnic in nature” (art. 8), and its territory is divided for administrative purposes into Autonomous Regions of the Atlantic coast, departments and municipalities. The municipality is the basic unit of the administrative division of the country. The City of Managua is the capital and the seat of the powers of the State (art. 12).

13. Where personal rights are concerned, the Constitution addresses in articles 23 to 46 the individuality of human life and its safety, equality before the law, the freedom of conscience, thought and religion, the prohibition of servitude and slavery, the right to asylum and refuge, and the right to private ownership of property; it also deals with the right to a healthy environment (art. 60) and programmes for persons with disabilities (art. 62); and Chapter VI stipulates recognition of the rights of the indigenous peoples and communities of the Atlantic coast.

14. The Constitution also states: “The various forms of public, private, associative, cooperative and community ownership shall be guaranteed and encouraged without any discrimination, in order to produce wealth, and all of these forms or ownership, operating freely, shall perform a social function.” (art. 5).

15. The protection of natural resources is also guaranteed, in article 60 of the Constitution, which stipulates specifically the obligation of the State “to preserve, conserve and restore the environment and natural resources”, for all Nicaraguans “have the right to live in a healthy environment.”

16. According to article 102, “natural resources are part of the national heritage”; the State must therefore attend to “the preservation, conservation, development and rational use of natural resources”, and only the State “may conclude contracts for the rational use of natural resources, when the national interest so requires.”

17. The Ministry of the Environment and Natural Resources (MARENA) was established by Executive Decree 1-94;³ since its establishment MARENA has been responsible for coordinating and directing the State's environmental policy and promoting the sustainable use of the country's natural resources.

18. The General Environment and Natural Resources Act (Act No. 217) was adopted on 27 March 1996⁴ in order to establish rules for the conservation, protection, improvement and restoration of the environment and its constituent natural resources and ensure their rational and sustainable use, in accordance with the provisions of the Constitution.

19. The Regulations of the General Environment and Natural Resources Act were approved by Decree 9-96 on 25 July 1996;⁵ they provide that MARENA is "the competent national authority for regulation, standard-setting, monitoring and control in matters affecting environmental quality, the sustainable use of natural resources, and the environmental management of non-renewable resources, in accordance with the provisions of the General Environment and Natural Resources Act and the other applicable laws. The Ministry of the Environment and Natural Resources is also the competent authority with respect to administrative sanctions for failure to comply with the environmental regulations. It shall exercise these powers in coordination with other State agencies and the relevant regional and municipal authorities." (art. 3).

20. There is also the Special Environment and Natural Resources (Offences) Act (Act No. 559),⁶ the purpose of which is to establish as offences against the environment and natural resources all acts or omissions which infringe or pervert the legislation on the conservation, protection, management, defence or improvement of the environment and natural resources and to establish civil responsibility for damage or losses caused by natural or juridical persons whose liability is proved.

21. A bill amending article 9 of Act No. 559, on noise pollution, is currently before the National Assembly's Committee on the Environment and Natural Resources.

22. In addition, the Felling, Exploitation and Marketing of Forestry Resources (Prohibitions) Act (Act No. 585)⁷ was recently adopted; it establishes a prohibition for a period of 10 years on the felling, exploitation and marketing of trees of the species mahogany, cedar, bombax, pine, mangrove and ceiba throughout the national territory; this prohibition may be renewed for similar or shorter or longer periods.

³ Adopted on 7 January 1994 and published in *La Gaceta*, Diario Oficial No. 6, of 10 January 1994.

⁴ Published in *La Gaceta*, Diario Oficial No. 105, of 6 June 1996.

⁵ Published in *La Gaceta*, Diario Oficial No. 163, of 29 August 1996.

⁶ Adopted on 26 October 2005 and published in *La Gaceta*, Diario Oficial No. 225, of 21 November 2005.

⁷ Adopted on 7 June 2006 and published in *La Gaceta*, Diario Oficial No. 120, of 21 June 2006

**ARTICLE 2 (Guarantees of the rights recognized in the Covenant
and principle of equality)**

23. The Constitution of the Republic has primacy over all other laws and constitutes the basis for ensuring full respect for the human rights of all Nicaraguans.

24. Where the principle of equality is concerned, article 27 of the Constitution states: “All persons are equal before the law and are entitled to equal protection. There shall be no discrimination by reason of birth, nationality, political ideology, race, sex, language, opinions, economic position or social status.”

25. The State of Nicaragua also respects and guarantees the rights accorded by the Constitution to all persons in Nicaraguan territory and subject to its jurisdiction, including aliens, who have the same duties and rights as Nicaraguans, except for political rights and the other rights specified by law (Constitution, art. 27, second and third paragraphs).

26. According to article 46 of the Constitution, “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 out 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.”

27. Article 46 recognizes human rights as inherent in the human person and stipulates the full exercise of the rights set out in five of the most important international human rights instruments. The Constitution of Nicaragua is thus one of the most advanced constitutions with regard to the protection of human rights; and these rights are also incorporated in national legislation, as may be seen in Title IV, on the rights, duties and guarantees of the Nicaraguan people.

28. The Supreme Court of Justice has repeatedly handed down decisions concerning recognition of these international instruments: in Decision No. 11 of 9 February 1994, third preambular paragraph; and in Decision No. 49 of 31 January 2001 and Decision No. 13 of 5 February 2002, second preambular paragraphs.

29. According to the second paragraph of article 10 of the Constitution, Nicaragua “recognizes in its territory only those international obligation which have been freely accepted and are in conformity with the Constitution of the Republic and the rules of international law.”

30. As a State Member of the United Nations, Nicaragua has signed and ratified the principal human rights instruments and guarantees their unrestricted respect and exercise.

31. Furthermore, although ILO Convention No. 169 of 1989 on Indigenous and Tribal Peoples in Independent Countries has not yet been ratified by Nicaragua, the Government of Reconciliation and National Unity is willing to do so, for Nicaragua has an outstanding record as a country which promotes the human rights of indigenous peoples.

A. Constitutional remedies

32. When a person considers that one of the rights or freedoms set out in the International Covenant has been infringed, he or she may invoke the *Amparo* Act (Act No. 49),⁸ which incorporates the three constitutional remedies guaranteeing the validity and application of the Constitution: the remedy of unconstitutionality, administrative *amparo* as such, and the remedy of *habeas corpus*, which are addressed in articles 187 to 189 of the Constitution.

Remedy of unconstitutionality

33. The remedy of unconstitutionality is addressed in Chapter IV, Title II, of the *Amparo* Act and is equivalent to a mechanism for formal monitoring of the constitutionality of “any law, decree or regulation which may conflict with the provisions of the Constitution” (Constitution, art. 187). This remedy may be invoked by any citizen when any law of a lower status than the Constitution causes him or her harm or may infringe his or her rights.

34. An action of unconstitutionality must be brought directly before the Supreme Court of Justice within a time limit of 60 days following the entry into force of the law in question (*Amparo* Act, art. 8), and the Court must give its ruling on the admissibility of the application within a time limit of 15 days, ordering the necessary proceedings or rejecting the application as inadmissible (art. 14).

35. A finding of unconstitutionality has the effect, on the basis of the Court’s ruling, of rendering void the law, decree law, decree or regulation, or the contested provisions thereof if the unconstitutionality is only partial (art. 18).

36. To give an example: the decisions issued at 9 a.m. on 22 August 1989 and at 9 a.m. on 6 September 1989 declared inadmissible the actions of unconstitutionality brought against the General Media and Communication Act (Act No. 57).

Remedy of *amparo*

37. The remedy of *amparo* is addressed in Chapter IV, Title III, of the *Amparo* Act; it is the procedural mechanism by means of which any citizen may defend his or her constitutional rights: the Attorney-General acts as a party in actions of *amparo*, and the Supreme Court is empowered to assume that the complaint is founded if the authority in question does not submit a report.

38. The Constitutional Division of the Supreme Court is the judicial body to which actions of *amparo* are submitted and before which judicial protection is sought through assertion of the supremacy of the Constitution. The principal function of the Constitutional Division is to protect and consolidate the fundamental rights set out in the Constitution by hearing and ruling on actions of *amparo*.

39. The Constitutional Division protects the Constitution and ensures its application and the legality and dispensation of accessible and participatory constitutional justice based on the exercise of civil rights and guarantees.

⁸ Adopted on 17 November 1988 and published in *La Gaceta*, Diario Oficial No. 241, of 20 December 1988.

40. Accordingly, in order to ensure the exercise of the rights set out in the Constitution “the remedy of *amparo* may be invoked against any order, act or decision and in general against any act or omission of any official or authority or an agent of such official or authority which violates or attempts to violate the rights and guarantees established in the Constitution” (Constitution, art. 188, and *Amparo* Act, art. 3).

41. The remedy of *amparo* follows an annulment procedure in which the chief objective is to secure the annulment or voidance of the contested act and thus to restore the *status quo ante*. It may be invoked only by the injured party. The injured party is any natural or juridical person who has been harmed or is in imminent danger of being harmed by any order, act or decision and in general by any act or omission of any official or authority or agent of such official or authority which violates or attempts to violate the rights and guarantees established in the Constitution (*Amparo* Act, art. 23).

42. The remedy of *amparo* must be invoked against the official or authority which ordered the violation, against the executing agent or against both, and the action is heard by the competent appeals court or the Civil Division (*Amparo* Act, art. 25). The court is not empowered to make good on its own initiative any omissions in the application, but it may allow a period of five days to enable the applicant to do so. If the injured party allows that time limit to expire, the action of *amparo* will be deemed not to have been lodged; if he acts within the time limit but does not state clearly and precisely which provisions of the Constitution have been infringed and the exact nature of the infringement, the application is declared inadmissible.

43. Article 25 of the Act provides that when the court declines to admit an application, the injured party may seek the remedy of *amparo* by bringing proceedings for review of leave to appeal before the Supreme Court (Decision issued at 9 a.m. on 9 August 1980, p. 187, point IV).

44. If leave to appeal is granted, the Constitutional Division or the appeals court is instructed to hear the action of *amparo* and to decree and order that the parties alleged to be responsible for the violation shall be requested, in an official communication sent with a request for notification of receipt, to submit a report to the Supreme Court, that the Office of the Attorney-General shall be notified of the *amparo* application, and sent a copy thereof, that the papers shall be transmitted to the Supreme Court, and that the applicant shall be notified to appear within three days (plus any additional travel time for distance).

45. Decisions in cases of administrative *amparo* refer only to the individuals or the juridical persons who brought the action and are limited, if such persons are granted the remedy, to the specific case in question (*Amparo* Act, art. 44).

46. Decisions must be accompanied by a statement of justification, with a clear description of the act or acts in question and an indication of the legal grounds for declaring the act or acts legal or illegal and of the decisive facts, and a clear statement of the act or acts in respect of which *amparo* is granted or denied (art. 45).

47. Lastly, when the contested act is a positive one, the purpose of the decision granting *amparo*, which must be handed down within 45 days of receipt of the official documents, is to restore to the injured party full exercise of his violated rights and to restore the *status quo ante*. When the contested act is a negative one, the effect of the decision is to oblige the authorities or officials held responsible to take steps to comply with the law or guarantee in question and to do what it requires them to do (art. 46).

Remedy of *habeas corpus*

48. Chapter IV, Title IV, of the *Amparo* Act addresses the remedy of *habeas corpus*, for which the procedure is much the same as for *amparo*.

49. For this remedy the Act sets out with great clarity provisions on the powers of the executing officer, the option of the notified authority to apply to an appeals court if it considers that the executing officer has not complied with the specific terms of the Act, and the option of the appeals court to review on its own motion the acts of the executing officer.

50. The Act also provides that as part of the complaint proceedings instituted by the injured parties the Supreme Court may verify that the application has been processed correctly.

51. In Nicaragua the remedy of *habeas corpus* is a guarantee of individual freedom in that it ensures that a person who has been arrested or deprived of his liberty is produced by the authority which ordered the detention, that the authority's reasons, the proceedings and the grounds are made public, and that the question of the detention's termination or continuation is resolved.

52. Still with an eye to citizens' liberty, physical integrity and security, the Constitutional Division also hears and rules on complaint proceedings against rejection by the appeals courts of applications of *habeas corpus*. The remedy is established in article 189 of the Constitution "for the benefit of persons whose liberty, physical integrity or security has been infringed or is in danger of infringement." This article thus provides protection not only for persons who have been physically detained but also for persons threatened with detention.

53. The remedy may be sought on behalf of an injured party by any inhabitant of the Republic, in writing by letter or telegram, or verbally. Since such an important right as personal liberty is at stake, the Act allows this remedy to be sought by any member of the public, unlike the remedy of *amparo*, when the application must be made by the injured party. The proceedings must be brought against the responsible official or authority, against a representative or officer of the agency or institution which ordered or committed the violation, against the executing agent, or against the individual or individuals who restricted the personal freedom in question (*Amparo* Act, art. 53).

54. Although the remedy of *habeas corpus* is a special remedy by virtue of the constitutional basis of the *Amparo* Act (Constitution, art. 184), it must be sought before a regional appeals court or before the Criminal Division, when such courts are available. The district criminal courts have competence in the case of acts of restriction of liberty committed by private individuals (art. 54).

55. Applications of *habeas corpus* may be made at any moment while the illegal deprivation of liberty or threat thereof persists. All the days and hours of the week are available for this purpose, even when public offices are closed during the Christmas holidays and Holy Week.

56. The application must state the facts justifying it, the place where the detainee is being held, if known, the name or position of the person exercising the authority or of the representative or officer of the agency or institution which ordered the detention. The application may be drawn up on ordinary paper and submitted by telegram or letter or even verbally; in the latter case the necessary form will be filled out (art. 55).

57. When the application has been duly submitted to the competent court or the criminal division of the jurisdiction in which the subject of the application is being held, the court in question issues an order for the subject to be produced and appoints the executing officer, who may be a representative of any civil authority or any public official or any other citizen, preferably a lawyer, who is of the age of majority and of established honesty and education; care must be taken not to appoint an official of the Judiciary (art. 56.).

58. The position of executing officer is unpaid and mandatory and may be refused only on the grounds of physical impossibility or proven involvement in the case; unjustified refusal is subject to a fine of up to 25 per cent of the person's monthly salary or income, without prejudice to the possibility of prosecution for disobedience (art. 59).

59. Where threats of illegal detention are concerned, the applicant must state the nature of the threat; in all cases the threat must be real, immediate, possible and feasible, and all the requirements of article 55 of the Act must be met (art. 57).

60. Once an application for protection against a threat of illegal detention has been duly submitted to the competent appeals court or criminal division of the jurisdiction in which the subject of the application is located, the court in question requests the authority against which the application has been lodged to transmit a report within 24 hours. With or without such report, the court decides to grant or reject the application; if it is granted, the case proceeds in accordance with the applicable provisions of article 56 of the Act (art. 58).

61. If the court rejects the application, the plaintiff may bring complaint proceedings before the Supreme Court of Justice; there is no remedy against the Supreme Court's ruling in such cases (art 58).

62. In the event that the constitutional guarantees of personal liberty have been suspended, the remedy of *habeas corpus* remains available in accordance with the provisions of the Emergencies Act (art. 62).

63. The Constitutional Division is competent to hear the applications described above and to ensure the protection of the fundamental rights established in the Constitution.

B. Constitutional Division of the Supreme Court of Justice

64. The Constitutional Division has its seat in Managua, the capital of the Republic, and has jurisdiction over the entire national territory. Its chief function is to hear and rule on actions of *amparo* concerning violation or threat of violation of the rights and guarantees established in the Constitution (Judiciary Act, art. 34). It also hears applications for review of leave to appeal against rejection of *amparo* applications by the courts receiving them.

65. Before the Supreme Court was split up into divisions, the 1987 Constitution provided, in the third and fourth paragraphs of its article 164, that it is for the plenary Supreme Court to hear and rule on actions of *amparo* and unconstitutionality. The constitutional amendments of April 1995 created the Constitutional Division of the Supreme Court.

66. The provisions of the Constitution stipulate that the Constitutional Division shall consist of 12 judges elected by the National Assembly for a term of five years and that they may be

removed from their posts only for the reasons specified in the Constitution and the laws (Constitution, arts. 162 and 163; Judiciary Act, art. 31).

67. Article 163 of the Constitution (Partial Amendment) Act (Act No. 192)⁹ states: “The Supreme Court of Justice shall be composed of divisions, each of which shall consist of at least three judges: the Civil, Criminal, Constitutional, and Administrative Litigation Divisions, the organization and membership of which shall be agreed by the judges themselves. The Supreme Court shall hear and rule on actions of unconstitutionality of laws and on conflicts of jurisdiction and constitutionality between the Powers of the State.”

68. Article 162 of the Constitution as amended in 1995 provided that the term of office of the judges of the Supreme Court and of the appeals courts should be six and five years respectively, while the constitutional amendments of 2000 set the term of office at five years in both cases and provided the judges with the same immunity: they may be removed from their posts only for the reasons specified in the Constitution and the laws.

69. The 1995 Constitution provided that the Supreme Court should “consist of 12 judges elected by the National Assembly.” However, the Constitution of the Republic of Nicaragua (Partial Amendment) Act (Act No. 330)¹⁰ amended article 163 of the Constitution, stipulating: “The Supreme Court of Justice shall consist of 16 judges elected by the National Assembly for a term of five years.”

70. Article 31 of the Judiciary Act (Act No. 260)¹¹ provided that “for jurisdictional purposes the Supreme Court of Justice shall be split up into four divisions: (1) Civil Division; (2) Criminal Division; (3) Constitutional Division; and (4) Administrative Litigation Division.”

71. Through its decisions the Constitutional Division interprets the supreme law of the judicial order - the Constitution - in that it monitors compliance with the Constitution, in accordance with articles 187 to 189, using the procedure established in the *Amparo* Act (Act No. 49).

ARTICLE 3 (Equality of men and women in the enjoyment of human rights)

72. Equality of opportunities is a concept based on the principle of equality, which constitutes its main foundation and recognizes that the establishment of equality of rights, or legal equality, is not sufficient to overcome the inequalities between women and men.

73. As the country’s supreme law, the Constitution confers equality of rights and duties on men and women in the following articles:

Article 27. “All persons are equal before the law and are entitled to equal protection. There shall be no discrimination by reason of birth, nationality, political ideology, race, sex, language, religion, opinions, economic position or social status.”

[...]

⁹ Published in *La Gaceta*, Diario Oficial No. 124, of 4 July 1995.

¹⁰ Published in *La Gaceta*, Diario Oficial No. 13, of 19 January 2000.

¹¹ Published in *La Gaceta*, Diario Oficial No. 137, of 23 July 1988.

Article 46. “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 out 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.”

[...]

Article 48. “All Nicaraguans shall have unconditional equality in the enjoyment of their political rights, in the exercise of such rights, and in the fulfilment of their duties and responsibilities. There is absolute equality between men and women.”

[...]

Article 71. “Children shall enjoy special protection and all the rights which their status requires; the Convention on the Rights of the Child is fully in force in this regard.”

74. It is the duty of the State to remove obstacles to de facto equality between Nicaraguan men and women and to their effective participation in the country’s political, economic and social life.

75. In this connection the Constitutional Division has deemed it pertinent to state: “Equality before the law means that the law must be equal in equality of circumstances and should not grant exceptions or privileges which exclude some persons from what is accorded to others in equality of circumstances. Similarly, the doctrine and our jurisprudence proclaim that the equality of all persons before the law, in accordance with the provisions and spirit of our Constitution, is nothing other than the right not to be excluded from the exceptions or privileges granted to others in equal circumstances, from which it necessarily follows that true equality consists in the application of the law in cases which arise in the light of the differing elements of those cases, and that any other interpretation of this right contradicts its own nature and is against the public interest.”¹²

76. The Act establishing the Office of the Procurator for the Protection of Human Rights (Act No. 212)¹³ provides for the appointment of a Special Procurator for Women. Two such procurators have been appointed to date (for 2002-2004 and 2005-2007). Their main activities have helped to promote processes of empowerment, democracy and transparency, and compliance with the law in public institutions where respect for human rights is concerned.

77. The Civil Code, in force since 1904, accords identical legal capacity to women and men, and a woman can exercise this capacity by freely concluding contracts, including with her own husband, administering her own property, and appearing on her own behalf in the courts of justice, without any need of representation by a lawyer, in order to assert her rights.

¹² Decision No. 120 (8.30 a.m. on 28 April 2005; point II).

¹³ Adopted on 13 December 1995 and published in *La Gaceta*, Diario Oficial No. 7, of 10 January 1996.

78. The Supreme Court of Justice has introduced a number of measures to facilitate women's access to justice: a pilot project to facilitate access to justice for low-income social groups in some areas of the country; a project to facilitate access to justice for women living in rural areas by expanding the rural justice facilitators programme; the establishment of care, mediation, information and counselling centres as an alternative means of dispute settlement in remote areas of the Atlantic coast; and the care programme for victims of domestic or sexual violence in the Autonomous Regions of the Caribbean coast.

79. The Nicaraguan Women's Institute (INIM)¹⁴ is the lead agency for the formulation, promotion, execution and evaluation of the Government's policies, plans, programmes and projects to encourage gender equality; in accordance with its mission, INIM has continued to carry out measures to secure the advancement and development of women.¹⁵

80. The Constitution accords full equality of rights to both men and women; this principle of equality means that all the public authorities should seek to establish suitable conditions for turning the freedom and equality of women into a reality.

81. It is therefore an obligation of the State to remove the obstacles to de facto equality between male and female Nicaraguans and to their active participation in the country's political, social and economic life.

82. The Civil Service and Administrative Careers Act (Act No. 476)¹⁶ was adopted in 2003; its purpose is to secure greater stability for men and women employees of ministries and public institutions. It regulates the Civil Service and Administrative Careers Schedule established by article 131 of the Constitution in order to ensure efficiency in the public administration and define the rights and duties of public officials.

83. Public official means any natural person employed in the upper management of the institutions of the State Administration who obtains his post in accordance with the provisions of the Constitution and the applicable regulations or by official appointment announced in *La Gaceta*; such persons are separated from their posts in the same way as they acquire them.

84. Of the 110 members of the National Assembly elected in 2006, 24 are women, and seven of the 20 delegates to the Central American Parliament are also women.¹⁷

85. The new Cabinet has more women appointees than previous ones. Five of the 12 ministries are headed by women, and a further three women were appointed deputy minister.

86. At the end of 2006 Commissioner-General Aminta Granera was appointed to the post of Director-General of the National Police, and women are currently in charge of the following ministries: Interior, Defence, Health, Labour, and Environment and Natural Resources. For the

¹⁴ Created by Decree No. 293 of 22 December 1987, published in *La Gaceta*, Diario Oficial No. 277, of 29 December 1987.

¹⁵ As one of its first actions to strengthen the national machinery, the current Government of Reconciliation and National Unity restored INIM's autonomous status and established it as an institution reporting to the Office of the President of the Republic.

¹⁶ Published in *La Gaceta*, Diario Oficial No. 235, of 11 December 2003.

¹⁷ Figures provided by the National Assembly.

first time in Nicaragua, the National Police, the Ministry of the Interior and the Ministry of Defence, institutions traditionally run by men, are headed by women.

87. Women occupy the post of secretary-general in the Ministry of Education and the Ministry of Agriculture and Forestry, and the following autonomous bodies are run by women: the National Aqueducts and Sewerage Corporation; the Institute of Urban and Rural Housing; the National Public Sector Corporation; the National Postal Corporation; the National Women's Institute; The National Institute for Support of Small and Medium-Sized Enterprises; and the Department of Migration and Alien Affairs.¹⁸

88. According to the National Women's Institute (INIM), the country's legal framework needs to be brought more closely into line with the international treaties on promotion and protection of women's rights which have been ratified by Nicaragua, the existing legislation needs to be applied more effectively, and women's access to justice needs to be improved, especially in the case of women belonging to the most excluded groups (poor, rural and indigenous women and adolescent girls).

ARTICLE 4 (Protection of human rights in states emergency)

89. The Constitution provides that in emergency situations "the President of the Republic in Council of Ministers may decree the suspension of rights and guarantees, for the whole or part of the national territory and for a specified but renewable period of time, when the security of the nation or economic circumstances so require, or in the event of a national disaster" (art. 185). Such suspension shall apply to some but not to all of the rights and guarantees established in the Constitution (art. 186).

90. In the period covered by the present report (1987-2006) the following decrees have been issued:

- (a) Decrees Nos. 245, 250 and 288, declaring a national food emergency (1987);
- (b) Decree No. 395, declaring a state of emergency owing to the threat posed to Nicaragua by Hurricane Juana (1988);

91. Since those times no situation warranting the suspension of fundamental rights and guarantees has arisen in Nicaragua and no such suspension has been decreed. Nor has the Constitutional Division handed down any decisions or made any other kind of order concerning states of emergency.

92. On 5 October 1988 the National Assembly adopted the Emergencies Act (Act No. 44),¹⁹ a law of constitutional status, the purpose of which is to regulate the modalities of states of emergency; its provisions apply when the President of the Republic decrees the suspension of rights and guarantees, in accordance with article 150 (ninth paragraph) and articles 185 and 186 of the Constitution.

¹⁸ Information taken from the 2007 list of Cabinet members.

¹⁹ Published in *La Gaceta*, Diario Oficial No. 198, of 19 October 1988.

93. The Emergencies Act stipulates that only the President “in the event of war, when the security of the nation or economic circumstances so require, or in the event of a national disaster, may suspend in the whole or in part of the national territory the rights and guarantees established in the Constitution, except for those referred to in article 186 thereof” (art. 2).

94. The Act goes on to stipulate in article 9 the President’s obligation to “notify the Secretary-General of the United Nations and the Secretary-General of the Organization of American States, pursuant to article 4 of the International Covenant on Political and Civil Rights and article 27 of the American Convention on Human Rights respectively.”

ARTICLE 5 (Guarantee of the rights recognized in the Covenant)

95. There can be no mistaken interpretations of the provisions of the Covenant in Nicaragua because, as already pointed out in connection with article 2, the Nicaraguan Constitution incorporates a number of human rights treaties and agreements (Constitution, arts. 46 and 71) and invests them with constitutional status.

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

97. Furthermore, the jurisprudence of the Supreme Court of Justice recognizes that once an international treaty is ratified it becomes a law of the Republic. In order for an international treaty to have the force of law it must be approved by the Legislature. When the treaty contains provisions inconsistent only with laws in force, but not with the Constitution, those laws are tacitly derogated on publication of the ratified treaty in *La Gaceta*.²⁰

ARTICLE 6 (Right to life)

98. Nicaraguan society underwent a revolutionary change between 1979 and 1990. However, the fitful warfare designed to restore the earlier socio-economic system produced a number of human rights violations and impaired the exercise of the human rights of that time, for confrontation in war is the extreme manifestation of conflict and violence. The right to life could not be duly protected, and the freedoms of expression, organization, conscience and religion were profoundly affected.

99. An amnesty was declared in 1990 under the Government of Violeta Barrios de Chamorro for persons possibly involved in the commission of any kind of offence against life. Since then, a policy of reconciliation has been pursued and it is currently being maintained by the new Government of Reconciliation and National Unity.

A. Abolition of the death penalty

100. The death penalty has not been available in Nicaragua since 1979: it was formally abolished by article 5 of the Statute on the Rights and Guarantees of Nicaraguans (Act No. 52),²¹

²⁰ *Boletín Judicial*, No. 16743, of 4 March 1953.

²¹ Adopted on 21 August 1979 and published in *La Gaceta*, Diario Oficial No. 11, of 17 September 1979.

which reads: “The right to life is inviolable and inherent in the human person. There shall be no death penalty in Nicaragua.” Later, article 23 of the new Constitution promulgated in 1987 stated: “There shall be no death penalty in Nicaragua.”

101. It should be mentioned as background to abolition that in 1969 Nicaragua had signed the American Convention on Human Rights (Pact of San José, Costa Rica),²² which provides that the death penalty shall not be reintroduced in States which have abolished it.²³

102. On 30 August 1990 Nicaragua signed the Protocol to this Convention at the headquarters of the Organization of American States (OAS),²⁴ approving it some time later by Legislative Decree No. 2080²⁵ and ratifying it by Decree No. 43-99.²⁶

103. Nicaragua signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, on abolition of the death penalty, on 21 February 1990 but has not yet ratified it.

104. A draft decree approving the Second Optional Protocol and containing its text was submitted to the Office of the President of the Republic in May 2006, together with a statement of the grounds for approval. The Office has transmitted it to the National Assembly for approval.

B. Persons affected by the pesticide Nemagon

105. Nicaragua has a large number of workers employed on banana plantations who have been affected by the use of pesticides such as Nemagon, or dibromochloropropane (DBCP),²⁷ which causes serious health problems such as cancer, genetic malformations, sterility, skin diseases, etc.

106. Since the exposure of workers to a banned toxic product constitutes an abuse of power by the multinational corporations concerned and a serious violation of the human rights to health, safety and life, on 5 October 2000 Nicaragua adopted a Special Act on the processing of actions brought by persons affected by the use of pesticides manufactured from DBCP (Act No. 364).²⁸

107. The purpose of this Special Act was to “regulate and facilitate the processing of actions for compensation brought by persons whose physical or mental health or pathological status has been affected by the use and application of the pesticide DBCP (1,2 dibromo-3-chloropropane) and its

²² Decree Law No. 55, adopted on 25 September 1979 and published in *La Gaceta*, Diario Oficial Nos. 53, 54 and 55, of 3, 4 and 5 March 1980 respectively.

²³ This Convention was approved and ratified by Decree Law No. 174, adopted on 25 September 1979 and published in *La Gaceta*, Diario Oficial No. 67, of 26 November 1979.

²⁴ Adopted in Asunción, Paraguay, on 8 June 1990, at the twentieth regular session of the OAS General Assembly.

²⁵ Adopted on 15 October 1998 and published in *La Gaceta*, Diario Oficial No. 216, of 12 November 1998.

²⁶ Adopted on 24 March 1999 and published in *La Gaceta*, Diario Oficial No. 68, of 14 April 1999.

²⁷ This pesticide was banned by the Environmental Protection Agency of the United States of America in 1977 and was withdrawn from the United States market in 1979. However, its use continued in the 1980s throughout Central America, including Nicaragua. This resulted in legal battles against banana growers which used DBCP (Dow, Chiquita, and Del Monte) and against the companies producing it (Dow, Shell, and Occidental).

²⁸ Published in *La Gaceta*, Diario Oficial No. 12, of 17 January 2001.

derivatives, known [in Nicaragua] under the names NEMAGON and FUMAZONE, on a number of the country's crops and plantations" (Act No. 364, art. 1).

108. More than 3,000 of the persons affected began a fight to obtain fair compensation, both in the national and in the United States courts. This fight was partially successful in Nicaragua, for in December 2002 a court ordered three United States companies (Dow Chemical, Standard Fruit, and Shell Oil) to pay 490 million dollars.

109. With the support of trade-unionists and the Nicaraguan Centre for Human Rights (CENIDH) the victims of Nemagon have organized protests and conducted campaigns to raise social awareness and mobilize public opinion within Nicaragua.²⁹

110. On 20 March 2004 the Government and the representatives of the affected workers signed the "El Raizón accords", in which they agreed to set up a special committee to submit periodic reports on the progress of the follow-up actions in support of the victims, in coordination with the Inter-institutional Commission established in November 2002. This led to the adoption of Presidential Accord No. 105-2004, on the creation of a special committee to monitor the cases of persons affected by Nemagon.³⁰

111. The Special Committee provided assistance to the persons affected and acted as mediator in the extrajudicial negotiations. In addition, the Ministry of Health, under a cooperation agreement signed with these persons, provided them with periodic medical treatment, giving priority to the more serious cases and supporting the measures established in the cooperation agreement.

112. Although the demand for health services has increased in Nicaragua over the past four years, the overall mortality rate has fallen over the past five years. In the period 1980-1985 the rate was 9.7, but the rate for 1990-1995 showed a big decline, to 6.6.

113. Some of the health indicators for 1990-1995 are shown in the following table.

Principle health indicators, Nicaragua 1990-1995

<i>Indicator</i>	<i>1990-1995</i>
Total mortality (per 1,000 inhabitants)	6.6
Life expectancy	66.2 years
Infant mortality (per 1,000 live births)	53.0

Source: INEC/CELADES-PAHO-WHO

114. The indicator of 53 infant deaths per 1,000 live births is a very high rate in the Central American context. The decline in this rate remains very slow: according to the Nicaraguan Demographic and Health Survey (ENDESA), by 1998 the rate had fallen to 40 per 1,000 live births.

115. In 2004 the Ministry of Health listed as the main causes of death a vast range of illnesses, caused by the lack of resources, poor nutrition and shortcomings in the health sector.

²⁹ In April 2005 farm workers employed on banana estates in western Nicaragua organized a protest outside the National Assembly which lasted for eight months.

³⁰ Published in *La Gaceta*, Diario Oficial No. 57, of 22 March 2004.

C. Infant mortality

116. According to the *Human Development Report* of the United Nations Development Programme (UNDP), in 2005 the infant mortality rate was 30 per 1,000 live births.

117. According to the World Health Organization (WHO), the maternal mortality rate in the country's poorest departments remains high, owing to the fact that some 55 per cent of women in those rural areas give birth at home and most of them are illiterate and do not receive any health education.

118. Moreover, according to WHO the infant and maternal mortality rates are under-recorded and in some regions the true rates can be as high as 60 per 1,000 live births.

119. According to statistics produced by the Pan-American Health Organization (PAHO), Nicaragua is one of the four Latin American countries with the highest rates of infant and maternal mortality, owing to serious deficits of medical care.

120. The main causes of infant mortality include malnutrition and lack of medical care. Most of the deaths occur because medical treatment is provided for sick children too late, sometimes because the health centre is very far away from the community in question or because the centre lacks the necessary medical resources.

121. The United Nations Children's Fund (UNICEF) reports that one in three children suffers from some degree of chronic malnutrition and nine per cent suffer serious malnutrition. A report of the Food and Agriculture Organization of the United Nations (FAO) states that every year four out of every 10 infant deaths are due to nutritional problems, particularly in the north of the country. In the last months of 2005 the infant mortality rate rose in the Atlantic coast region, along the frontier with Honduras, owing to the famine caused by a plague of rats, which ate the harvests of basic grains and tubers forming the diet of the inhabitants of the region's communities.

122. According to PAHO figures, the main causes of death among under-fives in indigenous and rural communities are malnutrition, diarrhoea, acute respiratory illnesses, and meningitis. According to the Health Ministry's *Boletín Epidemiológico*, in April 2006 most deaths (48 per cent) occurred among under-fives. The highest mortality rate - 8,7 per 100,000 inhabitants- is found among infants aged under 12 months.

D. Maternal mortality

123. The 2005 maternal mortality rate was between 150 and 200 deaths per 100,000 live births,³¹ between 25 and 30 per cent of them deaths of adolescent mothers, increasing the adolescent mortality rate for the year by five points. In the Atlantic region and in the areas of most difficult access the maternal mortality rate is double the national average.

124. The country's women's organizations have complained to the Ministry of Health about the high maternal mortality rates. However, according to the Ministry the rates have declined since

³¹ To October 2005 the Health Ministry's Office for Epidemiological Monitoring recorded 99 maternal deaths, giving a rate of 109.54 deaths per 100,000 live births.

2003: in 2004, 40 women died, and in 2005 the figure fell to 33; and the measures taken to improve the services are producing results.³²

125. It is regrettable that in Nicaragua one in four births occurs as a result of adolescent pregnancy, and one third of the women who die in childbirth are adolescents, even though the fertility rate in this age group has declined. The unequal access of the poorest members of the population to health care is one of the main causes of maternal and infant mortality in Nicaragua, owing both to the great distances between rural settlements and health posts and State hospitals and to the high cost of travel to them.

126. The poor provision for basic needs such as health and food in the countryside and marginal urban zones has a serious impact on the right to life in Nicaragua: most of the deaths of women and children are due to lack of the minimum medical care and a good diet.

E. Therapeutic abortion and the right to life

127. Since April 2006 the question of therapeutic abortion, in terms of the conflict between the right to life of women and unborn babies, has generated much controversy between the social groups for and against such abortion. There have been marches and petitions to the National Assembly to abrogate article 165 of the current Criminal Code, which allows therapeutic abortion, while other petitions sought the retention of this article in the nation's law.

128. On 26 October 2006 the plenary National Assembly adopted Act No. 603, abrogating article 165 of the current Criminal Code.³³ A new draft criminal code is currently before the National Assembly and has been partially adopted. On 6 April 2006 it was adopted as far as Book I, Chapter II, article 137.

F. Use of weapons

129. The Constitution provides that Nicaragua "prohibits the use of nuclear weapons and other means of mass destruction in internal and international conflicts" (art. 5, fifth paragraph).

130. On 9 November 1999 Nicaragua ratified under OAS auspices the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials.³⁴

131. In 2000 Nicaragua acceded to the United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, together with its Protocols I, II, III

³² Figures taken from the CENIDH report on human rights in Nicaragua, 2004-2005.

³³ Published in *La Gaceta*, Diario Oficial No. 224, of 17 November 2006.

³⁴ Executive Decree No. 102-99, adopted on 24 August 1999 and published in *La Gaceta*, Diario Oficial No. 168, of 2 September 1999.

and IV.³⁵ It also approved and ratified the Inter-American Convention on Transparency in Conventional Weapons Acquisitions.³⁶

132. July 2006 saw the adoption of Act No. 591, amending article 139 of Act No. 510, the Special Firearms, Explosives and Other Related Materials (Monitoring and Regulation) Act,³⁷ with regard to the purchase, sale and destruction of firearms belonging to the State.

133. On 12 December 2006 the plenary National Assembly adopted Decree No. 4959, approving the amendment of article I of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, together with its Protocols.³⁸

134. That same date saw the adoption of Decree No. 4967, approving accession to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.³⁹

135. Where conventional weapons are concerned, at the end of 2003 part of the arsenal of SAM-7 missiles kept by the Nicaraguan army was destroyed, on the initiative of the Government, under the Framework Treaty on Democratic Security, in order to enhance the climate of trust and security in the Central American region.

136. In that connection the National Assembly adopted on 18 November 2004 the Special Firearms, Ammunition, Explosives and Other Related Materials (Monitoring and Regulation) Act (Act No. 510),⁴⁰ which has been in force since 25 February 2005, in order to establish country-wide control of the licit and illicit movement of firearms within the national territory. One of the articles of this Act prevents the President of the Republic from ordering the unilateral destruction of the army's munitions without the prior authorization of the Legislature.

137. The adoption of Act No. 510 was followed by the issuance of its Regulations, currently in force under Decree No. 28-2005: "Regulations of the Special Firearms, Ammunition, Explosives and Other Related Materials (Monitoring and Regulation) Act";⁴¹ the aim and scope of these Regulations is to introduce a series of integrated measures and procedures to monitor and control the movement of the items covered by the Act, in order to prevent illicit trafficking in them and their diversion for illegal uses and/or purposes; they will apply in the national jurisdictions and free-trade areas, as well as at frontier posts and other kinds of customs enclave.

³⁵ This Convention was approved on 4 September 2000 by Decree No. 85-2000, published in *La Gaceta*, Diario Oficial No. 175, of 18 September 2000.

³⁶ Ratified by Decree No. 18-2003 and published in *La Gaceta*, Diario Oficial No. 31, of 13 February 2003.

³⁷ Act No. 591 was adopted on 13 July 2006 and published in *La Gaceta*, Diario Oficial No. 136, of 13 July 2006.

³⁸ Published in *La Gaceta*, Diario Oficial No. 12, of 17 January 2007.

³⁹ Published in *La Gaceta*, Diario Oficial No. 13, of 18 January 2007.

⁴⁰ Published in *La Gaceta*, Diario Oficial No. 40, of 25 February 2005.

⁴¹ Adopted on 21 April 2005 and published in *La Gaceta*, Diario Oficial No. 78, of 22 April 2005.

138. The Act provides for the establishment of the Office for Registration and Control of Firearms, Ammunition, Explosives and Other Related Materials (DAEM), which is represented in the country's various police stations. It also provides for the creation of a National Firearms Register under the authority responsible for application of the Act and its Regulations.

139. The Act and its Regulations establish the duty of the National Police, the armed forces and the National Prisons System to introduce internal rules for monitoring the weapons issued to their personnel and the purchase and destruction of these weapons. A six-months period of grace was allowed under the Act for the voluntary surrender of prohibited weapons, in order to reduce the number of illegally held weapons.

140. Article 150 of the Act established the National Multidisciplinary Committee, with the task of formulating and submitting public policy proposals on the monitoring and control of trafficking in firearms, ammunition, explosives and other related materials.

141. In the case of expired firearms licences the DAEM also introduced the APAL Plan (for handguns and long-barrelled guns), which included direct visits to gun shops, security firms, State agencies, fireworks manufacturers, owners of firearms, members of local crime-prevention committees, etc.

142. The Plan resulted in the seizure of 1,705 restricted weapons (including: 1,557 guns, 10 grenade-launchers, and 138 home-made weapons) and 1,018 sporting guns (including 197 rifles, 7 carbines, 108 shotguns, 317 pistols and 389 revolvers), as well as 149 hand-grenades, 101 M-79 grenades, and 346 weapons of other kinds.

143. The most significant development was the voluntary surrender of 1,622 restricted weapons, including 1,539 military rifles, 83 home-made weapons, 130,268 rounds of ammunition of various calibres, and 320 explosives. It must be pointed out that during this process ownership of a national total of 37,901 firearms was legalized. This exercise was undertaken in order to enhance the climate of trust and security throughout the national territory, and it helped the public at large to adjust to the new objectives and procedures established under Act No. 510 and to understand the offences and penalties.⁴²

144. At the end of 2006 the national weapons list showed 3,795 long-barrelled guns and 5,972 handguns, for a total of 9,767 weapons, 1,031 of which were in poor condition.

145. Attention must be drawn to the intensive efforts made by the DAEM, particularly in the last quarter of 2006 and first quarter of 2007, to identify weapons in the possession of natural and juridical persons, especially private guard and security firms.

146. DAEM has also increased its use of the Interpol network to check and consult on information on persons possessing firearms and on juridical persons connected with the trade in arms, explosives, ammunition and other related materials. Regional measures are also being organized to combat illicit trafficking in these types of weapon.

147. The Committee of Heads of Police of Central America and the Caribbean arranged a regional meeting for public agencies responsible for the registration and control of firearms,

⁴² Data taken from the *Anuario Estadístico 2005* of the National Police, p. 167.

explosives, ammunition and other related materials in order to establish direct contacts and strengthen the cooperation among countries in this matter. This undertaking was presented to the Regional Executive Unit of the Central American project to combat illicit trafficking in small and light arms.

148. In 2007 the DAEM was intending to boost its capacity to monitor firearms, explosives, ammunition and other related materials by recruiting more staff and improving its technical means of preventing and controlling the carrying of weapons in public.

149. There was a plan was to hold an event in the first half of 2007 at which firearms taken out of use for various reasons would be destroyed.

150. During this period of police activity and application of Act No. 510 a total of 2,817 weapons was seized, including 1,743 handguns, 946 long-barrelled guns, and 128 weapons of war.

151. Act No. 510 and its Regulations have served as a reference model and may be regarded as an institutional success story, which was given a qualitative organizational boost with the creation of the DAEM as a specialist agency.

**ARTICLE 7 (Prohibition of torture and other cruel, inhuman or
degrading treatment or punishment, and medical or
scientific experiments without consent)**

152. Article 36 of the Constitution states: “All persons are entitled to respect for their physical, mental and moral integrity. No one shall be subjected to torture or to cruel, inhuman or degrading procedures, punishment or treatment. Violation of this right constitutes a crime and shall be punished by the law.”

153. The Code of Criminal Procedure (CCP) contains a number of provisions on the treatment of prisoners. All persons indicted or convicted have the right “not to be subjected to torture or other cruel, inhuman treatment which degrades their personal dignity [or to be] subjected to techniques or methods which impair their free will, even with their consent” (CCP, art. 95, fifth and sixth paragraphs).

154. The Code also prohibits “the use in police investigations of torture, cruel, inhuman or degrading procedures or treatment or any other kind of pressure which violates human dignity” (CCP, art. 227, second paragraph).

155. Article 39 of the Constitution stipulates that Nicaragua’s National Prisons System (SPN) shall be humanitarian in nature and seek to change inmates with a view to their reintegration in society.

156. The Prison Regimes and Enforcement of Sentences Act (Act No. 473) was adopted on 11 September 2003;⁴³ it establishes the SPN operational rules. In the words of the Act, the SPN “is founded on recognition of the dignity of the person and respect for human rights” (art. 7).

⁴³ Published in *La Gaceta*, Diario Oficial No. 222, of 21 November 2003.

157. Furthermore, one of the principles of the SPN is that “in no case shall prisoners be subjected to torture or suffering or to cruel, inhuman or degrading treatment. Physical and mental abuse and any other procedure which impairs a prisoner’s human dignity are prohibited” (art. 7).

158. Chapter III of the National Police Act (Act No. 228),⁴⁴ on fundamental operating principles, stipulates the duty of members of the National Police to safeguard the life and physical integrity of persons whom they arrest and persons in their custody and to respect such persons’ honour and dignity (art. 7.3). Necessary force, using means within reach, may be employed only to prevent immediate and irreparable harm when other means are ineffective, and recourse to any form of torture for the purposes of criminal investigation is ruled out entirely.

159. Nicaragua ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Decree No. 30-2005.⁴⁵ It signed the Optional Protocol to the Convention on 14 March 2007

160. Both the Constitution and Acts Nos. 473 and 228 incorporate and endorse the provisions of the Convention against Torture.

A. Treatment of persons deprived of their liberty

161. The prohibition of all acts of torture inspired a broad range of regulations on the procedures of the SPN and the National Police.

162. In the case of the SPN, procedural handbooks have been issued on prison monitoring, prison security, and prison re-education, all approved by the Ministry of the Interior, with the aim of protecting prisoners’ constitutional right to respect for their physical, mental and moral integrity, notwithstanding the imposition of a prison sentence, a right which guarantees that no one shall be subjected to torture or to cruel or degrading treatment.

163. Persons delivered to prison by the National Police undergo a medical check on arrival but, if any sign of physical violence is detected, they are not officially admitted until they have been assessed by a forensic medical examiner, in accordance with articles 38.3 and 53 of Act No. 473.

164. If a person claims to have been subjected to criminal acts involving injury or to acts of other kinds involving abuse or in extreme cases torture, and the incident occurred in a penitentiary institution, an initial examination is made by the prison doctor, who must treat the victim immediately and notify the prison governor, so that he may request, through the judge overseeing enforcement of the sentence, the necessary forensic medical assessment.

165. The Governor also makes a report to the SPN Director-General as the senior authority for application of Act No. 473, which stipulates the obligation to safeguard prisoners’ physical, mental and moral integrity within SPN facilities.

166. Once the incident has been reported to him, the judge orders the prisoner to be sent to a forensic medical examiner, who makes a medical assessment and issues a report.

⁴⁴ Adopted on 31 July 1996 and published in *La Gaceta*, Diario Oficial No. 162, of 28 August 1996.

⁴⁵ Adopted on 19 May 2005 and published in *La Gaceta*, Diario Oficial No. 110, of 8 June 2005.

167. Pursuant to the Code of Criminal Procedure, the only body authorized to issue such medical reports is the Institute of Forensic Medicine, which proceeds in accordance with provisions of the Judiciary Act (Act No. 260) to the effect that forensic medical examiners constitute a service of the administration of justice and are subject to the direct orders of the judges and courts (arts. 183 to 186).

168. The SPN as such has no forensic-medicine experts, for that status is reserved for the medical examiners of the Institute of Forensic Medicine. However, prison doctors are very familiar with the Code of Conduct of Prison Officers, which states inter alia that officers responsible for enforcing the Act must ensure the comprehensive protection of the health of the persons in their charge and, in particular, take immediate steps to furnish medical attention when needed.

169. The SPN reports that no cases of torture have occurred in prison facilities, although there have been isolated cases of improper treatment and excessive use of force, for example; prompt correctional administrative steps were taken, in the light of the seriousness of the case.

170. The Disciplinary Regulations governing personnel employed by the Department for the National Prisons System classifies administrative measures as follows:

- (a) Very light disciplinary sanctions, covering private reprimands, reprimands at meetings before officers of equal or higher rank, working an additional one to three hours, without pay, for a maximum of three days, suspension of statutory time-off outside the prison for one to three days, and restriction to the prison premises for up to three days;
- (b) Light disciplinary sanctions, including working an additional one to four hours, without pay, for a maximum of seven days, restriction to the prison premises for four to 15 days, and working an additional one to four hours for a maximum of 15 days;
- (c) Severe disciplinary sanctions, which may entail reduction of rank and title, demotion and confinement to work in the prison's administrative unit, restriction to the prison premises for 16 to 30 days, or dismissal from the service.

171. The SPN operates on the principle of respect for human rights, of both Nicaraguan and foreign prisoners. However, there have been reports of abuse and occasional violations of human rights in the form of extreme measures taken to control exceptionally dangerous prisoners. The section of this report on article 9 of the Covenant provides fuller details of complaints lodged against the SPN.

172. Efforts have been made to improve the training of prison doctors, especially in a basic knowledge of forensic medicine: they have attended workshops and seminars on human rights, HIV/AIDS, and tuberculosis and other common prison diseases; the results have been beneficial for the prison population, and the efforts to enhance the specialist skills of SPN health personnel must be continued.

B. Treatment of patients in the National Psychiatric Hospital

173. The National Psychiatric Hospital is defined as a teaching hospital for the provision of psychiatric and social care; it is located in Managua and it functions chiefly as a national referral hospital.⁴⁶

174. In 2006 the Hospital had a total of 125 patients (63 chronic and 62 acute cases), treated by six psychiatrists, a deputy director for medical psychiatry and a deputy director for psychiatric education, six general doctors, one dentist, and eight resident bursary-holders and one resident doctor from other hospitals, making a total of 24 doctors providing specialist patient care.

175. The Hospital has 8,200 square metres of floor space and 22,000 square metres of grounds, with 14 buildings: four wings for male and female patients, an outpatients and emergency building, a dining hall for patients and staff, an infirmary building, a laundry building, a clothing building, a maintenance building, an administration building, a teaching building (the "Pabellón Cortez"), a day-hospital building, and a central storage building.

176. These facilities are in need of repair and rehabilitation, for the Hospital is currently in a serious state of disrepair as a result of the shortage of funds which constitutes its principle problem.

177. There is no evidence of abuse or torture of the Hospital's patients; on the contrary, the medical personnel is highly trained to care for them. The patients are cared for in as free an environment as possible and receive treatment which is as uninvasive as possible in the light of their health needs and the need to ensure the physical safety of other persons on the premises.

178. The main problem is the scarcity of resources, which makes it impossible to meet some of the needs of the in-patients in terms of clothing, footwear, mattresses and other perquisites; annual efforts are made to attract donations, which State institutions, private and public enterprises provide, year after year.

179. Recent measures introduced for the benefit of the patients include the compilation and use of 25 indicators on the human rights of persons suffering from mental disorders, and these indicators are being developed further.

180. Rules on the rational use of medicines are followed in monitoring the drugs administered to the patients. The treatment and care of each patient is based on an individually prescribed plan, which is discussed with the patient and periodically reviewed and amended as the case requires and carried out by professionally qualified personnel.

181. Since the treatment of all the patients is designed to preserve and foster their personal independence, the psychiatric measures are always administered in accordance with the relevant ethical rules of mental health professionals, in particular internationally accepted rules such as the principles of medical ethics applicable to health professionals, especially doctors, in the protection of persons arrested and detained against torture and other cruel, inhuman or degrading

⁴⁶ For the purposes of the preparation of the present report, visits were made to the Hospital's facilities and an interview was obtained with its Director, who provided additional information and authorized interviews with some of its other doctors.

treatment or punishment. There have been no allegations of improper use of psychiatric knowledge or techniques.

182. Furthermore, medication is tailored to the basic health needs of each patient and is administered solely for therapeutic or diagnostic purposes and never as a punishment or for the convenience of others. The health professionals administer only drugs of known and proven efficacy, and all drugs must be prescribed by a legally authorized health professional and noted in the patient's record.

183. Lastly, no patient in the Psychiatric Hospital may be subjected to any clinical trial or experimental treatment without his or her informed consent, except when the patient lacks the capacity to give informed consent, in which case such trial or treatment requires the approval of a competent and independent review body established for this specific purpose.

C. Medical and scientific experiments

184. Chapter II of the General Health Act (Act No. 423),⁴⁷ on the rights and obligations of users, addresses the question of medical and scientific experiments.

185. This Act provides that users of public and private health services are entitled to respect for their person, human dignity, and privacy "without any discrimination by reason of race, social status, sex, morals, economic status, ideological or political beliefs, trade-union membership, type of illness or disorder, or any other condition, in accordance with the international treaties signed by the Republic of Nicaragua." It also prescribes that no user of health services "shall be subjected to experimentation in the form of the administration of medicaments or diagnostic, therapeutic or prognostic procedures without being duly informed about their experimental nature and the risks involved and without the prior written consent of the user or of the person legally entitled to give it, where necessary and if the user is prevented from giving consent" (Act No. 423, art. 8, sixth and seventh paragraphs).

186. The doctor assigned to the user must make known to the user all the facts necessary to ensure that consent to any procedure or treatment is fully informed and that the user can evaluate and understand the specific procedure or treatment, the medical risks involved, and the probable duration of the incapacity. The user is also free to choose a procedure from among alternatives offered.

187. Consent must be given by the user in writing, except in cases when delayed intervention would cause a public health risk, when the patient lacks the capacity to make decisions or when any delay in dealing with the emergency may cause irreversible harm or when there is a risk of death; in such cases the patient's rights devolve to members of his immediate family or to persons with sufficient authority to represent him legally (art. 8, eighth paragraph, subparagraphs (a) to (c)).

188. A written refusal to receive medical or surgical treatment releases the attending doctor and the health institution from civil, criminal and administrative liability; in such cases the user may request a voluntary discharge.

⁴⁷ Adopted on 14 March 2002 and published in *La Gaceta*, Diario Oficial No. 91, of 17 May 2002.

189. Title II, Chapter I, of the Regulations of the General Health Act,⁴⁸ on principles and on the exercise of users' rights, states expressly, with respect to biomedical experiments, that "for the purposes of exercise of the users' rights established by law, institutions providing health services shall [...] warn the user, a member of the family, or the person responsible for the user when they propose to carry out a biomedical experiment affecting the user's care or treatment, and the user's informed written consent shall be mandatory" (art. 7, para. 17).

190. Chapter V of the Regulations of the Medicines and Pharmacies Act (Act No. 292),⁴⁹ on the general assessment requirements to be met by pharmaceutical products to maintain their registration status, provides chiefly and inter alia that "clinical tests shall constitute the means of assessment for maintenance of registration status" and that all clinical tests must satisfy the following requirements (introductory section):

- "(a) Possession of sufficient scientific data, in particular the results of pharmacological and toxicological tests;
- (b) Conduct of clinical tests under conditions ensuring respect for the human rights of the person concerned and for the ethical principles governing biomedical research involving human beings, and compliance for these purposes with the provisions of the Helsinki Declaration of the World Medical Association and subsequent declarations updating those principles;
- (c) Discontinuation of the clinical test if there is reasonable doubt as to the efficacy and safety of the therapeutic modifications which it entails;
- (d) Procurement of the freely given consent, preferably in writing or, failing that, before witnesses, of the subject of the test, once he or she has been informed by the health personnel carrying out the research about the nature, importance, scope and risks of the test and has understood that information;
- (e) Submission of a prior report by a clinical-research ethics committee duly accredited by the Ministry of Health."

191. The foregoing discussion shows that, where medical treatment is concerned, the State of Nicaragua has incorporated in its legal framework the fundamental principles relating to life, health, respect for human dignity, and informed consent.

ARTICLE 8 (Prohibition of slavery, servitude and forced labour)

192. Slavery was declared abolished in Nicaragua on 12 December 1838, and in the words of article 40 of the Constitution: "No one shall be subjected to servitude. Slavery and the slave trade are prohibited in all their forms."

⁴⁸ Adopted by Decree No. 001-2003 on 9 January 2003 and published in *La Gaceta*, Diario Oficial Nos. 7 and 8, of 10 and 13 January 2003.

⁴⁹ Published in *La Gaceta*, Diario Oficial No. 24, of 4 February 1999.

193. The prohibition of slavery was reaffirmed when Nicaragua acceded to the Supplementary Convention on the Abolition of the Slave Trade, and Institutions and Practices Similar to Slavery, adopted at Geneva on 6 September 1956⁵⁰ and to ILO Convention No.105 of 1957 concerning the Abolition of Forced Labour.⁵¹

194. Deprivation of liberty in the country's various detention systems offers opportunities, if the prisoner so wishes, for engaging in a number of re-educational, academic, occupational and artistic activities run by the SPN; this helps prisoners to keep their minds occupied, and time spent on such activities counts in their favour when remission of their sentences is under consideration.

195. According to article 96 of the Constitution, compulsory military service does not exist in Nicaragua, and "all forms of forced recruitment to the Nicaraguan Army or the National Police are prohibited."

196. The Criminal Code⁵² provides that "time which a convicted person has effectively spent in detention during the trial proceedings shall be deducted from the sentence at the rate one day of such detention for one day of the sentence imposed" (art. 87, second paragraph) and that "payment shall be awarded in the sentence for time spent by a convicted person during the trial proceedings employed without pay on State or municipal works at the rate of two days of work for each day of detention, and in other sentences at the rate of one for one, without prejudice to the payment to which the person may be entitled pursuant to the last paragraph of [article 87]" (art. 88).

197. Chapter IX, on prison work and its rehabilitation function, of the Prisons Regimes and Enforcement of Sentences Act (Act No. 473) provides in its articles 77 and 78 that persons deprived of their liberty may work in prison, but this is not compulsory or forced labour but entirely and expressly voluntary.

198. According to this Act, work done in the prisons system must be properly regulated in the light of its training and production purposes, with the sole aim of equipping inmates with a means of earning their living and thus facilitating their re-entry into the labour market when they are released.

199. SPN figures show that the country's eight prisons house a total of 5,672 prisoners, of which 2,577 are working, 1,955 are on the waiting list for some kind work, and 1,140 cannot work for various reasons (old age, security, illness, etc.)

⁵⁰ "Protocol amending the Slavery Convention signed at Geneva on 6 September 1956, International Instrument No.1", published in *La Gaceta*, Diario Oficial Nos. 1 and 2, of 2 and 3 January 1986.

⁵¹ Resolution No. 243 on "Agreements adopted by ILO at Geneva", approved on 28 June 1967 and published in *La Gaceta*, Diario Oficial Nos. 199, 200, 201 and 202 of 1, 2, 4 and 5 September 1967.

⁵² Adopted by Decree No. 297 on 1 April 1974 and published in *La Gaceta*, Diario Oficial No. 96, of 3 May 1974.

Prisoners working in prison

<i>Prison</i>	<i>Fit to work</i>	<i>Working</i>	<i>Waiting list</i>	<i>Not working</i>	<i>Paid</i>	<i>Unpaid</i>
Estelí	630	215	288	127	3	212
Chinandega	706	189	355	162	20	169
Tipitapa	1 973	986	507	480	157	829
Veracruz	169	80	62	27	23	57
Granada	596	242	122	232	13	299
Juigalpa	796	346	420	30	6	340
Matagalpa	704	433	200	71	12	421
Bluefields	98	86	1	11	6	80
Total	5 672	2 577	1 955	1 140	240	2 337

Source: SPN. [Http://www.migob.gob.ni/webgspn/estadisticas.php](http://www.migob.gob.ni/webgspn/estadisticas.php)

200. The remuneration of persons deprived of their liberty depends on the type of work and its modes and characteristics. According to the SPN figures, only 240 of the 2,577 prisoners currently working have an economic incentive to do so, while 2,337 continue to work without any kind of remuneration.

201. In the La Esperanza women's prison the women prisoners work on the production of *piñatas* (gift boxes), handicraft items and household items in the dressmaking shop. In other prisons they do carpentry, metal work and handicrafts.

202. Country-wide there are 30 prisoners employed in commercial activities, 1,429 in services, 130 in factory occupations, 200 in handicrafts, 47 in farming (4 livestock-raising and 33 crop-farming), and 693 in other activities.

203. Work of this kind benefits not only the prison inmates but also the prisons themselves, for some of the activities produce fruit and vegetables for consumption by all the persons deprived of their liberty.

ARTICLE 9 (Right to liberty and security of person)

204. According to article 25 of the Constitution, "everyone has the right to [...] personal liberty [and] to security" (first and second paragraphs).

205. Furthermore, Title III of the Criminal Code, on offences against personal liberty and other guarantees, includes in this category unlawful arrest, removal of children, abduction, kidnapping (arts 226 to 231), and threats and coercion (arts. 232 to 237).

A. Civil security

206. Civil security is a right broadly recognized in article 33 of the Constitution and is an essential factor in the integrated development of society, for its purpose is to deliver peace, well-being, tranquillity and harmony in social relations.

207. The State has a fundamental obligation to provide civil security for the people through its various institutions, to satisfy their basic needs (health, education, housing, decent jobs, etc.), and to introduce preventive and correctional measures to reduce crime rates.

B. Institutions involved

208. Pursuant to the Legislature (Organization, Powers and Procedures) Act (Act No. 290)⁵³ and its Regulations,⁵⁴ the National Police, the Department of Migration and Alien Affairs (DGME) and the SPN are among the institutions reporting directly to the Ministry of the Interior.

209. The National Police is a unified security and law-enforcement agency and is present throughout the national territory, except for a few remote rural areas. Its arrest and detention procedures are set out in the National Police Act (Act No. 228).

210. The function of the DGME is to ensure the orderly regulation of flows of Nicaraguan and foreign migrants in a context of efficiency, security and respect for the law and universal human rights.

211. The SPN is a civilian public-security agency with a hierarchical structure as a department of the Ministry of the Interior; its structure, organization and powers are spelled out in Act No. 290 and its Regulations.

National Police

212. The National Police of Nicaragua was founded in 1979. Its operations and organization stem basically from the Constitution of the Republic and the National Police Act (Act No. 228) and its Regulations. Police Headquarters is located in Managua, the capital of Nicaragua.

213. On 18 July 2006 Commissioner-General Aminta Granera Sacas was appointed Director-General of the National Police for a term of five years; she took office in September of that year.⁵⁵

214. The Code of Criminal Procedure provides that officers of the National Police are required to coordinate their activities with the Public Prosecutor's Office in order to ensure the smooth conduct of investigations and criminal proceedings. (art. 90).

215. The main functions of the National Police are to investigate offences, in coordination with the Public Prosecutor's Office, and to gather evidence to establish the commission of an offence and the identity of the perpetrator, as well as to arrest persons caught *in flagrante delicto*. Its powers also include the execution of judicial orders, including arrest warrants

216. Articles 33 and 34 of the Constitution deal with the rights of persons who have been arrested or charged and the safeguards against arbitrary arrest and detention. They provide that an arrested person "has the right to be informed without delay, in a language which he understands

⁵³ Published in *La Gaceta*, Diario Oficial No. 102, of 3 June 1998.

⁵⁴ Published in *La Gaceta*, Diario Oficial No. 205, of 30 October 1998.

⁵⁵ This was the second time in the country's history that a woman had taken the senior post in the National Police.

and in detail, of the reasons for his arrest and the charges against him, that his family [...] should be informed of his arrest and that he should be made available [...] to the authority” expressly empowered by law within a maximum period of 48 hours following the arrest.

217. The Code of Criminal Procedure stipulates that the duties of the National Police include respect for the constitutional rights and guarantees relating to arrest and that police reports must describe all the steps taken and confirm that the required information was given to the arrested person in good time (art. 232).

218. Once a prisoner has served his sentence, no one may continue to detain him after the issuance of the release order, and any instance of illegal detention triggers the liability of the authority in question (Constitution, arts. 33.3 and 33.4).

Complaints received

219. Although some members of the public have in the past shown a lack of trust in the institutions of the State, in particular the ones responsible for investigating crime, such as the National Police, that attitude has been changing little by little as a result of the enhanced professionalism of the National Police and its Department of Internal Affairs (DAI), which has been investigating cases brought to its attention alleging irregularities and abuses committed by police officers in the performance of their duties.

220. According to National Police statistics, in the period January-December 2006 the DAI received a total of 2,049 complaints for the whole country: 1,005 proved negative and 754 positive, and 290 were dismissed for lack of evidence. A total of 3,043 police officers were investigated and 1,089 were punished: 129 were dismissed; the services of eight voluntary officers were terminated; 54 officers were demoted, 59 were reprimanded; and additional working hours were imposed in 316 cases, suspension of statutory time off in nine, and restriction to police premises in 511.

221. Of the 2,049 complaints received, 1,237 concerned violations of human rights: 741 proved negative and 289 positive, while 207 were dismissed for lack of evidence. A total of 1,806 police officers were investigated and 461 were punished: 16 were dismissed; 10 were demoted; 197 were restricted to police premises; additional working hours were imposed in 194 cases, reprimands issued in 37, and suspension of time off in seven.

222. The DAI, in conjunction with the Department of Judicial Cooperation, investigated 74 cases: 12 murder cases, 49 cases of bodily injury, and 13 less serious offences involving 68 police officers, who suffered administrative sanctions and were referred to the judicial authorities.

223. Managua accounted for 52 per cent of the national total of complaints of human rights abuses; most of the complaints were of human rights abuses committed during searches in operations against drug trafficking. They included complaints of searches without warrants, use of excessive force, and abuse of authority.

224. These abuses of authority were also reported to the PDDH, CENIDH and DAI.

225. Since 2003 the DAI has recorded increases over previous years in complaints alleging human rights violations. The reason for this is that the public has greater trust in the National

Police with regard to the submission of any kind of complaint. Complaints can be handled in various ways, either directly in the DAI offices, by DAI personnel in police stations, or on DAI initiative when they come to light in the media.

226. The PDDH keeps records of complaints received, by institution and by the rights alleged to have been violated. Breakdowns of the complaints received in 2005 appear below.

Complaints received, by institution, 2005

<i>Institution</i>	<i>2004</i>		<i>2005</i>											<i>Total</i>
	<i>Nov</i>	<i>Dec</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	
Individuals	15	28	42	203	127	73	92	108	75	72	45	75	49	1004
Executive	4	11	22	36	54	39	56	66	61	36	30	48	32	495
Interior Min.	7	15	18	44	48	29	50	66	53	39	41	50	23	483
Judiciary	6	8	17	19	30	15	27	33	27	26	23	14	25	270
Municipalities	2	2	3	6	6	7	11	12	16	6	6	3	5	85
Prison system	5	3	5	4	4	9	24	12	4	4	2	6	2	84
Universities	1	0	0	2	4	1	2	1	1	1	1	0	0	14
Nat. Assembly	0	0	2	0	2	0	1	0	0	0	0	1	1	7
Army	0	0	0	0	0	1	3	1	0	0	0	1	1	7
Sup. Electoral Council	0	0	1	0	1	0	0	3	0	0	0	0	0	5
Nicaraguan Red Cross	0	0	1	0	0	0	0	0	1	0	0	1	0	3
Comptroller-General	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Abroad	0	0	0	0	0	3	1	5	0	1	4	0	0	14
Total	40	67	111	314	276	177	267	307	238	185	152	199	139	2 472

Complaints received, by violated right, 2005

<i>Right</i>	<i>2004</i>		<i>2005</i>											<i>Total</i>
	<i>Nov</i>	<i>Dec</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	
Personal integrity	12	22	27	180	86	48	106	81	78	43	50	67	26	826
Petition	3	5	21	9	31	30	26	51	39	23	31	37	26	332
Private property	5	13	11	18	21	20	17	24	33	25	20	17	17	241
Labour	6	9	15	26	20	17	21	33	25	6	12	11	12	213
Personal liberty	6	6	13	20	20	12	19	23	19	12	7	18	12	187
Prompt justice	2	3	10	30	18	2	14	13	9	28	17	18	14	178
Access to justice	1	2	2	16	14	17	17	37	17	15	5	12	5	160

<i>Right</i>	<i>2004</i>		<i>2005</i>											<i>Total</i>
	<i>Nov</i>	<i>Dec</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	
Due process	1	1	7	9	10	10	14	17	18	15	13	12	6	133
Social security	3	6	7	12	15	5	7	16	23	7	4	3	3	111
Family	0	0	0	37	22	4	10	15	8	5	4	6	2	113
Health	3	3	3	6	7	12	20	12	6	3	5	3	7	90
Food	0	0	0	20	11	5	3	5	3	8	1	4	3	63
Life	0	1	1	8	5	5	6	11	6	3	3	3	4	56
Education & culture	0	0	0	14	7	4	2	4	2	2	2	2	0	39
Healthy environment	0	1	1	3	1	1	5	2	6	1	1	0	2	24
Decent housing	0	0	1	5	1	3	3	7	1	0	0	0	0	21
Inviolability of the home	0	1	1	5	5	1	2	3	0	0	0	0	0	18
Equality before the law	0	1	2	1	1	1	2	1	0	6	1	1	1	18
Freedom of movement	0	0	0	0	1	0	1	3	0	0	1	1	0	7
Comprehensive protection	1	0	1	1	0	0	2	3	0	3	0	0	7	18
Discrimination	0	1	1	1	0	1	0	0	1	0	0	0	0	5
Truthful information	0	0	1	0	0	1	1	1	0	1	0	0	0	5
Standard of living	0	1	0	0	0	0	0	0	3	0	0	1	0	5
Privacy	0	0	0	0	2	1	0	0	0	1	0	0	0	4
Freedom of association	0	0	0	0	1	0	0	0	0	0	2	0	0	3
Security/personal legal capacity	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Freedom of expression	0	0	0	0	0	0	0	2	0	0	0	0	0	2
Sexual/reproductive health	0	0	0	0	0	0	1	0	0	0	0	1	0	2
Recreation	0	0	0	1	0	0	0	0	0	0	0	0	0	1
TOTAL	43	76	125	422	300	200	299	365	297	207	179	217	147	2 877

227. According to the PDDH, its statistics show that the National Police “is one of the bodies most frequently complained about, owing to the constant abuses committed during police operations chiefly in connection with the arrest of citizens, who state that they have been subjected to ill-treatment involving physical as well as verbal attacks; according to the PDDH’s

own operating principles such conduct has no justification, for it reduces people to their very lowest level as human beings.”

228. In the period January-June 2006 the PDDH recorded a total of 262 complaints against the National Police concerning human rights violations, as shown below.

<i>National Police (262 complaints)</i>	
<i>Right</i>	
Healthy environment	2
Due process	15
Justice	20
Labour	5
Honour and reputation	2
Information	3
Personal integrity	83
Inviolability of the home	7
Prompt and timely justice	5
Liberty	54
Demonstration	1
Petition/complaint/prompt response	23
Presumption of innocence	1
Property	13
Mother/father/children relations	1
Civil security	6
Special protection of children	2
Security	15
Life	3
Privacy	1
Total	262

229. Complaints which the PDDH investigates to establish the attention they have received from the DGME relate chiefly to the applications made to the DGME by immigrants concerning deportation orders or coordination with counterpart agencies in their countries of origin with a view to informing their families that they are being detained; the DGME holding facility for such immigrants is of a slightly higher standard than the SPN prison facilities.

230. Again in the period January-June 2006, the following complaints were received against the DGME.

Complaints against DGME	
Right	
Personal integrity	1
Petition/complaint/prompt response	1
Total	2

231. In the case of the SPN, “many of the complaints have to do with victimization of prisoners by SPN officers, who constantly refer to prisoners as criminals even though they are in the institution for the purposes of reintegration in society.”

232. A large number of the complaints are of ill-treatment, alleging failure to provide the required conditions for persons deprived of their liberty, such as proper health services and decent food, and they are just as consistent as the complaints described above in reporting acts of unequal treatment and discrimination among prisoners.

233. A total of 40 complaints was received between January and June 2006, as shown in the following table.

Complaints against SPN	
Right	
Justice	2
Due process	1
Personal integrity	12
Mother/father/children relations	1
Personal liberty	9
Petition/complaint/prompt response	6
Property	2
Prompt and timely justice	2
Family cohabitation	1
Health	3
Life	1
Total	40

Police custody

234. The Code of Criminal Procedure provides that in cases of *flagrante delicto* any person may make an arrest, provided that the offence carries a sentence of deprivation of liberty. This applies equally to the National Police, who do not require a judicial order “when the perpetrator of a punishable offence has been surprised at the moment of committing it, is pursued when fleeing from the scene of the offence or is surprised at or near the scene in possession of weapons, tools or other objects which create an assumption that he participated in the offence” (art. 31, first and second paragraphs).

235. The officers in command of police stations are empowered to issue arrest orders within 12 hours of learning of the commission of an offence punishable by deprivation of liberty, but in other cases a judicial order is required before an arrest may be made (art. 231, third and fourth paragraphs).

236. Officers of the National Police must report an arrest and the formal steps taken to the Public Prosecutor's Office within a time limit of 12 hours. The arrested person must be brought before a competent judge within the time limit of 48 hours stipulated in the Constitution (art. 231, fifth and sixth paragraphs). In addition, the arrest must be notified to the family members and other persons having a connection to the arrested person by the National Police within 48 hours of the arrest, with an indication of the police unit where the person is being held (art. 231, second paragraph).

C. Preliminary hearings

237. Following an arrest, the criminal proceedings begin with a preliminary hearing. According to Title II, Chapter II, of the Code of Criminal Procedure, on preliminary hearings, the purpose of such hearings is to inform the prisoner of the charges brought against him by the Public Prosecutor, determine whether precautionary measures are required, and ensure the exercise of the prisoner's right to defence counsel (art. 255).

238. The preliminary hearing must be held within 48 hours of the arrest, when the prisoner is brought before a competent judge; if the prosecutor offers no charges, the judge must order the prisoner's immediate release (art. 256).

239. The judge must also inform the prisoner of his right to appoint his own defence counsel, but if he is unable to afford counsel, the judge automatically appoints a public defence counsel, in conformity with article 34, fourth and fifth paragraphs, of the Constitution (art. 260).

D. Initial hearings

240. If at the preliminary hearing the judge has ordered the prisoner to be remanded in custody, he must set a date within the next 10 days for the initial hearing (art. 264). The purpose of this hearing is to "determine whether there are grounds for proceeding to trial, initiate the procedure for exchange of information about evidence, review any precautionary measures imposed, and decide on the procedural steps to be taken before the trial" (art. 265).

241. The initial hearing must be attended by the accused person, his defence counsel and a prosecutor; it is at this hearing that the prosecutor must state to the court the specific charge and present "evidence establishing sufficient reasonable grounds for bringing the accused to trial." If in the judge's opinion the evidence presented by the prosecutor is insufficient, he may request additional evidence, which must be presented within five days. If he considers that this additional evidence is still insufficient, he dismisses the case for lack of evidence and orders the prisoner to be released (arts. 265 and 268).

E. Trials

242. Once the parties have been heard and the initial hearing is completed, if the case has merit the judge orders the accused to be committed for trial (art. 272). All hearings are oral and public and must be conducted, on the basis of the charges brought, orally, in public and in accordance

with the principles of adversarial and concentrated proceedings, and in the uninterrupted presence of the judge, all the members of the jury, the parties to the prosecution, the accused and his counsel (arts. 281 and 282).

243. The Code of Criminal Procedure provides that “all persons charged with the commission of a serious offence have the right to trial by jury [except] in the case of offences connected with the use or sale of narcotic drugs or psychotropic or other controlled substances [or in cases connected with] the laundering of money and the proceeds of illicit activities.” However, the accused may waive his right to a jury trial and request a technical judgement by the judge (art. 293). A jury must consist of five titular members and one substitute member (art. 297).

244. In jury trials the role of the judge is limited to presiding over the proceedings, ruling on any legal issues which arise, and instructing the jury concerning the rules which they must keep in mind during their deliberations. In its verdict the jury finds the accused guilty or not guilty (arts. 298 and 301).

F. Pre-trial detention

245. Pre-trial detention is a precautionary measure which may ordered only by a competent judge or court (art. 167, first paragraph, subparagraph (k)).⁵⁶ Deprivation of liberty may be ordered only when the other precautionary measures available are insufficient to safeguard the purpose of the proceedings (art. 168).

246. These restrictions do not apply to the offences of drugs trafficking or use or to activities connected with the laundering of money or the proceeds of such offences; in such cases the judge must order pre-trial detention (art. 173). It should be pointed out that the need for precautionary measures to remain in effect must be reviewed by the judge once a month (art. 172).

247. Article 176 of the Code provides that a judge may substitute house arrest for pre-trial detention in the case of women in the last three months of pregnancy, mothers breastfeeding a baby for up to six months after the birth, or very old persons or persons in the terminal stage of a fatal illness, which must be duly verified.

248. Article 134 stipulates very short time limits for the conduct of the preliminary proceedings, and these time limits are even shorter if the accused is being held in pre-trial detention; these time limits are a very effective means of preventing any undue prolongation of such detention. The same article provides that the accused must be released if the judge has been unable to hand down his decision within three the months following the preliminary hearing. If the accused is held in pre-trial detention, the time allowed for completion of the proceedings may be no more than three months from the date of the first hearing, one month in the case of less serious offences, and 10 days for petty misdemeanours.

249. These time limits may be extended if the proceedings are declared to be complicated, for example “in cases connected with terrorist activities, international trafficking in drugs, banking

⁵⁶ According to article 173 of the Code, a judge may order pre-trial detention only at the request of the prosecution and provided that certain conditions are met, relating chiefly to the nature of the offence and the presumption that it was committed by the accused; other considerations are the likelihood that the accused will flee, the possibility of complicating the investigation proceedings, possible harm to the victims of the offence, and the risk that the accused will commit fresh offences.

offences, or trafficking in human organs” (art. 135). Lastly, “pre-trial detention may never exceed the length of the sentence imposed”; if it does, the prisoner must be released immediately (art. 179).

G. Classification, duration and effects of penalties

250. The Criminal Code provides for sentences of rigorous imprisonment for terms of three to 30 years to be served in a prison (arts. 56 and 59),⁵⁷ ordinary imprisonment for terms of one to 12 years to be served in a prison or special farm colony (arts. 56 and 60),⁵⁸ and light imprisonment for terms of 10 days to two years to be served in an establishment designated for this purpose (arts. 56 and 61).⁵⁹

251. The fact that a convict is serving a prison sentence does not mean that he cannot exercise the rights and options accorded by the Constitution and international treaties (CCP, art. 403); furthermore, time spent in pre-trial detention or under house arrest must be taken into account in determining the date on which the sentence ends (art. 410).

H. Crime prevention

252. The National Police is one of the State agencies called upon to play an important role in carrying out the country’s governance agenda by performing the duties assigned to it by law in establishing and maintaining public order and in preventing and combating criminal activities, with regard both to ordinary crimes and to organized crime.

253. The National Police is structured and organized so as to enable it to work effectively. These arrangements include various specialized crime-prevention units - the Departments of Public Security, Weapons and Explosives, Highways and Traffic, and Juvenile Affairs, not to mention the preventive work done by other specialized units as part of their daily duties.

254. All this police work is sustained by links with the community, where a very important role is played by local crime-prevention committees, the seven public security boards, the coordination of 2,000 cooperating forces and 43 local watch committees with a total of 801 members, and 198 crime-prevention units (132 rural and 66 urban) supported by 293 committees (194 rural and 99 urban),

255. The following table shows the country’s police strength for every 100,000 inhabitants in the period 2002-2006.

⁵⁷ This type of sentence entails farm or factory work inside the correctional establishment or work of public utility outside the establishment (Criminal Code, art. 59).

⁵⁸ Such sentences entail work performed exclusively within the establishment (Criminal Code, art. 60).

⁵⁹ Persons sentenced to light imprisonment may work within the establishment but are not obliged to do so. (Criminal Code, art. 61).

Number of police officers per 100,000 inhabitants

<i>Department</i>	<i>2006</i>	<i>2005</i>	<i>2004</i>	<i>2003</i>	<i>2002</i>
RAAS	200	226	171	146	91
RAAN	160	193	182	154	123
Río San Juan	192	150	120	99	86
Managua	164	145	133	149	138
Madriz	140	140	146	149	132
Rivas	155	136	131	120	105
Carazo	145	134	138	127	113
Estelí	140	122	128	121	116
León	125	113	116	112	102
Chontales	147	110	114	113	114
Granada	130	105	111	106	90
Nueva Segovia	106	103	105	107	99
Jinotega	89	90	92	85	81
Boaco	94	82	84	78	73
Chinandega	101	82	83	78	72
Masaya	88	78	79	77	71
Matagalpa	91	77	79	77	90
Zelaya Central	118	65	65	57	58
Total	179	158	156	141	136

Source: National Police (2006)

256. Police-community relationships are established by means of a participatory planning process which identifies problems connected with the public's perception of insecurity, and solutions are sought in consultation; this incorporates in the plans for each community the relevant aspects of police work, which are expressed in turn in the implementation of special plans of national impact to safeguard public order at various events and festivals, including in particular searches for wanted persons, checks on the sale of drugs, alcohol and weapons, and prevention of public order offences.

257. As part of its crime-prevention work the National Police has concluded cooperation agreements with a number of State agencies designed to prevent violence, such as for example the agreements with the Ministry of Education, the Nicaraguan Institute for Youth and Sports (INJUDE), the Ministry of the Family and several non-governmental organizations (NGOs).

258. These agreements have facilitated the sharing of statistical information and studies on these matters and the execution of joint plans for the benefit and protection of children and adolescents. Joint plans have also been carried out with other police forces in the region with a view to identifying groups and organizations having links with criminal gangs and organized crime. It may be asserted that the activities of such groups and organizations have little impact in Nicaragua, thanks to the preventive work done by the National Police and other institutions, which have helped to ensure that young people at risk are involved in all sorts of cultural, educational and work activities.

259. Another positive development has been the focus by the Tourist Police on tourist security and the special arrangements introduced for handling the country's increasing tourist trade; and municipal police forces have been created to enforce municipal ordinances.

260. Attention should also be drawn to the outstanding role played in the prevention of domestic and sexual violence by the 27 specialized and general Women and Children Units recently set up in all the country's police stations.

261. As already pointed out in the section of this report on article 6 of the Covenant, one of the legal tools which has been reinforcing the preventive work of the National Police is the Special Firearms, Ammunition, Explosives and other Related Materials (Monitoring and Regulation) Act (Act No. 510), which led to the removal from circulation of more than 3,500 firearms illegally held by members of the public. This Act has made it possible to monitor and regulate the sale of explosive powders and fireworks, which used to cause a sad tale of deaths and injuries.

262. It must also be pointed out that the preventive activities of the National Police include road safety, which is achieved by means of traffic regulating devices, vehicle checks, promotion of road safety campaigns, coordination with town halls on the introduction of road signs and signals, etc.

263. The National Police has also succeeded in inflicting some heavy blows on organized crime linked to international drugs trafficking; this has had a great impact on the public's sense of security, both nationally and internationally. This preventive work also includes the exchange of information with counterpart national agencies.

264. In 2006, for example, some 10,000 messages were received through the I-24/7 communication system. Most of them were international messages sent in order to alert police authorities and request assistance in connection with the capture of fugitives, tracing of missing persons, identification of corpses, verification of identities and passports, movements of migrants, fingerprints, photographs, documents, etc.

265. Nicaragua is regarded as one of the safest countries of the Central American region; one relevant point in this connection is that, when changes have been made in the police authorities, wide publicity has been given to the integrity and sense of responsibility of the National Police in applying severe disciplinary measures at all levels, including the dishonourable discharge of officers involved in improper acts, and to the heavy blows struck against national and international drugs trafficking. This has enabled the National Police to regain public trust, to grow stronger, and to revert to being a prestigious institution in the service of the people.

ARTICLE 10 (Rights of persons deprived of their liberty)

266. Since November 2003 Nicaragua's National Prisons System (SPN) has been subject to the Prisons System and Enforcement of Sentences Act and its Regulations;⁶⁰ the purpose of both these instruments is to regulate the rights and duties of persons deprived of their liberty and the treatment of prisoners by the State.

267. They constitute one the most comprehensive packages of legislation on the treatment of persons deprived of their liberty ever adopted by the State of Nicaragua and illustrate the importance of the human rights institutions and agencies in the positive development and application of such treatment.

268. The Constitution states: "The prisons system shall be humanitarian in nature and shall have the fundamental objective of changing the prisoner with a view to reintegration in society" (art 39), while the Criminal Code provides that "sentences of rigorous imprisonment shall be served in a prison" (art. 59).

269. Since 23 January 2006 Nicaragua has had a Special Procurator for Prisons; one of her chief functions is to monitor the treatment and living conditions of all persons deprived of their liberty, whether they are persons awaiting trial held in the cells of the National Police, convicts serving sentences in the SPN, or illegal migrants, whose status requires that they should be confined in the DGME holding centre. The SPN administers eight prisons, but Puerto Cabezas, capital of the Autonomous Region of Atlántico Norte (RAAN), has no prison establishment.⁶¹ The SPN houses a total of 5,536 persons deprived of their liberty, 947 of whom are persons who have been charged and are awaiting hearings or persons held in pre-trial detention; the remaining 4,589 are convicts.

271. Men make up 96.81 per cent of this total, and women 3.19 per cent. The prison population is distributed as follows: Tipitapa - 1,426; Juigalpa - 796; Chinandega - 615; Matagalpa - 576; Estelí - 517; Granada - 445; La Esperanza - 121; and Bluefields - 93.

272. The following table lists the current prison population in the country's eight prisons.

Total prison population

<i>Prison</i>	<i>Legal status</i>				<i>Total</i>	<i>Percentage</i>
	<i>Convicted</i>	<i>%</i>	<i>Pre-trial</i>	<i>%</i>		
Esteli	517	11.27	65	6.86	582	10.51
Chinandega	615	13.4	157	16.58	772	13.95
Tipitapa	1 426	31.07	421	44.46	1 847	33.36
Veracruz	121	2.64	43	4.54	164	2.96
Granada	445	9.7	109	11.51	554	10.01
Juigalpa	796	17.35	38	4.01	834	15.07
Matagalpa	576	12.55	112	11.83	688	12.43
Bluefields	93	2.03	2	0.21	95	1.72
Total	4 589	100	947	100	5 536	100

Source: SPN. [Http://www.migob.gob.ni/webdgspn/estadisticas.php](http://www.migob.gob.ni/webdgspn/estadisticas.php)

⁶⁰ Adopted on 12 March 2004 by Decree No. 16-2004 and published in *La Gaceta*, Diario Oficial No. 54, of 17 March 2004.

⁶¹ In the preparation of the present report visits were made, in coordination with the National Police and the SPN, to all the country's prisons and principal police stations.

273. In 2005 the State allocated the SPN 11 million córdobas for current expenditure, one of the smallest budgets that this institution has ever had. It then allocated 102,889,426 córdobas for current and capital expenditure, which was used to improve the care of the prison population and the administrative operation of each prison, with the aim at the time of re-educating 1,760 prisoners and repairing or rebuilding the Tipitapa and Matagalpa prisons.

A. Aliens deprived of their liberty

274. For the period October 2004 to October 2005 the SPN reported a total of 122 aliens deprived of their liberty, of whom 97 had been convicted and 25 had been charged. These 122 aliens were distributed among the prisons as follows: Estelí - 21; Chinandega - 23; Tipitapa - 69; Granada - 3; Juigalpa - 1; Matagalpa - 3; and Bluefields -2.

B. Treatment of juveniles deprived of their liberty

275. The Children and Adolescents Code (CNA) was promulgated in May 1988. In contrast to the earlier legislation, which took a legal-guardianship approach, the new Code established a special criminal regime: criminal justice specifically for juveniles.

276. It is worth mentioning that the National Police has been carrying out preventive work in marginal urban communities, including social and recreational programmes, such as the good-citizenship and civil-security programme, designed to prevent juvenile violence. One significant fact is that Nicaragua does not have to cope with a problem of juvenile gangs involving many children and adolescents in criminal activities.

277. The CNA provides that juvenile crime must be tackled with programmes of restorative justice. In addition to the special judges and procurators appointed for this purpose, there are also official guardians to advise juvenile offenders and try to ensure that they receive treatment in keeping with their age and legal status.

278. Recently, in 2005 in fact, the Special Centre for Custody of Juveniles was opened close to the Tipitapa prison; it is known as “Galería 7” and houses juveniles deprived of their liberty. Indeed, all the police stations and SPN establishments have special cells for juvenile offenders and, within the limitations of a prison, efforts are made to provide the minors held there with special treatment.

279. Although a daily amount of only 10 córdobas - equivalent to 0.60 United States dollars - is allocated to meet the needs of detained minors, the SPN authorities have endeavoured to provide vocational guidance and psychological programmes for them, and they have been offered opportunities to join educational and recreational programmes; and even more importantly the authorities have sought to guarantee the basic rights of the juvenile prison population.

280. Where the right to formal education is concerned, juveniles housed in the SPN may opt for any level of instruction. The Centre for Care of Minors has a school with spacious classrooms, a computer laboratory, a staff room, and a small library, where research is encouraged.

281. As mentioned above, the food budget is very small, but medical care is provided from the moment of admission to the Centre, and periodic medical checks are conducted. There are areas for recreation and culture, including even religious activities, and inmates are encouraged to take part in art exhibitions, events to mark special occasions, etc.

282. They are obviously entitled to receive family visits and thus to interact and maintain contacts with their families; efforts are made to integrate them in society and reduce the number of young people and juveniles held in detention.

C. Treatment of women deprived of their liberty

283. For 2005 the SPN reported a total of 293 females convicted and 72 charged, distributed as follows: Estelí - 47; Chinandega - 37; La Esperanza - 125; Granada - 33; Juigalpa - 25; Matagalpa - 21; and Bluefields - 9.

Female prison population

Prison	Legal status				Total	Percentage
	Convicted	%	Pre-trial	%		
Estelí	43	14.68	4	5.56	47	12.88
Chinandega	37	12.63	10	13.89	47	12.88
Tipitapa	0	0	0	0	0	0
Veracruz	125	42.66	38	52.78	163	44.66
Granada	33	11.26	14	19.44	47	12.88
Juigalpa	25	8.53	0	0	25	6.85
Matagalpa	21	7.17	4	5.56	25	6.85
Bluefields	9	3.07	2	2.78	11	3.01
Total	293	100	72	100	365	100

Source: SPN. [Http://www.migob.gob.ni/webdgspn/estadisticas.php](http://www.migob.gob.ni/webdgspn/estadisticas.php)

284. Arrangements for family members to live in with women inmates are introduced gradually once the women have passed through the earlier regimes established by the prisons legislation (adaptation, work, semi-open, open) and qualify for the live-in regime.

285. There are 177 inmates in the La Esperanza women's prison: 147 charged with use of or trafficking in narcotic drugs and psychotropic substances; 10 for property offences; two for sexual offences; and the remainder for public-order offences, illegal possession of weapons, and other offences. A total of 135 women were serving sentences and 42 were being held in pre-trial detention. They were housed in five wings. Those with good-conduct status were allowed to work inside the prison.

286. It must be stressed that most of the inmates (over 80 per cent) had been deprived of their liberty for drugs offences.

287. On 6 April 1999 the National Assembly adopted the Narcotic Drugs, Psychotropic Substances and Controlled Substances (Amendment and Extension) Act (Act No. 285),⁶² which amended and extended the existing Narcotic Drugs, Psychotropic Substances and Controlled Substances Act (Act No. 177).⁶³ Act No. 285 provides that persons convicted of the offence of

⁶² Published in *La Gaceta*, Diario Oficial Nos. 69 and 70, of 15 and 16 April 1999.

⁶³ Adopted on 27 May 1994 and published in *La Gaceta*, Diario Oficial No. 138, of 25 July 1994.

internal trafficking in narcotic drugs, psychotropic substances or other controlled substances shall be sentenced to rigorous imprisonment for five to 20 years and a fine of one to five million córdobas (about \$61,000 to \$303,000) (art. 51). International trafficking carries a sentence of rigorous imprisonment for 20 to 30 years and a fine of two to nine million córdobas (art. 52).

288. Possession of narcotic drugs, in a quantity of five grams or less in the case of marihuana or one gram in the case of cocaine and other drugs, carries an uncommutable sentence, for the first offence, of 30 to 90 days' light imprisonment and a fine of 1,000 to 5,000 córdobas. Very heavy fines of a minimum of one million córdobas (about \$61,000) are also imposed.

289. If a convicted person is unable to pay the fine (most of them are poor), it is commuted to one additional year's imprisonment; this means that the minimum sentence of five years' rigorous imprisonment is automatically increased to six years.

290. Persons convicted of drugs offences cannot use prison work to reduce their sentences (normally two days' work for one day's reduction). And, unlike ordinary prisoners, persons convicted under Act No. 285 cannot qualify for release on parole.

291. Article 78 of the Act provides that persons charged with drugs offences may not be released on bail for any reason whatsoever. If they are convicted, they may not enjoy the benefit of a suspended sentence or of release on parole after serving part of their sentence, or pardon or amnesty.

292. As pointed out above, the quantity of the narcotic drug found in a person's possession (no more than five grams of marihuana or one gram of cocaine or any other drug) determines whether an uncommutable sentence of 30 days' light imprisonment or a minimum sentence of five years' rigorous imprisonment for trafficking is imposed.

D. The "gift prisoners" of the National Prisons System

293. According to statements by competent SPN authorities, the prisons which were visited have a number of inmates, most of them serving sentences, who have practically no contact with the outside world, either because they are being held in a prison far from the department in which they live, or because their families are unable or unwilling to visit them, or because they cannot afford the services of a lawyer.

294. These persons are usually called or identified by the SPN authorities as "gift prisoners", in other words prisoners who "have been donated to the prison system". This situation has sometimes arisen because most of these prisoners do not have the economic capacity to request the benefits to which they might possibly be entitled, such as release on parole once part of their sentence has been served.

295. A number of civil society organizations, including even some legal practices, have arranged for law students, as part of their work experience, to process some cases in order to obtain release on parole, but there are generally few moves to furnish legal assistance to these persons, some of whom, having no families or anywhere to live, opt to remain in the facilities of the SPN.

E. Lack of security in prisons

296. Rioting in prison establishments is a relatively new phenomenon. The first case occurred in 2003. Rioting gives rise to a sense of insecurity in the prisons. It results in damage to property, physical injuries, and violation of the right to life.

297. According to the SPN, the prison population almost always exceeds the accommodation capacity of the country's total of eight prisons, as the following table shows.

Accommodation capacity

<i>Prison</i>	<i>Accommodation capacity</i>	<i>Current population</i>	<i>Deficit</i>	<i>Percentage</i>
Estelí	500	582	82	16.4
Chinandega	466	772	306	65.67
Tipitapa	2 400	1 847	-553	-23.04
Veracruz	110	164	54	49.09
Granada	550	554	4	0.73
Juigalpa	594	834	240	40.4
Matagalpa	750	688	-62	-8.27
Bluefields	76	95	19	25
Total	5 446	5 536	90	1.65

Source: SPN. [Http://www.migob.gob.ni/webdgspn/estadisticas.php](http://www.migob.gob.ni/webdgspn/estadisticas.php)

298. On 23 and 24 September 2005 there was a riot in Bluefields prison which lasted 20 hours; it was caused by inmates claiming to have suffered ill-treatment at the hands of prison officers and demanding the dismissal of three officers for violating their rights. The investigation established the guilt of at least four officers, who were punished for violating the human rights of inmates during the riot.

299. This prison has no inside water supply, so that water has to be taken from a well; although it has room for only 68 prisoners, it was housing 110 at the time of the riot. According to an SPN report, the capacity of Bluefields prisons is 76; in October 2006, when it was visited, it had 99 inmates.

300. The conditions under which convicts are held in Bluefields show that the building and the entire infrastructure in which the SPN operates were not designed as a prison; the overcrowding is in excess of 165 per cent, the food is not of the best, and the sanitation conditions are so bad that waste water passes through the area where the food is cooked.

301. The Bluefields authorities reported that there is project to construct a prison building at an estimated cost of five million dollars. This project would provide accommodation for 500 inmates, with areas for conjugal visits and sports activities, and a kitchen.

302. Rioting is sometimes caused by members of rival youth gangs, who transfer to the prisons bad blood created in the heat of street clashes over control of districts or streets in their home neighbourhoods.

303. The prison-building project in the Autonomous Regions has been under way for over five years, but the lack of funding has been a constant constraint. The Bluefields prison in Puerto

Cabezas would provide an immediate solution, but prisons are also needed in the towns of Boaco, Ocotol, León and Rivas, where there is overcrowding and general poor conditions for persons deprived of their liberty.

F. Positive aspects

304. Policies have been introduced for the social reintegration of prisoners who have served their sentences, and re-education efforts are continuing to this end. The enormous prison population is held under prison regimes established in the prisons legislation designed primarily to ensure decent treatment of persons deprived of their liberty, offer them incentives, and prepare them to return to society.

305. The size of the prison population also causes overcrowding in prisons with limited accommodation capacity. This affects the health and safety of every inmate and constitutes an extremely serious situation which has been described as a cruel and degrading form of detention. These considerations have prompted the SPN to carry out a number of projects for the remodelling, extension and general improvement of the infrastructure of the country's prisons.

306. The construction of women's wings was completed in 2006 in Granada and Estelí, and this has helped to improve conditions for the women prisoners; there are plans to build new prisons in Bluefields, with a larger capacity, and in Puerto Cabezas, where up to now convicts have had to serve their sentences in the Bilwi gaols, also the scene, regrettably, of rioting caused by the precarious living conditions there.

307. The SPN authorities are indeed anxious to secure, as far as their resources allow, a better standard of living for persons deprived of their liberty by creating more agreeable conditions for them, for example by allowing some women prisoners to cook in their dormitories. Some prisons, Granada for example, have built women's areas with more space and better conditions. There is also an increasing tendency to respect the religious beliefs of male and female prisoners, and two churches and halls have been built for religious activities. Other positive aspects include the establishment of youth choirs and sports activities for young inmates.

308. As already pointed out, some prisons have remodelled their installations and can now offer decent basic conditions for their male and female inmates, enabling them to engage in educational, recreational, artistic, cultural, religious and work activities (cleaning, carpentry, handicrafts, etc.) which contribute to the process of their socialization and facilitate their future reintegration in society.

309. The new "Puertas de la Esperanza" women's wing in Estelí prison can house 60 inmates in good conditions: it is spacious and has sufficient bathrooms, lavatories and laundry facilities, and a kitchen and adequate ventilation. There is also a full-time female officer responsible for the custody of the inmates.

310. In 2006 the prison population in the Matagalpa regional prison totalled 860, including 35 women and seven juveniles. As it has room for only 594 inmates, there is overcrowding; however the living conditions of male and female prisoners had improved since earlier visits, even though the population had increased by 10 per cent over the 2005 figure.

311. The SPN National Association for Persons Deprived of Liberty was established at the end of 2004; its chief functions are to run social programmes to facilitate prisoners' rehabilitation and to raise funds to pay for educational activities.

G. Re-educational nature of the National Prisons System

312. In the words of the Constitution, "the [National Prisons System] shall promote for its inmates, through a progressive educational system, family unity, health, educational and cultural achievement and productive waged employment" (art. 39); and as a humanitarian institution the SPN provides special treatment for persons deprived of their liberty in accordance with the minimum international rules, treaties and other instruments relating to the running of prisons.

313. Since "sentences have a re-educational function" (Constitution, art. 39), the SPN has set itself the chief objectives of re-educating prisoners for reintegration in society, enforcing the measures of deprivation of liberty and other criminal sentences handed down by the courts of justice, and promoting family unity, health and productive employment. Although no legal framework has been adopted in this regard, the work of the SPN is based on a number of scattered pieces of legislation on prisons.

314. Prisoners can take part in a number of organized activities designed to enhance their self-respect and sense of personal and social responsibility towards their families and society at large, thus encompassing the full scope of the aims of re-education and social reintegration of inmates.

315. The main such activities are education in its various modalities (literacy, primary, secondary), including the award of scholarships for university study, technical training, productive employment, recreation, culture and sports, access to libraries, psychological care, specialist medical care, promotion of family unity by means of ordinary, special and conjugal visits, and communication with the outside world.

316. All the prisons have fair numbers of inmates enrolled in the various educational programmes, as the following table shows.

Prisoners undergoing instruction - First-quarter comparison, 2004-2005

<i>Prison</i>	<i>Current enrolment</i>							
	<i>Initial enrolment</i>		<i>Literate</i>		<i>Primary</i>		<i>Secondary</i>	
	<i>2004</i>	<i>2005</i>	<i>2004</i>	<i>2005</i>	<i>2004</i>	<i>2005</i>	<i>2004</i>	<i>2005</i>
Estelí	221	259	0	42	120	90	102	110
Chinandega	213	259	0	0	108	115	108	96
Tipitapa	390	634	119	0	392	271	262	121
Veracruz	67	80	0	0	31	27	40	43
Granada	183	205	0	0	130	92	112	101
Juigalpa	238	258	61	45	112	133	82	62
Matagalpa	300	392	0	0	240	192	102	110
Bluefields	21	34	0	0	22	26	0	0
Total	1 633	2 078	180	87	1 155	946	808	643

Source: SPN. [Http://www.migob.gob.ni/webdgspn/estadisticas.php](http://www.migob.gob.ni/webdgspn/estadisticas.php)

317. Prisoners have been allowed access to higher education. Two prisoners from the Estelí prison are attending the University of Northern Nicaragua, in the second year of the Systems Engineering course; one Chinandega prisoner is attending the University of Chinandega, in the fourth year of Systems Engineering; another one from Matagalpa is in the preparatory year; and two inmates of Tipitapa prison are studying at the National Agrarian University, in the fourth year of the Agronomy Course.

318. Respect for the human dignity of persons deprived of their liberty is promoted by means of seminars and workshops run by the school of prison studies and taught by the senior managers of the prisons system, according to their specialist qualifications. There are also civil society organizations and a number of NGOs periodically providing other instruction based on human rights handbooks.

319. In June 2006 the PDDH introduced a diploma course in human rights for persons deprived of their liberty, on the proposal of the Special Procurator for Prisons, which simulates the work done for prisoners by the PDDH, thus improving their knowledge of their rights.

320. The principal function of SPN officers is to instruct the prisoners in ethical and moral values, in the establishment of good relations and, above all, in the basic principles of how to conduct themselves. This instruction is based on the Code of Conduct for officers responsible for enforcing the law, the Prisons System and Enforcement of Sentences Act and its Regulations, the Disciplinary Rules for SPN personnel, and the procedural handbooks governing the operation of the prisons system.

ARTICLE 11 (Criminal liability for contractual obligations)

321. Article 41 of the Constitution states: “No one shall be imprisoned for debt.” But it continues: “This principle does not restrict the orders issued by competent judicial authorities in respect of failure to fulfil maintenance obligations. It is the duty of all persons - nationals or aliens - to pay what they owe.” This provision allows execution on the person in exceptional cases of offences against the civil status in the form of deliberate failure to pay maintenance” (Criminal Code, art. 225).

322. The Maintenance Act (Act No. 143)⁶⁴ regulates all questions of maintenance: the right to receive maintenance and the obligation to pay maintenance derived from family relationships, and the procedure for due application and interpretation of that right and obligation. The Act stipulates clearly that children are entitled to maintenance payments not only for food but also to meet all the requirements of their comprehensive development, including education, health and recreation.

323. Although the Act does not state a specific amount of maintenance, this amount is proportional to the needs of the child and the capacity to pay of the father or mother. It may start from 25 per cent of income.

324. A distinction must be drawn between a civil obligation to pay a debt derived from a maintenance obligation and the crime of abandonment of family, and between a civil obligation to pay a debt and the crime of fraudulent use of an object given as a guarantee or deposit.

⁶⁴ Adopted on 22 January 1992 and published in *La Gaceta*, Diario Oficial No. 57, of 24 March 1992.

325. When a contractual obligation backed by collateral is not paid, the civil court warns the person concerned to present the collateral; failure to do so constitutes the offence of possession of stolen goods. There are other acts constituting more serious offences, such as bad faith and fraud; these acts are regulated by the Criminal Code, the Code of Criminal Procedure, and the Commercial Collateral Act (Act No. 146).⁶⁵

326. In Nicaragua's civil legislation this legal procedure is called "execution on the person" and refers to a civil court's power to order the arrest of a person who fails to present an object given as a guarantee or placed as a deposit or who is unable to fulfil a contractual obligation. A person may be arrested by decision of a civil court and committed to police custody, but this is almost always an exceptional measure. This legal procedure is used mainly by banks and other financial institutions against their debtors.

327. The same act may give rise to either civil or criminal consequences but its legal regulation has to be different, for pursuant to the Constitution "no one may suffer arbitrary arrest or detention or be deprived of his liberty except on grounds established by law and in accordance with a legal procedure" (art. 33); therefore, arrest or detention in respect of the commission of a criminal offence requires a judicial order.

ARTICLE 12 (Personal freedom of movement)

328. Article 31 of the Constitution states: "All Nicaraguans are entitled to move freely and reside in any part of the national territory and freely to enter and leave the country."

329. Article 25 of the Civil Code states: "A person's domicile is the place in which he has his habitual residence [and] a person passing through a place is a transient."

330. The Migration Act (Act No. 153)⁶⁶ was adopted in 1993 in order to "establish the essential legal order in matters of migration and shall accordingly regulate acts connected with immigration and emigration" (art. 1).

331. This Act provides that the voluntary migration of Nicaraguans in exercise of their constitutional rights and the laws which regulate those rights "shall be protected by national legislation, by agreements or treaties with the States in which they reside, and by the relevant international treaties in force" (art. 4).

332. Nicaraguans, with the sole exception of minors, do not require exit visas in order to leave the country. Any minor leaving the country must be in possession of a passport issued in his or her name and valid for at least six months, and an entry and exit card (TIE), and satisfy the other requirements established by the DGME (art. 52).

333. The requirements for entering the country are set out in Presidential Decrees Nos. 57-2005⁶⁷ and 70-2005⁶⁸ and are described below.

⁶⁵ Adopted on 5 March 1992 and published in *La Gaceta*, Diario Oficial No. 60, of 27 March 1992.

⁶⁶ Published in *La Gaceta*, Diario Oficial No. 80, of 30 April 1993.

⁶⁷ Published in *La Gaceta*, Diario Oficial No. 172, of 5 September 2005.

⁶⁸ Published in *La Gaceta*, Diario Oficial No. 200, of 17 November 2005.

A. Category-A countries (no visa required)

334. Nationals of category-A countries do not require a visa to enter Nicaragua; they must merely present a passport valid for at least six months and fill out a TIE correctly at the time of entry. Such nationals may remain in the country for 90 days, with the possibility of extension for a further 90 days. At the end of that period aliens must leave the national territory.

B. Category-B countries

335. In order to enter Nicaragua nationals of category-B countries require a consular visa stamped in a valid passport. This entry visa must be obtained from Nicaragua's consular office in the country of residence or visit or, in the absence of such office, from the nearest consular office.

C. Category-C countries

336. Depending on the type of passport presented, nationals of category-C countries will require a consular visa stamped in a valid passport; this entry visa must be obtained by the person in question from Nicaragua's consular office in the country of origin, or by a natural or juridical person from a DGME office.

337. Approval of a request for an entry visa is notified to the consular office concerned, which proceeds to issue the visa. Aliens may request extension of their stay in the national territory from the central DGME offices for a maximum of 90 days; they must submit a valid passport with an entry stamp and pay the corresponding fee. This applies to categories A, B and C.

338. Aliens wishing to reside in Nicaragua must apply for a change of migration category from the DGME authorities; this requirement also applies to categories A, B and C.

339. Pursuant to the Migration Act and the Alien Affairs Act, resident aliens wishing to leave the country, in addition to possessing a passport and a travel document or an equivalent document issued in their name, must obtain the necessary exit visa or authorization and a boarding/landing card (Migration Act, art. 53). This latter requirement does not apply to non-resident aliens who remain less than 30 days in Nicaragua or to nationals of countries with which Nicaragua has concluded a visa-waiver agreement and whose stay in Nicaragua does not exceed 90 days (art. 54).

340. The Agreement on the Creation of a Single Central American Visa for the Free Movement of Aliens between El Salvador, Guatemala, Honduras and Nicaragua, known as "CA-4", facilitates matters for Guatemala, El Salvador, Honduras and Nicaragua, resident aliens, and nationals of category-A countries (no visa required).

341. Nicaraguans entering the national territory do not require an entry visa; they must merely be in possession of a passport or travel document issued in their name by a competent authority and a boarding/landing card (art. 56). Nationals of countries with which Nicaragua has concluded a visa-waiver agreement are also exempted from the entry-visa requirement for non-residents, in accordance with the terms and conditions set out in such agreement or under a unilateral disposition by the Government of Nicaragua (art. 61).

342. In order to be admitted as a temporary or permanent resident an alien, on entering the country and at the time of filling out the immigration card, must present a passport valid for more than six months, stamped with a visa indicating the entry category and subcategory, an entry

permit issued by the DGME, a boarding/landing card, and a medical certificate issued by the health authorities of the country of origin or departure (art. 57). In order to re-enter the country, aliens already admitted as temporary or permanent residents need present only a valid passport, the corresponding re-entry visa, and a boarding/landing card (art. 58).

343. Aliens already admitted as temporary or permanent residents who re-enter within 180 days of leaving Nicaragua are exempted from the entry-visa requirement (art. 59).

344. The DGME figures for the different categories of passport issued in the period 1990-2000 are shown below.

Types of passport

<i>Year</i>	<i>Ordinary "C"</i>	<i>Official "E"</i>	<i>Diplomatic "A"</i>	<i>Service "B"</i>	<i>Total</i>
1990	68 549	1 582	1 093	137	71 361
1991	92 963	1 982	1 472	265	96 682
1992	107 334	580	390	71	108 375
1993	87 487	85	286	56	87 914
1994	74 235	36	0	37	74 308
1995	42 316	58	185	45	42 604
1996	64 068	69	575	82	64 794
1997	82 025	119	1 202	0	83 346
1998	112 309	75	330	58	112 772
1999	131 125	182	242	55	131 604
2000	117 728	151	279	139	118 297
*Temporary	4 659				4 659
2001	127 967	166	218	48	128 399
2002	79 869	121	497	27	80 514
Revalidations	13 176	0	0	0	13 176
2003	64 736	246	276	40	65 298
Revalidations	28 120				28 120
2004	57 408	126	103	28	57 665
Revalidations	40 548				40 548
2005	75 703	141	159	41	76 044
Revalidations	31 254				31 254
2006	115 671	201	134	35	116 041
Revalidations	26 971				26 971
TOTALS	1 501 493	5 920	7 441	1 164	1 632 654

* A total of 4,659 temporary passports had to be issued in 2000 because of a shortage of standard booklets.

ARTICLE 13 (Protection of aliens against arbitrary expulsion)

345. The Constitution states: “Aliens have the same duties and rights as Nicaraguans with the exception of political rights and the rights specified by law; aliens may not intervene in the country’s political affairs” (art. 27, second paragraph).

346. Rather than a country of destination for immigration Nicaragua is currently a country of transit for migrants making their way to the United States of America. The migration legislation dates from 1993 (Migration Act (Act No. 153)) and has not yet been updated. However, the Transport of Illegal Migrants (Control) Act (Act No. 240)⁶⁹ was promulgated in 1996.

347. This Act provides that the offence of illegal entry and/or stay in the national territory is committed by any “alien who enters the country by any of the means or modalities set out in article 5 of [the] Act, and such alien shall receive an uncommutable sentence of three months’ light imprisonment.” Once this sentence has been served, the DGME is instructed to deport the alien in question to his or her country of origin (art. 21).

348. Progress was made in the shape of the adoption on 26 November 2004 of Act No. 240-513,⁷⁰ which amended and expanded Act No. 240, eliminating the uncommutable sentence of three months’ light imprisonment.

349. Article 21 of the new Act provides that any persons who illegally enter and/or remain in the national territory “shall be detained by the competent authority for a period of 48 hours from the time of their apprehension.”

350. It is further established clearly that illegal migrants “shall be held in a place designated as the National Illegal Migrant Holding Centre under the administration and in the custody of the authorities of the Department of Migration and Alien Affairs and the necessary security rules and measures shall be applied until they are deported to their country of origin or departure once they have been documented by their country’s consulate and have obtained their return ticket; they embark in the custody of the authorities of the Department of Migration and Alien Affairs (art. 21, para. 2).

351. The DGME Holding Centre was opened in 1980 and is run by a Director, a secretariat, a Special Inspector, three detention officers and one nursing officer.

352. The Centre receives and detains illegal migrants, makes medical referrals, conducts interviews, notifies the Ministry of Foreign Affairs and the PDDH, allows detained migrants to make telephone calls, organizes the management, control and safekeeping of their funds, purchases and supplies articles of personal hygiene, cooperates with consulates as they prepare migrants’ identity and travel documents, and supervises custody and departure at the various frontier posts. It also issues reports containing all the available information on a migrant for transmission to the DGME files and, ultimately, requests the migrant’s transfer.

353. The Centre’s basic operating principle is respect for the exercise of human rights, for the aliens in question are being held merely for migration offences. Although the Centre’s conditions

⁶⁹ Published in *La Gaceta*, Diario Oficial No. 220, of 20 November 1996.

⁷⁰ Published in *La Gaceta*, Diario Oficial No. 20, of 28 January 2005.

are spartan, owing to lack of resources, considerable efforts are made to provide three meals a day. There is a recreation area and a television set in every room, and the migrants have the right to make telephone calls to their families and to receive calls from them.

354. The Act provides that the DGME must hold a hearing to determine the status of aliens apprehended in irregular situations. This hearing must take place within 24 hours of the migrant's detention. It may result in the issuance of a deportation order. If this order cannot be executed, the alien is granted temporary permission to reside in Nicaragua. Unfortunately, many States have no consular representation in Nicaragua, and most of their air connections to places outside the continent are routed through Costa Rica or the United States of America.

355. A migrant's status is notified to the consulate in question, the Ministry of Foreign Affairs and the PDDH, which may visit migrants at any time to check on the conditions under which they are being held.

356. When the Holding Centre was visited in June 2006, it was found that one of the problems was the scant budget for the migrants' maintenance, and according to the authorities there is in fact no specific budget for this purpose or to meet the Centre's needs, and some migrants, lacking the funds to return to their countries, spent up to six months or more in detention, until some solution is found.

357. The Centre can house about 50 persons, and on average some 20 migrants are held in the cells. There are three cells, one of which is set up for women. There is no overcrowding as the cells are spacious, but there are insufficient mattresses to go round.

358. There is no evidence of abusive treatment or torture, and even less of violence among the migrants themselves, for they share the common circumstance of being detained there not for infringing the law or committing a criminal offence but merely for entering the country illegally.

359. Nicaragua's legislation does not offer a systematic remedy against administrative detention for migration offences. The migrants are detained only while their identity and legal status in the country are being checked or pending the execution of deportation orders. Most of the migrants entering the country illegally are returned to their country of origin.

360. The following table shows the DGME figures for the number of migrants detained, by country of origin, between 1990 and December 2005.

<i>Country</i>	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	<i>Total</i>
Germany	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Stateless	0	0	0	0	0	0	0	0	0	0	0	0	0	2	3	0	5
Argentina	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Belize	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Bolivia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	6	9
Cameroon	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0	5
Canada	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	2
China	0	0	0	0	0	21	42	0	0	0	0	7	3	13	13	16	115
Colombia	1	30	51	5	15	45	33	35	36	42	26	25	35	63	45	45	532

<i>Country</i>	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	<i>Total</i>
Costa Rica	0	9	9	0	5	78	5	0	0	4	1	4	2	2	5	6	130
Cuba	1	0	0	1	0	19	26	0	1	10	12	10	24	13	7	29	153
Ecuador	16	77	151	53	4	157	209	109	412	142	25	18	60	51	120	58	1.662
El Salvador	1	2	5	1	1	63	17	21	0	0	0	1	0	2	2	6	122
United States	0	0	0	0	0	0	3	0	0	0	2	5	2	2	2	2	18
Ghana	0	0	0	0	0	0	2	0	0	0	3	0	0	0	0	0	5
Guatemala	0	0	5	4	0	9	3	0	1	0	1	0	4	3	7	3	40
Haiti	0	16	0	0	16	0	0	0	0	0	0	0	0	0	0	0	32
Honduras	1	2	6	1	1	16	1	34	3	2	0	1	2	6	7	2	85
Hungary	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
India	0	0	7	18	4	130	93	0	10	5	5	8	0	2	0	1	283
Jordan	0	0	0	0	0	9	2	0	0	0	0	0	0	0	0	0	11
Liberia	0	0	0	0	0	0	1	0	0	0	2	0	0	0	0	0	3
Mali	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Mexico	0	0	0	0	0	0	4	0	6	2	6	1	4	5	5	4	37
Nigeria	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	3
Other countries	0	16	0	0	16	88	10	48	5	8	14	7	8	8	9	0	237
Pakistan	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	3
Panama	1	2	1	1	0	9	1	0	2	6	4	1	2	2	0	0	32
Peru	51	296	382	162	104	200	145	99	165	92	25	55	50	134	196	99	2.255
Puerto Rico	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	3
Domin. Rep.	0	22	57	0	2	36	4	0	10	5	4	55	4	8	3	16	226
Romania	0	0	0	0	0	0	0	0	0	0	0	0	0	0	7	0	7
Sierra Leone	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2
Singapore	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
Syria	0	0	0	0	0	0	7	0	0	0	0	0	0	0	0	0	7
Somalia	0	0	0	0	0	0	0	0	0	0	1	0	1	0	2	0	4
South Africa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Sudan	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
Turkey	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
Venezuela	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	2
Viet Nam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14	14
Total	72	472	674	246	168	880	608	346	651	318	136	212	202	319	439	312	6.055

A. Expulsion of aliens

361. The circumstances determining the expulsion of aliens are set out in Chapter X, on rejection, deportation and expulsion of aliens, of the Alien Affairs Act (Act No. 154);⁷¹ they include the cancellation of residence under article 29 of the Act, reasons of public order, defence or internal security, and conduct contrary to the principles and interests of the Government, commission of a serious offence, recidivism, possession of an extremely dangerous character harmful to society, profiting from trafficking in persons, drugs or arms, and situations in which special laws provide for expulsion (art. 62; art. 63 (a) to (d); and art. 63).

362. Deportation is an administrative act ordered by the DGME and consists of the removal from the national territory of an alien who has entered it clandestinely, remained in the country on the strength of a false statement or presentation of a forged document or after the legal period of stay has expired or residence or stay has been cancelled, or whose specified time limit for leaving the country has expired, or who is a member of the crew of a vessel entering Nicaraguan waters without the required authorization of the competent national authority.

363. An expulsion order is an order issued by the Ministry of the Interior under which an alien must leave the national territory within a specified time limit.

364. Once the offence or other ground for expulsion has been verified, the case is referred to the Minister of the Interior, who issues an order within a maximum of 72 hours for the expulsion of the person regarded as harmful or dangerous to society.

365. This order is then transmitted to the DGME, which arranges with the National Police the person to be transported to Augusto César Sandino international airport for expulsion.

366. According to the DGME, there have been few cases of expulsion, given the grounds for expulsion mentioned above: public order and internal security; attacks against the State of Nicaragua, or harm or danger to Nicaraguan society. No one has ever been expelled for overstaying a period of residence; in such cases an attempt is made to help the alien, in accordance with the Act, to apply for an extension.

367. An alien may state his reasons for contesting expulsion to the Ministry of the Interior by administrative means or before an appeals court by judicial means. The remedies available against expulsion orders are judicial review, appeal, and *amparo*.

368. The DGME reports that over the past 20 years it has handled only three cases of expulsion of aliens with criminal records in their country of origin; they were expelled in open proceedings for reasons of public order and national security.

369. There was one case in which the remedy of *amparo* was sought against the DGME in the Managua court of appeal, before the expulsion took place, on the ground of threat of unlawful arrest. For this reason the resident alien was not placed in detention, but an order was made and he was given 72 hours to leave the country. This decision was notified to the alien, the Ministry of Foreign Affairs, and the consulate of his country of origin. In any event, to date the DGME has not received any formal complaints with regard to expulsion orders.

⁷¹ Published in *La Gaceta*, Diario Oficial No. 81, of 3 May 1993.

370. The following table sets out the DGME figures on aliens who have been rejected or deported, by country, in the period 1996-2005.

<i>Country</i>	<i>96</i>	<i>97</i>	<i>98</i>	<i>99</i>	<i>00</i>	<i>01</i>	<i>02</i>	<i>03</i>	<i>04</i>	<i>05</i>	<i>Total</i>
Ecuador	325	125	492	143	86	105	49	52	5	64	1 446
Peru	240	101	200	101	40	85	40	122	29	96	1 054
El Salvador	197	195	51	41	47	25	30	8	4	8	606
Costa Rica	193	150	190	134	37	59	72	136	16	43	1 030
India	142	8		5		11	2			1	169
Colombia	132	80	101	62	50	66	58	67	7	53	676
Honduras	169	382	77	169	133	62	52	125	12	43	1 224
Canada		18	1	2	1	1				2	25
Cuba	52	13	22	9	18	6	29	14	3	27	193
China	40		8			37	17	17		19	138
USA		45	9	9	5	11	5	8	5	6	103
Guatemala	72	76	18	9	14	7	8	5		4	213
Israel	24	13	25	12		2					76
Mexico	26	20	20	6	15	5	11	4		6	113
Panama	28	11	8	4	8	4	6	9	1	3	82
Domin. Rep.		20	19	17	23	83	13	16		17	208
Other African				2	10		4			1	17
Italy	16		5			2		2			25
France				5							5
Cameroon						11					11
Haiti						3	2				5
Indonesia								1			1
Viet Nam										7	7
Spain				7	1			2			10
Others	171	93	41	27	35	46	23	17	1	18	472
Total	1827	1350	1287	764	523	631	421	605	83	418	7 909

B. Extradition procedure

371. Article 43 of the Constitution states that in Nicaragua “there shall be no extradition in respect of political offences or ordinary offences connected therewith, according to Nicaraguan definition. Extradition in respect of ordinary offences shall be regulated by the law and international treaties.”

372. Pursuant to the international agreements and treaties ratified by Nicaragua, aliens are liable to extradition provided that the requesting country agrees to and complies with the conditions imposed by the State of Nicaragua, namely that the life of the person concerned shall not be placed in jeopardy and he or she shall not be subjected to any cruel or inhuman treatment.

Furthermore, the person may be tried only for the offence with which he was charged at the time when the request for extradition was made, and not for any other offence.

373. The Constitution states: “Nicaraguans shall not be extradited from the national territory” (art. 43., second paragraph); in other words, there are no cases in which nationals may be extradited. Articles 348 to 360 of the Code of Criminal Procedure set out the judicial procedure to be followed for the extradition of aliens.

374. The Criminal Division of the Supreme Court of Justice is the body competent to grant or deny extradition, although its decisions on extradition are notified to the requesting or requested State by the Executive (art. 350).

375. The first step is for the Government in question to request the extradition from Nicaraguan territory, so that the Office of the Attorney-General of the Republic may refer the request to the Criminal Division of the Supreme Court with the necessary documents (art. 353).

376. The following information must be furnished together with the extradition request: details of the identity of the accused or convicted person; evidence of the arrest or detention order or, when appropriate, of the final enforceable judgment; a certified copy of the proceedings in the case, proving or at least providing reasonable evidence of guilt, a certified copy of the legal provisions under which the act is characterized as a crime and participation is attributed to the offender, and details of the applicable penalty and of statutory limitations (art. 356., third paragraph). The person whose extradition is requested must be brought before the Criminal Division, which appoints counsel for him, if he has not done so himself; during the extradition proceedings the person may be detained for up to two months (art. 356, first and second paragraphs).

378. Once the extradition request has been lodged and all the requirements have been met, a hearing lasting up to 20 days is given to the accused person, his counsel and the public prosecutor: 10 days for the presentation of evidence and the remainder for assessing it (art. 356, fourth paragraph).

379. The Criminal Division issues a ruling granting or denying the request within the next 10 days. It must also “seek and obtain from the requesting country a formal undertaking that the person to be extradited will not be tried for an earlier offence or subjected to penalties other than the ones applicable to the offence in question or imposed in the sentence already handed down, a copy of which shall be transmitted to the Nicaraguan courts” (art. 356., fifth paragraph).

380. The decision of the Criminal Division is subject to the remedy of reconsideration, which must be sought within a time limit of three days from the day following notification of the decision (art. 356, seventh paragraph).

381. If the extradition request is denied, the person in question must be released, but the case is referred to the Office of the Public Prosecutor and the National Police for any further action (art. 357)

C. Asylum-seekers and refugees.

382. Article 42 of the Constitution provides that Nicaragua “recognizes and guarantees the right to refuge and asylum.”

383. As background to this subject reference should be made to the establishment in 1982 of the National Office for Refugees under the auspices of what was called at the time the Nicaraguan Institute of Social Security and Welfare.⁷² However, in 1990, as part of the institutional reforms, this Institute became the Nicaraguan Social Security Institute, and the National Office disappeared. As a party to the 1951 Convention relating to the Status of Refugees,⁷³ Nicaragua has been applying an ad hoc procedure involving CEPAD and the DGME based on the Migration Act (Act No. 153) and the Alien Affairs Act (Act No. 154).

384. The Migration Act provides that refugees are included in the category of temporary residents (art. 29 (g)) and require the prior recognition of the status of refugee or asylum-seeker by the Government, in accordance with the relevant agreements ratified by Nicaragua.

385. The State of Nicaragua has been a participant in the historic contribution of Latin America to refugee law embodied in the Cartagena Declaration on Refugees of 1984, in which the concept of refugee is adapted to current needs and incorporates innovative principles concerning the fundamental rights of refugees.

386. Nicaragua has always been willing to provide assistance to foreign nationals with refugee status, and the DGME archives contain files on a considerable number of citizens who came to the country as refugees. As mentioned earlier, these matters are coordinated by the representative of the United Nations High Commissioner for Refugees (UNHCR) in CEPAD.

387. The procedure is as follows: the applicant must present himself voluntarily to the DGME or have been arrested at a Nicaraguan frontier post for attempting to enter the country illegally. Applicants for refugee status usually come from countries affected by military, racial, ethnic or political conflicts; they apply to the DGME in writing for refugee status. The DGME then refers the application to the UNHCR representative; the applicant must later appear for interview, then the case is investigated and the application granted or refused. If it is granted, the person concerned is kept in custody and the decision is transmitted to the DGME.

388. In early March 2004 work started on the establishment of an Inter-institutional Committee on Refugees, with the main aim of drafting a refugee bill. In July 2004, with UNHCR support, training was given to representatives of State agencies and NGOs on the most important elements of refugee rights to be taken into consideration in drafting the national legislation.

389. Nicaragua reaffirms its firm intention to strengthen its national systems and protection arrangements and to seek lasting solutions for refugee problems; it has completed the drafting of the refugee bill, which is now under study and consultation in the National Assembly.

⁷² This Office was created by Decree No. 1096 of 13 September 1982. The Regulations of the National Office for Refugees (Establishment) Act were promulgated in 1984 and published in *La Gaceta*, Diario Oficial No. 70, of 6 April 1984.

⁷³ Nicaragua acceded without reservations to the Convention and to its Protocol of 1967 by Decree No. 297, published in *La Gaceta*, Diario Oficial No. 39, of 15 February 1980.

390. On 25 April 2006 the refugee bill was presented, with UNHCR support, to the National Assembly's Population and Development Committee; the bill had been prepared by a working group made up of representatives of State institutions and civil society, such as the Ministry of Foreign Affairs, the Ministry of the Interior, DGME, PDDH, CEPAD, CENIDH and the Nicaraguan Migration Network.

391. This bill is designed to ensure the correct application of the principles of solidarity and non-refoulement and to provide lasting solutions; it creates a national committee on refugees as the body responsible for determining refugee status in Nicaragua. It also incorporates the broad concept of refugee established in the Cartagena Declaration and stipulates a procedure which scrupulously respects refugee rights, including access to justice and protection, within the framework of international refugee and human rights law.

**ARTICLE 14 (Equality before the law, guarantees of due process,
and principles of the administration of justice)**

392. The 1995 amendments to the Constitution increased the powers of the Supreme Court of Justice, which had been set out in earlier constitutions such the 1974 version and simplified in 1987. This move re-established inter alia important functions such as ruling on extradition requests from other countries and denying requests submitted by nationals, issuance of authorizations to exercise the professions of lawyer and notary public and their suspension and restoration in accordance with the law, consideration of and ruling on disputes between the Powers of the State, and consideration of and ruling on constitutionality disputes between the central Government, the municipal governments and the Autonomous Regions of the Atlantic coast.

393. The amendments also established, as mentioned in the section of this report on article 2, that the Supreme Court should consist of four divisions and that the judges should be chosen from shortlists proposed by the President of the Republic following consultation with the relevant civil organizations.

394. The Judiciary Act (Act No. 260)⁷⁴ was adopted in July 1998; it introduced the most far-reaching changes and reorganization of the Judiciary since the Courts Act promulgated in 1896 in the time of José Santos Zelaya.

395. This Act, which is still in force, has 229 articles addressing important matters for the development of justice in Nicaragua, such as the exclusive jurisdiction of the judges and courts, the binding nature of judicial decisions, and the functions and powers of the plenary Court and its divisions, the appeals courts, and the district and local courts. It also contains specific sections on the policy-making organs of the Judiciary and its subsidiary organs, judicial procedures, judicial cooperation, the legal profession, etc.

396. Nicaragua's judicial system is based on the tradition of continental European law, or civil law. The system consists of the Judiciary, headed by the Supreme Court of Justice, which has 16 members, the Office of the Attorney-General of the Republic (representing the Executive and protecting the interests of the State), the Office of the Public Prosecutor (an independent body responsible for investigating offences and bringing proceedings on behalf of the public), the

⁷⁴ Published in *La Gaceta*, Diario Oficial No. 137, of 23 July 1998.

Office of the Public Guardian (an organ of the Judiciary), the Office of the Procurator for the Protection of Human Rights, the National Prisons System, the National Police, and the Office for Peaceful Settlement of Disputes.

397. In 2006 there was a total of 73 senior judges, 16 in the Supreme Court and 57 in the appeals courts. There were 319 judges assigned to specific lower courts: 134 to district courts and 185 to local courts.

398. Attention must be drawn to the role of women in the justice system. Nicaragua has a very large number of women appointees, for most of the posts of judge, prosecutor and defence counsel are filled by women, as shown in the following table.

Court personnel in Nicaragua, by sex

<i>Post</i>	<i>Judges</i>	<i>Prosecution</i>	<i>Defence</i>	<i>Total</i>	<i>Percentage</i>
Men	128	76	45	249	40
Women	191	148	33	372	60
Total	319	224*	78	621	100

Source: Supreme Court of Justice, 2006.

* Figure for 2005.

399. The breakdown of the number of senior judges shows a clear predominance of men over women, whereas the majority of judges assigned to particular courts are women. For example, only four of the 16 Supreme Court judges are women. The four divisions of the Supreme Court (Civil, Criminal, Constitutional, and Administrative Litigation) are presided over by men.

400. Eight of the nine presidents of the appeals courts are men, with only one woman. Of the other judges of the same rank, 29 are men and 19 women. In total, 37 (64.91 per cent) of the 57 appeal-court judges are men and only 20 women (35.09 per cent).

401. The distribution shows considerable variation in the case of district and local judges, but the majority are women: 63 per cent of the total of 134 district judges are women and 37 per cent men.

402. Most of the local judges are also women, but not to the same extent as for the district courts: 57 per cent are women and 43 per cent men.

A. Establishment of courts

403. According to article 164 of the Constitution, responsibility for organizing and directing the administration of justice rests with the Supreme Court of Justice: it considers and rules on ordinary and special administrative appeals against decisions of lower courts and applications of *amparo* and unconstitutionality, and it appoints the judges of the appeals courts and judges of lower rank (district and local judges).

404. The appeals courts have five senior judges, appointed for a term of five years with the possibility of extension for a further five years. The courts of the criminal division hear appeals against rulings of district judges on serious offences (CCP, art. 21).

405. The judicial structure has an appeals court for each of the country's court jurisdictions. Each of these appeals courts is divided into at least two divisions for hearing civil, labour and criminal cases.

406. The district courts are classified, according to the type of case heard, as civil, family, criminal or labour courts or as any other special court established by law. They are courts of first instance and, depending on the nature and volume of cases, they may also act as courts of appeal against decisions of local courts in the same geographical jurisdiction.

407. The justice administered in the local courts is basic justice, or the first rung in the structure of the Judiciary, and local courts are found in every one of the country's municipalities, with their seat in the chief town. They are single-judge courts. Depending on their jurisdictional competence, they classified as combined, civil, family, criminal or labour courts or as any other special court established by law. Nicaragua has a total of 185 local judges.⁷⁵

408. There are three categories of criminal court: high courts, trial courts, and sentence-enforcement courts. Local courts may be trial courts, for they are competent to hear cases of criminal misdemeanour and the less serious crimes; the district courts are competent to hear the more serious crimes. The sentence-enforcement courts monitor the functioning of the prisons system and compliance with the constitutional purposes of the sentences handed down by the courts.

409. The law also provides for juvenile courts and jury courts; a special juvenile court was established in Managua in 1998. There are currently three sentence-enforcement courts in Managua.

B. Code of Criminal Procedure

410. The Code of Criminal Instruction in force since 1879 constituted a flagrant violation of human rights and the Constitution of the Republic, for its rules undermined the exercise of the human rights recognized by the Constitution as inalienable.

411. Accordingly, on 14 February 2001 the Judges of the Supreme Court of Justice submitted to the National Assembly a bill entitled "Code of Criminal Procedure". The Judiciary Committee then spent some seven months discussing this text article by article and made more than 350 changes. The bill was then passed back to the plenary Assembly, which also made a number of changes, to both substance and form, before adopting on 13 November 2001 the Criminal Code of the Republic of Nicaragua (as Act No. 406).⁷⁶

412. The shift from the inquisitorial to the accusatory system caused a revolution in the legislation on criminal procedure, for both internal and external reasons, for the new Code constituted a response to the needs stated earlier.

413. The Code's chief sections address the principle of oral hearings, the participation of the victim of the offence and the establishment of his status of specific accuser, the prompt restoration of or compensation for damages and injuries inflicted on the victim, civic participation

⁷⁵ Data provided by the Supreme Court of Justice.

⁷⁶ Published in *La Gaceta*, Diario Oficial Nos. 243 and 244, of 21 and 24 December 2001.

through the introduction of jury trials in oral proceedings, the responsibilities of the National Police and the Public Prosecutor, application of the principle of prompt action by the Public Prosecutor in bringing criminal actions, and absolute respect for the fundamental human rights of the accused.

414. The adoption of the accusatorial system meant the incorporation of fundamental guarantees to improve the dispensation of justice in Nicaragua; the aims are to ensure the impartiality of the courts, with the victim represented by the Office of the Public Prosecutor in the shape of its court prosecutors and with full provision of direct and real defence during the trial, as well as to ensure speedy criminal proceedings. The introduction of the new Code has brought about a sharp decrease in the law's delays.

415. The legislation approved by the legislature provides that the charges shall be formulated and sustained by the Public Prosecutor, but the injured party, if he so wishes, may bring charges in his own name and represent himself (CCP, art. 51).

416. On the entry into force of the new Code, the following propositions came into effect for its application and invocation before the courts of justice:

“Article 1. Principle of legality. No one shall be condemned to a sentence or subjected to a precautionary measure except by a final decision handed down by a competent court in a trial conducted in accordance with the rights and guarantees embodied in the Constitution, the provisions of this Code and the international treaties, conventions and agreements signed and ratified by the Republic.

Article 2. Presumption of innocence. Any person charged with an offence shall be deemed innocent and shall be treated as innocent until his guilt is declared in a final sentence handed down in accordance with the law.

Pending such declaration, no public official or employee may represent a person as guilty or provide any information as to guilt or innocence.

In cases when the accused fails to appear or is sentenced in his absence, the publication of information essential to his apprehension by judicial order shall be allowed.

When there is a reasonable doubt as to the guilt of the accused, the court shall issue a not-guilty verdict or finding.

Article 3. Respect for human dignity. In criminal proceedings all persons shall be treated with due respect for the dignity inherent in the human being, and the rights deriving therefrom shall be protected under conditions of equality.

Article 4. Right to defence. Every accused person or defendant has the right to material and technical defence. To this end the State, through the Office of the Public Guardian, shall furnish the legal assistance of a defence counsel to persons who are unable to afford to pay for their own defence counsel.

If the accused does not appoint a defence counsel, one shall be appointed on his behalf, in accordance with the procedure established in the Judiciary Act. The same

procedure shall be followed in the event of dereliction of duty or the removal, death, resignation or excuse of a defence counsel.

Any authority acting in a case must ensure that the defendant is informed immediately of the essential rights accorded to defendants by the judicial order.

[...]

Article 8. Principle of free justice and prompt process. Justice is free in Nicaragua. The courts and the Office of the Public Prosecutor shall take actions to ensure the prompt, transparent and effective dispensation of justice.

All persons standing trial in criminal proceedings shall be entitled to have the case resolved within a reasonable time, without impairment of their constitutional guarantees by pointless formalities.

Article 9. Intervention of the victim. Pursuant to the Constitution of the Republic, the victim of the offence has the right to appear as a party in criminal proceedings from the outset and at all levels; this right is limited only by the rights of others, considerations of common security, and the just requirements of the common good.

[...]

Article 11. Established courts. No one shall be tried by courts other than the courts designated prior to the commission of the offence for which he is being tried. Accordingly, no one may be denied trial by the competent court established by law or brought before a special court. Special courts are prohibited.”

417. The foregoing provisions ensure access to prompt and free justice and consolidate on a basis of equality the right of victims to justice, particularly by rendering less formal the conduct of criminal proceedings in cases of domestic violence, when the victims are women and children. The State of Nicaragua has thus put into practice the necessary legal reforms to sustain equality of rights and opportunities in the realization of the human rights of all persons in their dealings with the administrators of justice.

C. Office of the Public Prosecutor

418. The Office of the Public Prosecutor, formerly part of the Office of the Procurator-General of Justice, was created by the adoption on 2 May 2000 of the Office of the Public Prosecutor (Establishment) Act (Act No. 346),⁷⁷ as an independent entity with organizational, operational and administrative autonomy. The Office has specialist units for performance of its prosecution function and works hand in hand with the National Police.

419. Under the new legislation the Office became the entity directly responsible for bringing criminal actions on behalf of the public, establishing the facts of the case, investigating crimes, and laying charges before the courts. It acquired its new powers and status under the programme of reform of the workings of criminal justice, which became a reality with the entry into force of the new Code of Criminal Procedure.

⁷⁷ Published in *la Gaceta*, Diario Oficial No.196, of 17 October 2000.

420. The Office is organized as a number of specialist units. The prosecutors perform their duties in the name and as representatives of the Prosecutor-General, who is this institution's senior official. It also operates a career system for its professional staff, in accordance with article 9 of Act No. 346.

421. The Office's functions are to carry out, on its own initiative or on the application of a party, the investigation and prosecution of offences for which a public action lies, transmit complaints received to the National Police for investigation, consider the findings of the National Police, and determine on its own responsibility whether to institute criminal and civil actions in the cases specified by law.

422. In addition to a Prosecutor-General, the Office has a Deputy Prosecutor-General, an Inspector-General, prosecutors in the country's departments and the Autonomous Regions of the Atlantic coast, and assistant and special prosecutors.

423. The Deputy Prosecutor-General is directly subordinate to the Prosecutor-General and acts for him during absences and during temporary or definitive incapacity pending the appointment of a replacement, as well as in the event of excuse or challenge. The Deputy Prosecutor-General is responsible for coordinating the Training and Planning Unit.

424. The Office also has a Inspectorate-General, the body responsible for inspecting the sub-offices in order to check on their operations and the services provided by their personnel. The Inspector-General reports directly to the Prosecutor-General and is responsible for conducting the necessary investigation of complaints submitted by authorities or individuals concerning perversion of their duties and powers by prosecutors during criminal proceedings.

425. The Office's managerial structure is completed by its Administrative and Financial Unit. It also has a Training and Planning Unit. In places where required, there should also be an Evidence and Related Materials Unit, responsible for the safekeeping, preservation and disposition of such materials for the purposes of investigations and criminal proceedings.

426. In 2004 the Office had 131 prosecutors for the whole country; the figure is currently 220. Their chief function is to protect the rights of the victims of offences and they direct their activities to that end, from the first step in a case, which is when the victim comes forward to report the offence.

427. The Office is responsible for prosecuting offences, and its constituent Act stipulates penalties for failure to perform this duty diligently and effectively; it is in fact fundamental for the Office's personnel to perform diligently and effectively. The fact that the Office enjoys operational and administrative autonomy means that the victims feel themselves to be supported by society as represented by the Office, which must have a presence throughout the national territory.

428. Although the Office must have staff present 24 hours a day in the Women and children Units in all the country's police stations in order to furnish proper and above all humanitarian services for victims, in some cases the sub-offices are open only during working hours (8 a.m. to 5 p.m.).

D. Office of the Attorney-General of the Republic

429. The Office of the Attorney-General of the Republic (Establishment) Act (Act No. 411)⁷⁸ was adopted on 4 December 2001; it provides that this Office shall represent the Executive in judicial matters.

430. The Office's function is to act as the legal representative of the State in public and private legal proceedings. It is also required to furnish legal advice, when so requested, to other public institutions and to conduct studies and research commissioned by the Judiciary.

431. The Office is responsible for the legal representation of the judicial interests of the State. It has other more technical responsibilities. Its senior official is the Attorney-General of the Republic, who has the rank of Minister of State and is appointed by the President of the Republic.

432. The Attorney-General's functions include the following:

- (a) He is the titular head of the legal representation of the State;
- (b) He certifies legal opinions which are binding on the State; and
- (c) He appoints and dismisses the Office's officials and other employees;

433. The Office also has a Deputy Attorney-General, a Law Office of the State (*Notaría del Estado*), and assistant and special attorneys, as well as an administrative-support apparatus.

434. The Deputy Attorney-General takes over in the event of the Attorney-General's temporary absence or a legal impediment to his acting. The Law Office of the State is staffed by State lawyers appointed by the Attorney-General, who are responsible for issuing public documents concerning transactions or contracts to which the State is a party or in which it has an interest. It uses for this purpose the Protocol of the State. Special prosecutors are appointed for specific cases and have the same powers as staff prosecutors. The Office is supported by an Executive Secretariat, an Inspectorate-General, a Planning and Training Division, an Administrative and Financial Division, etc.

E. Office of the Public Guardian

435. According to article 95.3 of the Code of Criminal Procedure an accused person has the right "to be advised by a defence counsel [...] appointed by himself or his relatives or, if he wishes, by a public defence counsel or a counsel appointed by the court."

436. Accused persons also have the right to communicate with a lawyer to report their arrest (art. 103). Most accused persons and defendants cannot afford to pay for the services of a private lawyer.

437. The Office of the Public Guardian was established in January 1999 on the entry into force of the Judiciary Act as the entity responsible for furnishing free legal assistance to persons involved in judicial proceedings who cannot afford their own lawyer. It is an organ of the

⁷⁸ Published in *La Gaceta*, Diario Oficial No. 24, of 24 December 2001.

Judiciary. According to its constituent Act, its services cover the criminal, civil, commercial and labour branches of the law.

438. The Office was designed to facilitate the establishment of a social democratic State based on the rule of law and consequently entailing the equality of all persons, due process and the right to defence; it furnishes free legal services to persons who are unable to pay for the services of a legal professional.

439. Pursuant to article 212 of the Judiciary Act, the Office must provide a public defence counsel when so requested, either verbally or in writing, for poor persons or persons of previously verified limited resources who are facing legal proceedings but cannot afford a private law professional, and to provide a lawyer for persons applying for maintenance or appearing as plaintiffs in civil, commercial, labour, family or agrarian cases.

440. A report issued by the Director of the Office of the Public Guardian in November 2001 states that at that date the Office was providing its services only in the capital, Managua, in criminal matters and specifically in ordinary criminal cases (trying offences carrying a sentence of over three years), in juvenile criminal cases, and in the enforcement of sentences.

441. The same report states that the Office's first year of operations (1999) concluded with 33 per cent of cases completed. That figure rose to 52 per cent in 2000 but had fallen back to 43 per cent by the end of 2001.

442. The report explains that this increase in the number of cases which it could not handle was due to a rise of 262 per cent in the number of cases submitted to the Juvenile Unit in 2000. In 58 per cent of the total of 2,465 cases completed at the date of the report the verdict was in favour of the defence.

443. In November 2001 the Office had a total of 13 public defence counsel handling cases at eight district criminal courts and one juvenile court. In the Municipality of Managua, with a population of one million, there was one defence counsel for every 76,923 inhabitants.

444. Up to December 2004 the service was provided exclusively in criminal cases in district criminal courts, because these courts try the most serious cases carrying sentences of over three years' ordinary imprisonment, and in any event the Office could not deal with more cases at that time for lack of personnel (49 counsel).

445. In January 2005 the Office's strength was increased by the addition of 26 new defence counsel, enabling it to expand its coverage to some of the country's local courts, especially in remoter municipalities or municipalities where there are no law professionals, and to apply the principle of equality of opportunity, chiefly by means of prior mediation.

446. The Office has an integrated technical team and is represented in 45 of the country's 153 municipalities. In some departments lacking a public guardianship service, the judge in the case appoints a defence counsel from among the lawyers practising locally. Unfortunately, some lawyers reject such appointments and prefer to accept the consequent fines and other sanctions. Some law faculties, such as in the University of Central America, and some bar associations offer free legal advice and defence services for the poor.

447. In order to refine the provision of criminal defence services, the Office set up at its headquarters in Managua an Adult Criminal Unit to deal with requests from the two special district courts and a Sentence Enforcement Unit to deal with cases in any of the three sentence-enforcement courts.

448. The other offices up and down the country do not specialize in this way, and their lawyers attend to all kinds of criminal case. If the person assisted is found to have concealed his true economic capacity, the public defence counsel is immediately withdrawn, and the Office proceeds to collect the fees due in accordance with the Code of Judicial Fees.

449. The services of defence counsel have generally been provided exclusively in criminal cases, with some exceptions, as in the case of the pilot project to facilitate access to justice for poor persons in the Department of Masaya. This project was started in July 2003 with funding from the Government of Catalonia as a result of approaches made by the Catalan Association of Professionals for Cooperation. The success of this project, originally designed to run for one year, led to its extension to three years.

450. The project's purpose is to lay the foundations for a service model according to which civil society cooperates with the State to provide legal services for the poor, with an eye to enabling the experiment to be replicated by other countries of Central America, for this was the first project of its kind to be carried out in the region.

451. It also facilitates access to justice for the protection of the rights of the people of Masaya by extending the services of public defence counsel to other areas of the law in addition to criminal cases: civil, labour, agrarian, commercial and administrative. In the period July 2004 to 30 June 2005 the project assisted 3,456 persons..

452. The project gave birth to another project, on training, extension and impact-evaluation, which is designed to guarantee the quality of the service by means of personnel training. The outreach component is designed to make people aware of the existence of the service through the holding of workshops for community leaders throughout the country, and the impact-evaluation component seeks to measure the effects on the administration of justice and the protection of the rights of the users.

453. Since 1 April 2005, under a programme entitled "Improved access to justice for women in family cases", the Office has been expanding its services in civil family cases in the Municipality of Managua.

454. For operational purposes this programme recruited four public defence counsel, who dealt with cases of adoption, maintenance, replacement of birth certificates, acknowledgement of paternity, enforcement of sentences, etc.

F. Office of the Procurator for the Protection of Human Rights

455. The Office of the Procurator for the Protection of Human Rights (PDDH) is an institution functioning as a commission of the National Assembly for the promotion, protection and safekeeping of constitutional guarantees and human rights.

456. It has a Procurator and a Deputy Procurator elected by a vote of at least 60 per cent of the members of the National Assembly, who enjoy immunity, for a term of five years.

457. The task of promoting and protecting human rights means supervising the public administration to ensure that these rights are not infringed by acts or omissions of State agencies. For operational purpose the Office is governed by the Office of the Procurator for the Protection of Human Rights (Establishment) Act of 1996 (Act No. 212), as amended by Act No. 471 of 3 October 2003.

G. Creation of new courts

458. Pursuant to its commitment to improve the access of the most vulnerable groups to justice and provide a better service for the people, especially users who go to court to resolve family cases (abuse, divorces, applications for maintenance, parental authority, etc.) the Supreme Court's National Council on Judicial Administration and the Legal Profession decided to create family courts to deal expeditiously with such matters.

459. Owing to budgetary constraints it has been possible to set up only two family courts, in Managua; they opened in April 2006. The aim is gradually to create, within two years at the outside, at least one family court in each of the country's jurisdictions.

460. The Judiciary sees these courts as a response to the need to provide access to good-quality justice and resolve cases with specialist attention and more expeditiously.

461. In 2005 the Managua courts alone heard a total of 30,800 cases, including 10,500 family cases; the establishment of the family courts has thus helped to reduce the congestion in other courts and improve the services to users.

462. The judicial system also has in Managua an Office for the Reception and Distribution of Cases and Documents, which is responsible for receiving and assigning new cases among the courts of first instance and the criminal, labour and juvenile courts and distributing documents on proceedings under way; and it provides the public with information about the location of hearings. It is also responsible for preparing periodic reports on the allocation of cases to the sentence-enforcement courts and keeping records of the admission of cases for internal use and for the general public.

463. The Office collaborates with the SPN on matters connected with the serving of sentences and prepares statistical reports on the cases in question. When a prisoner is close to completing his or her sentence the SPN seeks assistance, sending a list of the names for review and/or indication of the allocation of a sentence-enforcement court (in addition to the monthly reports sent to the Office).

H. District courts for juvenile offenders

464. The State of Nicaragua is a party to the United Nations Convention on the Rights of the Child, which was signed by Nicaragua on 20 November 1989, approved on 19 April 1990 and ratified in October 1990.⁷⁹

465. On 24 March 1998 the National Assembly approved the Children and Adolescents Code (CNA),⁸⁰ which is based on the Convention on the Rights of the Child. Article 113 of this Code

⁷⁹ Decree No. 324, adopted on 18 April 1990 and published in *La Gaceta*, Diario Oficial No. 189, of 20 September 1990.

instructs “the Supreme Court of Justice, within a time limit of 18 months from the publication of the present Act, to establish [the juvenile] courts.”

466. Although it had not received the budget allocated by the National Assembly, in order to make a start the Judiciary took steps to open at least the first juvenile court in Managua, in November 1998.

467. The country now has a total of 14 district courts for juvenile offenders, in Bluefields, Boaco, Jinotega, Masaya, Jinotepe, Matagalpa, Chinandega, Juigalpa, Rivas, Estelí, León, Puerto Cabezas, Granada and Managua. The departments have one juvenile court each, and Managua two.

468. These courts are competent to hear in first instance cases in which juveniles are charged with committing or participating in offences or misdemeanours, with a view to resolving all the cases within the time limits fixed in the CNA by issuing rulings and decisions on the type of measure to be imposed to restrict or otherwise affect a fundamental right or freedom of the accused juvenile.

469. Every juvenile court is empowered to order, in the light of considerations of guilt, proportionality and reasonableness, educational measures or measures of deprivation of liberty, to consider the conciliation hearing and approve its outcome when the parties reach an agreement, to allow the suspension of the proceedings provided that the requirements of the CNA are met, to review, approve or amend decisions taken by the Office of the Public Prosecutor in application of the principle of prompt proceedings, to notify the administrative authorities of charges brought against juveniles, to coordinate action with institutions of the Government and of civil society for the application of the correctional measures imposed on juveniles, and to perform the other functions assigned to it under the CNA and other legislation.

Services offered by criminal courts for juvenile offenders

470. The juvenile courts take over proceedings or cases transmitted by the Office of the Public Prosecutor, as an ordinary procedure, the National Police and the appeals courts. They are also responsible for placing convicted juveniles in education or training programmes providing community services, in coordination with the local mayor's office and with the support of the Development Programmes Foundation (FUNPRODE), which is represented in Masaya, Granada, León, Carazo and Managua.

471. Every juvenile court has a specialist interdisciplinary team consisting of a psychologist and a social worker, who are responsible for carrying out bio-social studies both of the young person concerned and of his or her family. As the case requires, they provide specialist care for the victims and other parties injured by the offence.

472. Every court also has a unit responsible for enforcing and monitoring the sentences imposed on juveniles. It monitors the judicial measures ordered and places the juveniles concerned in education and personal training programmes. It is important to involve family members in any rehabilitation programme and, above all, to take care not to harm the rights either of the juvenile or of the victim or other injured parties.

⁸⁰ Act No. 287, published in *La Gaceta*, Diario Oficial No. 97, of 27 May 1998.

473. August 2005 saw the re-opening of the Technical Office for Monitoring the Juvenile Justice System, which had originally been set up in October 2001. Owing to budgetary problems it had been forced to close down for almost a year and a half.

474. This Office is responsible for establishing links to furnish technical and professional support to the juvenile courts throughout the country, with a view to organizing the training programmes and implementing the programme of changes and investment required for compliance with the Convention on the Rights of the Child. It also collaborates with civil society organizations and international bodies in the search for ways of dealing with juvenile offenders and securing their reintegration in society.

I. Rural judicial facilitators

475. In 2000 the main features of the country's rural areas, in particular the ones located in the central, northern and Atlantic regions, reflected a high degree of isolation, insecurity, scant institutional presence of the State, widespread violence, impunity, and a constant threat of social and political instability caused largely by extreme poverty.

476. There are serious constraints on the administration of justice, associated with the absence of arrangements for dispute-settlement and crime prevention and reduction and the people's limited access to justice.

477. The Judiciary needed a working agenda with specific priorities, including the continuation of the efforts to consolidate the justice system on the basis of democracy and civic participation, especially in the process of modernizing the system and improving access to it.

478. March 2003 saw the introduction of the Access to Justice Programme, also known as the Rural Judicial Facilitators Programme, following the signature of a cooperation agreement between the Organization of American States and the Supreme Court of Justice.

479. The post of rural judicial facilitator (FJR) was established by the Code of Criminal Procedure (Act No. 406) and the amendments to the Judiciary Act (Act No. 260), and the legal basis will be found in Chapter VI of the Regulations on Facilitators, which states that pursuant to article 57 of the Code of Criminal Procedure "the Supreme Court of Justice is empowered to organize the activities of justice facilitators in rural areas and that pursuant to article 423 of the Code, amending article 169 of the Judiciary Act (Act No. 260), [...] the justice facilitators constitute auxiliary personnel in the service of the administration of justice."

480. Before starting work an FJR must have been officially appointed in a legal document issued by the local court of the municipality where he or she lives; as auxiliary workers in the service of the administration of justice the FJR's are required to furnish advice to members of the local community on judicial and administrative matters and improve the legal knowledge acquired in the training provided in their communities by the Supreme Court and other bodies.

481. They are also responsible for conducting extrajudicial mediation in the cases permitted by law, monitoring the outcome of such mediation, maintaining links and smooth communications with the local officials of the justice system, and supporting the court in carrying out activities and executing measures in performance of the function of administering justice in an effort to improve access to justice, as well as providing prior mediation services in accordance with Article 57 of the Code.

482. The network now has 627 FRJs, 127 (20 per cent) of them women. They are present in 68 of the country's municipalities, especially in areas where poverty or extreme poverty are common; this means that 45 per cent of all municipalities are covered.

483. The FRJs mediate in cases concerning land ownership, the environment and juvenile offences and they support democratization and the sectoral reforms. They have developed a strategy of equal status in the relations between men and women and they do valuable work for victims by breaking the circle of fear and by lodging complaints, chiefly concerning offences against women.

484. The links of the FRJs with local courts and municipal authorities and their contribution to a culture of peaceful settlement of disputes offer useful models for the plans to extend this experiment to other municipalities. Forty-one of the mayors (60 per cent of the total number) of the places where the FRJ programme is operating are firm in their support, despite their low levels of funding and revenue.

485. It is important to stress that the FRJs support and strengthen the application of customary law through the work of the *Wihta* in the Autonomous Regions of Atlántico Norte and Atlántico Sur, especially among the Miskita and Mayagna ethnic groups.

J. Civic Participation Act

486. On 22 October 2003 the National Assembly adopted the Civic Participation Act (Act No. 475),⁸¹ which establishes the arrangements for political participation by Nicaraguans in the various areas of public life.

487. This Act recognizes the right of Nicaraguans to bring forward legal initiatives and the requirement of civic consultation on all laws; it regulates civic participation in the formulation, application and evaluation of public policies and national, regional and municipal plans and programmes, stipulates the obligation of officials to furnish information, an obligation reinforced by the Information Act, and creates a procedure for submitting petitions and complaints of irregularities on the part of public employees; and, as a true innovation, it provides for the promotion and protection of human rights and procedures for exercise of the civic participation established in the Office of the Procurator for the Protection of Human Rights (Establishment) Act (Act No. 212).

K. Legal profession

488. According to World Bank figures, on 30 October 2001 Nicaragua had a total of 7,559 registered lawyers (including notaries public) - a ratio of 143 lawyers for every 100,000 inhabitants. The same source reports that on that date there were 12 academic institutions teaching law.

489. Nicaragua still lacks a national bar association. But its lawyers have formed a number of bodies, such as the Association of Lawyers, the Association of Democratic Lawyers, and the Association of Women Lawyers.

⁸¹ Published in *La Gaceta*, Diario Oficial No. 241, of 19 December 2003.

490. Pursuant to article 164.8 of the Constitution, the disciplinary supervision of the legal profession is in the hands of the Supreme Court of Justice. In 2003 the Court sanctioned 23 lawyers for professional irregularities.

L. Law School

491. The Law School is the lead body for legal training in Nicaragua and is committed to change and to enhancement of qualifications in the legal profession and the administration of justice to ensure that judicial personnel perform their duties ethically, transparently, efficiently and fairly and thus contribute to the consolidation of the Judiciary and a State based on the rule of law.

492. The Law School is responsible for the legal and technical training of judicial personnel aspiring to membership of the legal profession and personnel employed in the administration of justice by means of initial, on-the-job and specialized training measures designed to enable such personnel to perform their duties to a high standard and efficiently and fairly as a means of contributing to the improvement of the services and the prestige of the judicial system.

M. Military courts

493. With regard to the exclusively military jurisdiction, the Military Criminal Code was adopted on 22 November 2005 as Act No. 566.⁸² Article 1 of this Code states: “No one shall be convicted of an offence which is not expressly established as punishable by the military legislation in force at the time of its commission or subjected to a penalty or security measure which is not established in such legislation. Nor shall a penalty or security measure be applied under conditions other than those prescribed in the present Code.”

494. The Code provides sanctions for military officers who abuse their rank. Title III states that a sentence of light imprisonment for one day to three months shall be imposed and that the military offence of abuse of rank shall include “offering insults to subordinates, provided that such an act does not constitute a more serious offence, and ordering or carrying out punishments not provided for in the regulations” (art. 225).

495. Any member of the military who is charged with commission of a military offence or misdemeanour must be treated with respect for the dignity inherent in the human being and in accordance with his rank and duties. Furthermore, the Code prohibits the imposition of penalties or security measures involving torture, inhuman, cruel, shaming or degrading procedures or treatment: all punishments must be carried out with respect for the dignity of the human being and fundamental human rights.

496. With a view to protecting prisoners of war article 215 of the Code specifies the acts regarded as criminal offences when committed against prisoners of war. This article also states that a member of the military who deliberately causes the death of a prisoner of war or inflicts bodily injury on him, or who inflicts torture or inhuman treatment on or rapes a prisoner of war, or carries out unjustified medical or scientific experiments which are not for the prisoner’s benefit and do not have his consent, or deliberately causes severe suffering to a prisoner of war shall receive a mandatory sentence of 10 to 20 years’ ordinary imprisonment; if the acts in question merely pose a serious threat to the prisoner’s physical integrity or health, the next less severe

⁸² Published in *La Gaceta*, Diario Oficial No. 4, of 5 January 2006.

sentence shall be imposed. The same sentence shall be imposed if one of the offences mentioned above is committed against wounded, sick or shipwrecked prisoners or against civilians.

497. Other offences against prisoners of war are also addressed, article 216 of the Code stipulating sentences of two to eight years' ordinary imprisonment. These offences include failure to provide adequate food or necessary medical care and denial of a prisoner's right to an impartial trial.

498. The second paragraph of article 93 of the Constitution states: "Strictly military crimes and offences committed by members of the Army shall be tried by the military courts." Military trials are regulated by the provisions of the Code of Military Organization, Jurisdiction and Social Security (Act No. 181),⁸³ by the Military Courts Act (Act No. 523)⁸⁴ and by the Code of Military Procedure.

499. Military judges and courts enjoy independence in the performance of their functions and their decisions must be consistent with the Constitution and the law (Act No. 523, art. 6).

500. All members of the military tried by a military court are guaranteed due process and protection of the guarantees and application of the principles established in the Constitution and other laws of the Republic, as described in the section of this report on article 14 of the Covenant.

501. In Nicaragua's legal system criminal charges are brought before the ordinary criminal courts (criminal jurisdiction) and actions of civil law and civil obligations are brought before the civil courts (civil jurisdiction); it may therefore be affirmed that there are separate jurisdictions for civil, criminal and military cases.

502. Civil actions may be brought against members of the military before the civil courts. Members of the military may also be charged before the criminal courts with the commission of ordinary crimes, such as murder, bodily harm, theft, etc. However, they may be tried for strictly military offences only by the military courts.

503. If a member of the military is found guilty, he must serve his sentence, if it less than three years, in the Military Prison Unit, known as "La Granja", which is administered by the Office of the Adjutant-General. If the sentence is longer than three years, it must be served in the SPN, where military convicts are housed separately from ordinary convicts.

504. The conditions in the La Granja facilities are those of a prison system, and prisoners enjoy the benefits prescribed by law, except that the guards are soldiers and military discipline is maintained.

ARTICLE 15 (Principles of legality, non-retroactivity, and most favourable legislation)

505. Article 32 of the Constitution states: "No one shall be obliged to do what the law does not prescribe or prevented from doing what the law does not prohibit."

⁸³ Adopted on 23 August 1994 and published in *La Gaceta*, Diario Oficial No. 165, of 2 September 1994.

⁸⁴ Adopted on 17 February 2005 and published in *La Gaceta*, Diario Oficial No. 65, of 5 April 2005.

506. Article 37 provides that sentences “shall apply only to the convicted person” and that “no penalty or penalties shall be imposed which, separately or jointly, total more than 30 years.” Since Nicaragua has abolished the death penalty, the maximum penalty provided for in the Criminal Code is rigorous imprisonment for a term of three to 30 years (art. 56). The Constitution also provides that “the law shall not be applied retroactively, except in criminal cases when such application favours the convicted person” (art. 38).

507. Where the principle of legality is concerned, Decision No. 207 of the Supreme Court of Justice states clearly that the principle of legality (*nullum crimen, nulla pena sine previa lege* - there shall be no crime or penalty without a prior law) is established in the International Covenant on Civil and Political Rights of the United Nations, and in the American Declaration of the Rights and Duties of Man of the Organization of American States in the same form as it is established in the Statute on the Rights and Guarantees of Nicaraguans.⁸⁵

ARTICLE 16 (Right to recognition of legal existence and capacity)

508. The third paragraph of article 25 of the Constitution states that everyone has the right “to recognition of legal existence and capacity.”

509. The Civil Code (in force since 1904) regulates matters connected with the existence of persons, either natural or juridical. It states at the outset that “any human being who is capable of exercising rights and contracting obligations is a person” (art. 1).

510. With regard to natural persons, article 5 states that “the legal existence of all persons begins at birth”; this means that they are persons “capable of acquiring rights and contracting obligations. They are allowed to perform all acts and are accorded all rights which they are not expressly prohibited from performing or acquiring, regardless of their political capacity” (art. 6).

511. Persons yet to be born, immature persons, lunatics and deaf mutes who cannot make themselves understood in writing and have some degree of disability, and minors have absolute incapacity; however all such persons may acquire rights and contract obligations through a representative (art. 10).

512. A person’s natural existence begins “at conception in the mother’s womb” and before birth a person “must be protected in respect of the rights which he or she may acquire by virtue of legal existence. These rights are acquired irrevocably if the person conceived in the mother’s womb is born alive” (art. 19).

513. Chapter XIII of the Civil Code addresses the question of juridical persons, stating first of all that “no association or corporation shall have juridical personality unless it has been created or authorized by law” (art. 76).⁸⁶

514. All associations and corporations which enjoy juridical personality may exercise all the civil rights relating to the legitimate interests of the entity in question. Associations and corporations which do not exist legally as juridical persons shall be deemed simple civil or

⁸⁵ Point XIII of Judicial Decision No. 207, issued at 10.45 a.m. on 28 June 2005.

⁸⁶ *Boletín Judicial*, 4373-17869-18265, point I.

commercial entities depending on their purposes. If an association or corporation obtains legal certification subsequent to its foundation, it shall exist legally as a juridical person from the time when its foundation is verified (art. 79).

515. The Civil Code provides that corporations shall be represented by the persons on whom the relevant laws, ordinances or statutes or, failing that, an agreement of the corporation confer the status of representative.

516. Special agents may also be appointed by agreement, which must be certified by a notary public duly authorized by the Supreme Court of Justice.

517. An absolute majority of the members of an association or corporation, in the absence of its legitimate representative, is deemed to be the whole association or corporation for the purposes of its representation or the appointment of a person to represent it.⁸⁷ If a quorum of the Board cannot be found and there is an urgent matter to be considered, the appeals court in the place where the association has its registered office appoints, at the request of any person having an interest, the members needed to make up the quorum during the absence or vacancy.

518. All associations must have statutes establishing special representatives for certain matters or authorizing its legal representatives to appoint such special representatives. The special power of representation extends to all the legal acts connected with the matter in question (art. 82).

519. No decision of a general meeting of the members may impair the personal rights of one of them without his or her consent. An association loses its legal capacity on the opening of bankruptcy proceedings or convening of a meeting of creditors. In the event of insolvency the Board initiates such moves and, if there are unpaid debts, the Board members who are in debt are responsible to the creditors for any resulting harm and are regarded as joint debtors. (art. 85). The dissolution of the association or corporation or the suspension of its legal capacity shall be announced publicly by the liquidators.

520. Establishments, corporations and other juridical persons generally enjoy the same rights as private individuals in respect of the acquisition of property, taking and maintaining possession of property, establishing rights, receiving usufructs, legacies, bequests and donations, and bringing any necessary civil or criminal actions, except where the Constitution provides otherwise.

521. Chapter XIV of the Civil Code regulates matters connected with the purpose of juridical persons; it states in this regard: "A corporations may not be dissolved of its own accord without the consent of the authority which legitimized its existence. But it may be dissolved by law, against its members wishes, if it compromises the security or interests of the State or is not pursuing the purpose for which it was constituted" (art. 88).

522. If a corporation's statutes do not address the question of how to make up its membership numbers or dissolve it if, owing to death or other unforeseen event, the number of members falls below the level required for fulfilment of the purposes for which the corporation was constituted, or if all its purposes are lost, the authority which legitimized its existence determines the way in which the number of members is to be made up or the corporation renewed or finally declared dissolved.

⁸⁷ *Boletín Judicial*, 4944.

523. An association or corporation may also be terminated by the loss of the property which supports it. Once it has been dissolved or terminated, its property and other assets are disposed of in accordance with the provisions of its statutes; if the statutes are silent on this matter, the property and assets are deemed to belong to the State and are assigned by the Legislature to purposes similar to the purposes for which it was constituted, if possible; otherwise, to purposes determined by the Legislature (arts. 90 and 91).

**ARTICLE 17 (Right to privacy, protection of private
correspondence, inviolability of the home,
and protection of honour and reputation)**

524. The Constitution states: “Everyone has the right to privacy of the person and the family, inviolability of the home, correspondence and communications of every kind, and respect for honour and reputation, and to be informed of all information held on him or her by the State authorities and of the reasons why such information is being held” (art. 26, first to fourth paragraphs).

525. In Nicaragua the importance of the family is recognized by law; Chapter IV of the Constitution addresses the family, and article 70 states expressly that the family is “the fundamental nucleus of society and is entitled to protection by society and the State.”

526. Article 71 goes on to state that it is “the right of Nicaraguans to establish a family. A family’s assets shall not be subject to distraint and shall be exempt from all public charges. The law shall regulate and protect these rights.”

527. Article 25 of the Civil Code provides that a person’s home (*domicilio*) is “the place where he has his habitual residence.” But in subsequent articles the Code goes on to indicate specific places. For example: “Public employees have their home in the place where they perform their duties” (art. 29); “Members of the military on active service have their home in the place to which they are seconded” (art. 30); “Domestic servants of the age of majority have their home in the home of their employer” (art. 31); convicts serving sentences have their home in the place of detention” (art. 32); “Persons serving in the Navy of the Republic have their home in the place in Nicaragua in which they find themselves” (art. 35); and “Persons serving in the Merchant Marine of the Republic shall be deemed to have their home in their vessel’s place of registration” (art. 36).

528. Articles 238 to 250 of Title III of the Criminal Code address offences against personal liberty, including the violation of secrets, violation of the home, house searches, and desecration of graves and corpses. In some cases the criminal authorities may order telephone taps and house searches.

529. The Code of Criminal Procedure provides in this connection that, for the purposes of collection of evidence in criminal proceedings, telephone calls and other forms of electronic communication may be intercepted in cases involving terrorism, ransom, trafficking in organs, trafficking in persons for purposes of sex or in narcotic and psychotropic drugs and other controlled materials, legitimization of capital or laundering of money and other assets, and trafficking in arms, explosives or stolen vehicles (art. 213, first to sixth paragraphs).

530. Telecommunications may be intercepted only at the express and justified request of the Public Prosecutor of the Republic or the Director-General of the National Police, who must certify that he has assessed the background of the case and that the intervention is justified, as

well as indicating the time for which the measure is sought (which may not be more than 30 days) and the persons who will have access to the communications (art. 213, third and fourth paragraphs).

531. House searches, which may be conducted in a residence and its outbuildings or in offices or other business premises, require a judicial order, which must be requested and issued in the light of due cause and in writing (art. 217, first paragraph). All house searches must be conducted between the hours of 6 a.m. and 6 p.m., and any need for searches at other times must be stated in the judicial order (second paragraph).

532. Other authorities, such as the judicial, civil and labour authorities, are required to conduct investigations stipulated by law in accordance with the provisions of the Code of Civil Procedure and the Labour Code, but may not exceed the powers assigned for the investigation in question and may not, therefore, interfere in a person's private life.

533. Any such interference on the part of a public official must be investigated by the Office of the Procurator for the Protection of Human Rights, the body empowered by Act No. 212 to investigate and order sanctions of a public official's conduct.

534. The Office of the Attorney-General is likewise empowered to investigate and sanction the conduct of public officials, through its Civil Complaints Office. Accordingly, injured parties have to apply to these institutions, even though the Executive Power (Organization, Powers and Procedures) Act (Act No. 290) provides administrative remedies against decisions of the State authorities considered to have infringed civil rights. These remedies must be sought from the authority which ordered the measures in question.

535. The Ministry of the Family is required to comply with article 80 of the Children and Adolescents Code and carry out the necessary investigations; as stipulated in the second paragraph of that article, "it must carry out the necessary investigation without charge in summary verbal adversary proceedings, in compliance with the principles embodied in the Convention on the Rights of the Child, the present Code and the other laws in force." In other words, if the Ministry needs to carry out an investigation which goes beyond its own powers, it must have recourse to the competent authority in order to save a minor from any unlawful interference in his or her private or family life and, most importantly, from any unlawful attack on honour and reputation.

ARTICLE 18 (Freedom of thought, conscience and religion)

536. Nicaragua is a secular State. The freedoms of thought, conscience and religion are duly established in the Constitution, which states that all persons "individually and collectively, have the right to manifest their religious beliefs in private or in public by means of rites and practices and instruction in such beliefs" (art. 69, first paragraph).

537. Since pursuant to article 14 of the Constitution the State "has no official religion", all its citizens enjoy the full exercise of the freedom of conscience; therefore, "no one may evade compliance with the law or prevent other persons from exercising their rights and performing their duties by invoking religious beliefs or rules" (art. 69, para. 2). This provision does not limit the free practice of other religions, provided that such practice is consistent with public morals.

538. The secular nature of the State is a democratic principle applied to ensure that governmental officials act for the benefit of the whole population, regardless of individual religious beliefs.

539. In recent years some 35 per cent of the population have opted for non-Catholic religions, especially evangelicalism, which is itself divided into various churches.

540. This development has not caused any sector of the population to feel itself adversely affected; on the contrary, it has fostered a climate of religious tolerance which promotes respect for human rights.

541. Between 1950 and 1963, 96 per cent of the total population belonged to the Catholic Church and the rest were Protestants, which of course included evangelicals, Moravians and other denominations of that era. It is significant that, according to the censuses conducted by the National Statistics and Census Institute (INEC), the whole population indicated support for some religion or other: 100 per cent declared affiliation to the Catholic or to Protestant or other denominations; the “none” option did not appear.

542. By 1995 the number of Catholics had declined (by 23 percentage points), evangelicals accounted for 15.1 per cent, and 8.5 per cent of the population indicated “no religion”.

543. Ten years later, in the 2005 INEC census, Catholicism had declined by 14 percentage points (from 72.9 per cent in 1995 to 58.5 per cent in 2005), while evangelicals increased their share by about seven points, from 15.1 per cent in 1995 to 21.6 per cent in 2005, Moravians held their ground, and the number of persons declaring no religious belief rose (15.7 per cent).

544. The following table shows the percentage distribution of the various religious denominations in the INEC censuses conducted in 1950, 1963, 1995 and 2005.

<i>Religion</i>	<i>1950 census</i>		<i>1963 census</i>		<i>1995 census</i>		<i>2005 census</i>	
	<i>Population</i>	<i>%</i>	<i>Population</i>	<i>%</i>	<i>Population</i>	<i>%</i>	<i>Population</i>	<i>%</i>
Total	888 113	100	1 256 695	100	3 647 308	100	4 537 200	100
Catholic	852 065	95.8	1 206 253	96	2 658 887	72.9	2 652 985	58.5
Evangelical	-	-	-	-	550 957	15.1	981 795	21.6
Moravian	-	-	-	-	54 827	1.5	73 902	1.6
Protestant*	36 118	4.1	48 300	3.8	-	-	-	-
Jehovah's Witnesses	-	-	-	-	-	-	42 587	0.9
Others	930	0.1	2 142	0.2	73 391	2	74 621	1.6
None	-	-	-	-	309 246	8.5	711 310	15.7

* Protestantism was not investigated by denomination in the 1950 census.

545. The Taxation and Commercial Justice Act (Act No. 257)⁸⁸ was adopted on 15 May 1997; it provided that religions and religious denominations which “have recognized juridical personality are exempt from payment of taxes with respect to their churches and outbuildings and property and objects intended exclusively for the practice of their rites, as well as their assets and income connected exclusively with the pursuit of their own purposes” (art. 2).

⁸⁸ Published in *La Gaceta*, Diario Oficial No. 106, of 6 June 1997.

546. This Act abrogated some of the provisions of Legislative Decree No. 662 (Income Tax Act)⁸⁹ and its amendments and established that “churches and religious denominations which have recognized juridical personality are exempt from the payment of taxes with respect to their income from activities and property intended exclusively for the practice of their rites” (art. 3).

547. These advantages have produced an increase in recent years in the number of registered religious entities. According to figures provided by the Interior Ministry’s Department for Registration and Supervision of Associations, there is currently a total of 872 registered religious entities.⁹⁰

548. Pursuant to article 124 of the Constitution, “education in Nicaragua shall be secular”, and the State, acting through the Ministry of Education, Culture and Sport shall guarantee the freedom of parents or, as appropriate, legal guardians to choose a school which will enable their children to receive a religious and moral education in keeping with the parents’ own beliefs.

549. Since the education system is secular, no school, college or university may impose any kind of religion or religious belief, unless the establishment in question is by its nature of a religious orientation. This stems from the Constitution, which provides that the State shall recognize “the right of private educational establishments of a religious orientation to teach religion as an extracurricular subject” (art. 124).

550. Private schools which teach religion as an extracurricular subject are certified by the Ministry, which has on occasions signed support agreements with private religious schools for maintenance of the pupils, most of whom are from poor families.

551. Article 180 of the Constitution provides that the communities of the Atlantic coast have “the right to live and develop in accordance with the forms of social organization deriving from their historical and cultural traditions”, and the State shall “attend to the preservation of their cultures and their languages, religions and customs.”

552. Accordingly, in Nicaragua there is discrimination against any individual or religious denomination; to the contrary, the State has created a good environment for promoting respect for the freedom of conscience and religion.

ARTICLE 19 (Right to freedom of opinion and expression)

553. The right to freedom of expression is established in article 66 of the Constitution, which states: “Nicaraguans have the right to receive truthful information. This right encompasses the freedom to seek, receive and impart information and ideas, orally, in writing, graphically or by any other means of their choice.”

⁸⁹ Adopted on 25 December 1974.

⁹⁰ This Department was requested to supply data for the period 1987-2006, but it provided instead an updated list dated 5 March 2007 showing a total of 3,990 registered non-profit associations for the whole country.

554. The right to impart information is a social responsibility and is exercised in strict compliance with the principles set out in the Constitution. Furthermore: “This right shall not be subjected to censorship except by virtue of other responsibilities established by law” (art. 67).

555. There are 21 professional associations active in this area:⁹¹ six journalists’ trade unions; 10 communications trade unions; and five broadcasting trade unions; they are all registered with the Department and include the Journalists’ Union of Nicaragua (UPN), the Journalists’ Association of Nicaragua (APN) and the Nicaraguan Association of Parliamentary Journalists (ANPP).

556. The main communication media are concentrated in Managua and mostly cover the Pacific region.

557. Throughout 2006 an access to public information act was awaiting adoption in the National Assembly; this civic initiative had been drafted and submitted by the Violeta Barrios de Chamorro Foundation and the Office for Civic Coordination. It remains under discussion in the approval process in the National Assembly.

558. This act will require public officials to make permanent provision for the public to obtain information about institutional budgets, wages and salaries, annual reports, appointments, tenders and contracts. It also seeks to ensure and regulate access to the public information contained in documents, archives and databases of State institutions, joint enterprises, and to information on State grants and private companies which administer and manage public funds, as well as facilitating the investigation by journalists of the management of State property and assets and civic monitoring and control of public administration.

559. Unfortunately, there have been problems with the security of media professionals. In 2004, for example, two journalists were murdered and, although the material perpetrators are serving prison terms, the persons behind the murders were not identified or, of course, prosecuted.

560. One of the journalists murdered in 2004 was Carlos Guadamuz, who worked in television on Channel 23.⁹² The material perpetrator of the crime is currently serving a term of rigorous imprisonment in Tipitapa prison, while the person or persons who plotted it remain unpunished.

561. The other person murdered that year was the 23-year-old journalist María José Bravo,⁹³ who worked on the newspaper *La Prensa* in Juigalpa, Chontales.

562. Minutes before her murder she had been at a discussion at the Departmental Computer Centre of the local Supreme Electoral Council attended by activists of the Alianza por la República (APR) and the Partido Liberal Constitucionalista (PLC), concerning the number of votes received in the municipal elections in the municipalities of Cuapa and Santo Tomás.

563. When she left the Centre to report on the vote count she was shot at point-blank range by Eugenio Hernández González, former PLC mayor of the municipality of El Ayote. This murder was condemned by civil rights organizations such as CENIDH, and all the journalists’ unions and

⁹¹ Figures supplied by the Department for Registration and Supervision of Associations.

⁹² He was murdered on 10 February 2004.

⁹³ She was murdered on 9 November 2004.

the public added their voices to the clamour for justice. The murderer was sentenced to 25 years' rigorous imprisonment.

A. Journalist murdered in Estelí

564. The journalist Rony Adolfo Olivas Olivas, a correspondent of *La Prensa* and UPN President in the Department of Estelí, was murdered in the small hours of 13 August. The crime took place two days after the UPN National Executive had denounced the increasing use of threats and harassment against journalists in various parts of the country and had called for the appointment of a procurator for freedom of expression.

565. Newspaper reports indicated that the murder had been committed by a taxi driver, Santos Roberto Osegueda Palacios, as a settling of accounts by drugs traffickers, because Olivas had published a number of pieces on the subject.

566. On 25 October, after 21 hours of deliberations, a jury found Santos Osegueda Palacios guilty of the murder in August, by three gunshots, of Adolfo Olivas. A sentence of 25 years' rigorous imprisonment was handed down six days later.

B. "Red top" journalism questioned

567. Under pretext of objective journalism a type of coverage has started to emerge in Nicaragua which infringes the human rights of the subject, mainly in cases of the domestic and sexual violence to which children are sometimes subjected; as a result, journalism has come to be regarded as somewhat sensationalist and purely commercial.

568. Attention should be drawn to the work done by CENIDH in providing opportunities for exchanges and discussion among journalists, police officers and human rights defenders on the journalistic treatment of news items involving women and children. In this connection CENIDH held a third Journalists' Forum, entitled "Another approach is possible...." and dedicated to María José Bravo.

569. This event was attended by more than 80 journalists and 20 police officers, who shared their experience with the human rights defenders and explained the constraints on the efforts to introduce a correct approach to news with a gender and generational focus.

570. CENIDH had earlier held meetings with journalists in the Departments of Managua, Chontales and Estelí, highlighting through a discussion with communicators, local authorities and civil society the limits to the right to freedom of expression and opinion and the need to respect the human rights of women and children. This CENIDH initiative to bring together communicators from different civil society organizations produced a proposal for a research paper entitled "Journalists speak: media violence against children. A short sharp study", which was published in June under the auspices of Save the Children.

571. The paper concluded that the reporting by some of the media, in particular some "red top" television stations, infringed the human rights of children and flouted the Convention on the Rights of the Child by the daily, indiscriminate and repeated reporting of acts of violence suffered by children.

C. Association of Journalists (Establishment) Act

572. The Nicaraguan Association of Journalists (Establishment) Act (Act No. 372)⁹⁴ was adopted on 6 March 2001 to facilitate the unionization of journalists.

573. In 2004 journalists members of the country's two biggest journalists' organizations, the UPN and the APN, had overcome the political-party allegiances which divided them and had taken responsibility for the establishment of an institution intended by law to become the governing body for the journalism sector.

574. The UPN and the APN delivered their best efforts and on 27 November 2004 sealed the alliance at the Constituent Congress of the Association of Journalists.

575. The establishment of the Association made a reality of the aspirations of hundreds of journalists, many of them already dead. The Association seeks to satisfy social demands by establishing the social security fund envisaged in the Act and to improve journalism's professional standards by means of the compulsory registration of journalists, self-regulation of the exercise of the profession, and application of the Code of Ethics for Journalists produced by the profession itself.

D. Amendment of article 68 of the Constitution

576. As a result of the 1995 amendment of the Constitution, article 68 granted tax exemptions to the communication media. However, this provision was amended by the adoption on 29 April 2003 of the Fiscal Equity Act (Act No. 453).⁹⁵

577. Article 17 of the amended version establishes a ceiling on exemptions of 2.5 per cent of the total revenue in the preceding year for the big media organizations and 5 per cent for the others

578. Despite protests by some media owners, this Act was not included in the Framework Act which provided for the application of the amendments to the Constitution approved by the National Assembly in 2005.

ARTICLE 20 (Prohibition of propaganda for war and any advocacy of national, racial or religious hatred)

579. It is one of Nicaragua's cardinal principles that the "struggle for peace and the establishment of a just international order are inalienable commitments of the Nation [which is opposed] to all forms of domination" (Constitution, art.3).

580. Furthermore, Nicaragua "bases its international relations on friendship and solidarity among peoples and reciprocity between States. Therefore, it refrains from and prohibits all forms of political, military, economic, cultural or religious aggression and intervention in the internal affairs of other States" (art. 5).

⁹⁴ Published in *La Gaceta*, Diario Oficial No. 70, of 16 April 2001.

⁹⁵ Published in *La Gaceta*, Diario Oficial No. 82, of 6 May 2003.

ARTICLE 21 (Right of peaceful assembly)

581. Article 53 of the Constitution “recognizes the right of peaceful assembly; the exercise of this right shall not require prior authorization.” Article 54 recognizes “the right of public assembly, demonstration and movement in accordance with the law.” And article 55 recognizes “the right to organize and join political parties in accordance with the law.”

582. The holding of a public demonstration requires prior authorization by the Department of Public Security of the National Police.

583. This Department can be approached through any police station in the national territory. The legal basis for this arrangement is found in the National Police Act (Act No. 228).

584. The processing of applications takes 72 hours, and security must be deposited against damage and injury. The duration of a permit to hold a public demonstration is stated in the permit itself.

585. Pursuant to the provisions of the National Police Act, any natural or juridical person may apply to the Department for a permit, which may be granted only to political parties and civil and labour organizations, in the interests of preservation of public order and calm.

ARTICLE 22 (Right to freedom of association)

586. The ILO conventions ratified by Nicaragua include Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organize.⁹⁶

587. This Convention regulates the right, freely exercised by workers and employers without distinction, to associate for the advancement and protection of their respective interests and to do so without prior authorization.

588. Workers and employers are also accorded the right to establish any organizations which they deem fit and to join such organizations without prior authorization. Workers’ and employers’ organizations have the right to organize freely; they may not be dissolved or suspended by administrative act and they are entitled to form and to join federations and confederations. Such federations and confederations may in turn join international workers’ and employers’ organizations.

589. At its thirty-second meeting, in 1949, the International Labour Conference adopted the Right to Organize and Collective Bargaining Convention (No. 98).⁹⁷ This Convention regulates the protection of workers when exercising the right organize, prohibits interference by employers’ and workers’ organizations in each other’s affairs, and promotes voluntary collective bargaining.

590. Convention No. 98 also provides workers with due protection against any act of discrimination which impairs the freedom of association in relation to jobs or work, as well as

⁹⁶ Ratification published in *La Gaceta*, Diario Oficial No. 202, of 5 September 1967 and registered with ILO on 31 October 1967.

⁹⁷ Ratification published in *La Gaceta*, Diario Oficial No. 202, of 5 September 1967 and registered with ILO on 31 October 1967.

encouraging among employers and their organizations on the one hand and workers and their organizations on the other the full development and use of voluntary negotiation as a means of regulating, in collective agreements, work and employment conditions and (as the Convention requires) safeguarding workers' and employers' organizations against interference in each other's affairs.

591. Article 87 of the Constitution of the Republic provides for "full freedom of association. Workers may organize themselves voluntarily into trade union, and trade unions may be established in accordance with the law." Furthermore, articles 203 to 242 of the Labour Code (Act No. 185)⁹⁸ address all matters relating to trade unions. These matters are also governed by the Regulations on Trade Associations (Decree No. 55-97)⁹⁹ and the amendments thereto approved by Decree No. 93-2004.

592. The amendments to the Regulations on Trade Associations were received with satisfaction and seen as an advance by the ILO bodies responsible for monitoring the application of Convention No. 87, for they eliminated the requirement of Nicaraguan nationality for members of the boards of management of trade unions and allowed federations and confederations to involve themselves in collective disputes, as well as stipulating that workers had the right to terminate their membership of a trade union.

593. Nicaragua's legislation defines a trade organization as any association of workers or employers constituted for the representation and defence of workers' or employers' respective interests. Such associations are entitled to form any trade unions, federations and confederations which they deem fit.

594. They also enjoy the same civil rights and freedoms as are accorded in Nicaragua to similar organizations; it is stipulated that the rights conferred on workers' and employers' associations shall be based on respect for the civil liberties listed and in particular on the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and that the concept of rights of such associations is devoid of meaning when such civil liberties do not exist.

595. The formalities prescribed in the regulations for the constitution and operation of workers' and employers' associations must be compatible with the right of freedom of association and must not impair the full exercise of the rights of association and collective bargaining.

596. Prior authorization is not required for the constitution of such associations, and they are accorded juridical personality by the Registry of Trade Associations. Registration is a declarative but mandatory act, under article 87 of the Constitution, and does not affect the constitution of a trade association.

A. Requirements for forming a trade union

597. The formation of a trade union is subject to the following formalities: submission of the original and two copies of the charter and statutes (two copies for each department); signature of

⁹⁸ Adopted on 5 September 1996 and published in *La Gaceta*, Diario Oficial No. 205, of 30 October 1996.

⁹⁹ Published in *La Gaceta*, Diario Oficial No. 188, of 3 October 1997.

these documents by the members who attended the charter meeting of the new trade union (legal minimum of 20 workers); submission of the union's membership form (not essential) and its minutes, accounts and membership-registration books, duly stamped by the Ministry of Labour (Labour Code, art. 209).

B. Procedure for registration of a new trade union

598. Workers who have decided to form a trade union, or their representatives duly delegated by the trade union in its charter, must submit the charter and statutes to the Department of Trade Associations (DAS) in order to obtain juridical personality, regardless of the location of the union's registered office, in accordance with articles 211 and 212 of the Labour Code and article 9 of the Regulations on Trade Associations (Decree No. 55-97). These documents must be accompanied by the signatures of the workers who attended the charter meeting in the minimum number established by law.

599. Once these documents have been submitted to the DAS, its counsel conducts an initial review to verify whether they satisfy the requirements of the law; the documents are then transmitted to the Department's Director, who conducts a second review. If any inconsistencies or gaps are found, a report is issued to the applicants within three days of the submission of the application; if the applicant organization does not make good the defects, further reports are issued as necessary.

600. The application for registration of the new trade union must be checked: it must be duly signed by the secretary-general and/or the minutes and agreements secretary elected at the charter meeting; the date on the charter must coincide with the date in the heading of the list of founder members; and the documentation must satisfy all the requirements of article 9 of the Regulations on Trade Associations.

601. If the statutes were discussed and adopted at the charter meeting, the original and one copy thereof must be appended if the trade union is located in the Department of Managua; for the country's other departments an additional copy is required.

602. If the statutes were not discussed and adopted at the charter meeting, the charter document must show the date and time of the meeting to be held for those purposes, bearing in mind the time limit of 40 days fixed in article 9.6 of the Regulations.

603. It is also necessary to check that the statutes satisfy the requirements of article 11 of the Regulations and that the list or lists are presented in an original and a copy without blots or erasures duly headed with the trade union's name and showing the time, day, place and year of the charter meeting at which they were discussed and adopted.

604. The Registry of Trade Associations will refuse to register a trade union only if its purposes and aims are inconsistent with the provisions of the Labour Code or if it does not have the number of founder members specified in the Act or if it is proven that signatures have been forged or that some of the persons listed do not exist.

605. These requirements are not peremptory and may be met by the organization at a later date. Once the defects have been corrected, the DAS registers the trade union in accordance with the Act. All the documents are reviewed once again to ensure that they have been corrected, and if they are in order the registration is effected within the next 10 days.

606. If the trade union has its registered office in Managua, the DAS delivers the document certifying its board of management within the same 10-day period. If the registered office is in another of the country's departments, it issues only the certificate of juridical personality, together with the original documents and the copies which had been submitted, duly stamped, so that the trade union may transmit them to its regional authorities for issuance of certification of its board of management and registration of the other documents.

607. The certificates of juridical personality and of the board of management of organizations with their registered offices in Managua are issued once they have been recorded in the relevant registers.

C. Refusal of registration

608. If the registration of a new trade union is refused under article 213 of the Labour Code, the applicants may lodge an appeal within five days of the notification of the refusal.

609. If such an appeal is lodged in time and in due form, an order admitting it is issued and the trade union is notified that within 24 of such notification it must submit its case to the Inspectorate-General of Labour, which is the body of second instance competent to hear it. Within 10 days the Inspectorate-General confirms or revokes the DAS refusal; in the latter case, the DAS proceeds to register and certify the organization; if the refusal is confirmed, the documents are returned to the DAS and placed on file; the applicants may seek the remedy of *amparo*.

Numbers of applications rejected by the Department of Trade Associations

<i>Year</i>	<i>Date (day/month)</i>	<i>Trade union</i>	<i>Enterprise</i>	<i>Comments</i>
1993	None			
1994	27/09	Workers' union	Avícola La Estrella	
	24/06	SITRAMESA	Metales y Estructuras	
1995	01/05	Oscar Morales Juárez	Industrial Metalúrgica	
	15/12	Ramón Ordóñez	Avícola La Estrella	
	10/11	Workers' union	Hospital A.L.F.	
	03/09	Workers' union	La Fosforera	
1996	28/07	Roberto Lara	Ministry of Finance	
1997	None			
1998	14/07	SICEVECSA	Supermercado Cereales y Vegetales	
	27/02	Farm workers' union	INETER	
1999	14/06	Orlando Sánchez	Compañía Azucarera del Sur (CASUR)	
2000	None			
2001	27/09	Farm workers' union	Mina Agrícola "SIARES"	
	22/02	Workers' union	Roo Shing Garments	
2002	09/04	"Jorge Castellón"	Empresa Generadora Eléctrica Occidental S.A.	
	20/08	SITRAMENA	Mercado de Managua	
	25/05	Danilo Medina	Alcaldía Municipal de Tipitapa	
	12/12	Workers' union	Ingenio de Montelimar	

<i>Year</i>	<i>Date (day/month)</i>	<i>Trade union</i>	<i>Enterprise</i>	<i>Comments</i>
2003	None			
2004	31/05	National Workers' Union	Lotería Nacional	
	13/01	Union of Independent Workers		
		Union of Blue and White Collar Workers	Alcadía Municipal de Granada	
2005	19/08	Idalia Siva trade union	HANSAE Managua S.A.	
2006	02/10	Workers' union	Nicaragua Sugar States Limited	
2007	04/01	Workers' union	ARNECON	

Source: Register of decisions of the Inspectorate-General of Labour and the DAS.

610. Using figures supplied by the Ministry of Labour, the following tables show the number of trade unions by department, economic sector, and central headquarters, with an indication of the active boards of management and membership strength.

**Active trade-union boards of management and numbers of affiliated workers,
by department, economic sector and parent organization**

<i>Department</i>	<i>Boards</i>	<i>Members</i>
Nueva Segovia	15	855
Madriz	10	462
Estelí	52	2 841
León	89	5 144
Chinandega	77	4 037
Managua	335	22 745
Masaya	27	965
Granada	24	1 086
Carazo	22	857
Rivas	18	790
Total	669	39 782
<i>Economic sector</i>	<i>Boards</i>	<i>Members</i>
Agriculture	16	952
Fisheries	3	67
Mines and quarries	5	237
Manufacturing	50	8 382
Electricity, gas and water	36	1 238
Construction	16	607
Commerce	13	703
Hotels and restaurants	3	176
Transport, storage, marketing	21	978

<i>Department</i>	<i>Boards</i>	<i>Members</i>
Financial intermediation	2	174
Real estate sales and rental	0	0
Public administration and defence	143	8 872
Education	168	8 832
Social and health services	162	7 151
Community and personal services	31	1 413
Total	669	39 782
<i>Parent organization</i>	<i>Boards</i>	<i>Members</i>
CAUS	28	2 034
CGT (i)		
CTN	53	1 826
CGTEN/ANDEN	41	2 550
CTN (a)	32	5 326
FETSALUD	86	4 541
CNTD	1	54
CST (J.B)	24	1 332
CNT	22	783
CST	54	3 762
ATC	26	1 738
UNE	57	3 864
CUS	37	2 117
CSTE	7	167
CUT	6	456
CNMN	1	18
FNT	1	71
FITS	1	26
None	171	8 387
Total	669	39 782

Source: DAS figures: headquarters and departmental offices.

611. The Ministry of Labour reported that Nicaragua's legislation is generally in line with the provisions of ILO Conventions Nos. 87 and 98, for Decree No. 93-2004 amending the Regulations on Trade Associations harmonized that legislation more closely with the international standards.¹⁰⁰

¹⁰⁰ See paragraph 605 of the present report.

D. Legislation on collective bargaining, strikes and arbitration

612. The Labour Code regulates the following matters: collective agreements (arts. 235-248); collective disputes (art. 243); strikes (art. 244); legal actions stemming from collective disputes (arts. 370-384); the Strikes Tribunal (arts. 385-389); and arbitration (arts. 390-402).

E. Right to strike

613. The Labour Code defines a strike as any “collective work stoppage agreed, executed and maintained by a majority of the workers involved in a labour dispute” (art. 244).

614. The right to strike is subject to the following limitations:

- (a) The strikers’ purpose must be to improve or protect against their employer their rights, working conditions and treatment in labour relations and negotiations, all conditions relating to collective labour agreements in general, and their economic and social interests;
- (b) The Ministry of Labour conciliation procedures must have been exhausted;
- (c) The strike must be approved at a general meeting of the workers and peacefully executed and maintained, inside or outside the enterprise or establishment, by a majority of the workers. If the strike is called in an enterprise having several establishments, the workers’ majority must be a majority of all the workers employed by the enterprise, and if called in one or more of the establishments, a majority of all the workers in the establishment or establishments involved;
- (d) Strikes in support of other workers are permitted only in the case of a legal strike in the same industry or activity called for one of the purposes listed in the preceding subparagraphs.

F. General information on the strikes procedure

615. The Strikes Tribunal is a collegiate tripartite body (Ministry of Labour, representatives of employers’ and workers’ organizations) responsible for ensuring that a strike proceeds in accordance with the law; this is not a responsibility of the Ministry.

616. The Tribunal is legally empowered to establish negotiations between the parties. If a total or partial agreement cannot be obtained, the Tribunal arranges for a vote to be taken at a general meeting of the workers, who decide by a simple majority in a secret and direct ballot whether to accept the employer’s proposal. Acceptance is noted in the record of the meeting and the dispute is declared settled; rejection triggers a second round of voting to decide whether to continue the strike or go to arbitration.

617. The Tribunal is the body competent to declare a strike legal. If in the second ballot the workers opt to continue the strike, the President of the Tribunal declares the strike legal and orders all relevant measures to guarantee that it is conducted without prejudice to the workers, the public or the enterprise (art. 388).

618. According to the information supplied by the Ministry, at the time of compilation of the present report there was no official record of a strike declared legal by the Tribunal.

ARTICLE 23 (Protection of the family and matrimony)

619. As already pointed out in the part of this report on the application of article 17 of the Covenant, article 70 of the Constitution states: “The family is the fundamental nucleus of society.”

620. Article 74 of the Constitution states further: “The State shall furnish special protection for the process of human reproduction” and provide antenatal and postnatal care through the public health and social security authorities, as well as guaranteeing the acquisition and maintenance of employment, with adequate remuneration and benefits, through the labour authorities.

621. Nicaragua’s legislation does not offer any definitions of the various concepts of “family”, either nuclear or extended; rather it stresses the importance of the family and as a stable de facto union protected by the State based on the voluntary agreement of a man and a woman (Constitution, art. 72), although it still does not specify the parameters for recognition of such unions.

622. Similarly, under the Children and Adolescents Code the State regulates the comprehensive protection which the family, society, the State and private institutions must provide for children and adolescents.

623. Article 100 of the Civil Code provides that males aged 21 years or declared to be of the age of majority and females aged 18 years or declared to be of the age of majority may freely contract matrimony. Article 101 states: “Males aged 15 years and females aged 14 years are competent to contract matrimony.”

624. Although the law regards matrimony only as a contract, marriages must generally be celebrated before the civil officials specified by law (art. 95). To this end the couple must apply to a local or district civil court, or they may take their vows before a notary public who has exercised his profession for more than 10 years; such notaries are authorized to conduct marriage ceremonies. However, “persons who adhere to the religion of most Nicaraguans, which is Catholic, Apostolic and Roman, may celebrate their marriage before a competent priest or ecclesiastical authority, in accordance with the canon law of the Catholic Church” (art. 95).

625. The Civil Code specifies three types of impediment to exercise of the right to contract matrimony: absolute, relative and prohibitive impediment. Absolute impediments include a prior matrimonial bond, ascendant or descendant kinship by virtue of consanguinity or legitimate or illegitimate affinity, sibling kinship, commission of the murder or complicity in the murder of one of the spouses by the surviving spouse, and conviction for adultery or complicity in adultery (art. 110, first to fifth paragraphs).

626. Relative impediments include mistaken identity, serious or grave violence, lunacy or any mental incapacity at the time of the ceremony, and failure to meet the minimum-age requirements of article 101 (art. 111, first to third paragraphs).

627. Prohibitive impediment comes into play when a male aged under 21 years or a female aged under 18 years not declared to be of the age of consent seek to marry without the express consent

of the person legally required to give consent, when a woman seeks to remarry within 300 days of the dissolution of her earlier marriage, when a guardian or any of his or her descendants seeks to marry his or her ward before the guardianship has been definitively terminated, and when the parties fail to make public or they disregard legal rulings (art. 112, first to fourth paragraphs).

628. The rights and duties deriving from matrimony are set out in articles 151 to 159 of the Civil Code, and matters connected with the dissolution of the matrimonial bond are addressed in Act No. 38,¹⁰¹ on the dissolution of marriage at the wish of one of parties.

629. With regard to equality in marriage, since there may be no discrimination on the basis of sex with respect to the acquisition or loss of nationality by reason of matrimony, article 8 of the Nicaraguan Nationality Act (Act No. 149)¹⁰² provides that “nationality may be acquired by two years of permanent residence in Nicaragua by an alien who, in addition to meeting the requirements [...] of article 7 is (a) a native-born Spaniard or a national of a State which applies the principle of reciprocity or (b) an alien married to a Nicaraguan, provided that the marriage bond remains intact. This requirement is waived when, under the national law of the country of the alien spouse he or she loses the nationality of that country as a result of the marriage. Otherwise the nationality legislation of the State to which the spouses move shall apply.”

630. Relations between parents and children are governed by the Parent and Child Relations (Regulation) Act (Act No. 149).¹⁰³

631. Like the other countries of Central America, Nicaragua has a number of problems with the constitution of the family, connected mainly with parental irresponsibility, for many men father children out of wedlock without legally acknowledging them. This means that many of these children grow up without a father, maintain no links with him, and receive no kind of economic support from him.

632. The national statistics indicate that 31 per cent of Nicaraguan households are headed by women and that in urban areas 35 per cent of children aged under 15 do not live with their father; in rural areas 18.5 per cent of heads of family are women. This means that many of these men have disappeared completely from the lives of their children, leaving the responsibility for their upbringing to the mother and/or family members.

633. Twenty-five per cent of children live with their mother alone, and 10 per cent live with neither parent (ENDESA data; INEC-1998).

634. Given this situation, the Ministry of the Family is endeavouring to promote parental responsibility, and provide a legitimate defence of children’s rights, directing its efforts through measures of social protection and special protection, including a number of systematic activities to cater for the whole of the child population, as well as adolescents and adults, in situations of extreme poverty, vulnerability and high social risk.

¹⁰¹ Adopted on 28 April 1988 and published in *La Gaceta*, Diario Oficial, No. 80, of 19 April 1988.

¹⁰² Adopted on 4 June 1992 and published in *La Gaceta*, Diario Oficial No. 124, of 30 June 1992.

¹⁰³ Adopted by Decree No. 1065 on 24 June 1982 and published in *La Gaceta*, Diario Oficial No. 155, of 3 July 1982.

635. The need has been seen to carry out legal reforms to serve the best interests of the child, manifested for example in a bill on promotion and protection of responsible parenthood, which is designed to make it easier for children to be registered in the names of their father and mother, using DNA evidence when the father or mother refuses voluntarily to acknowledge a child. In order to obtain such evidence the Ministry of the Family collaborates with the Molecular Biology Centre of the University of Central America.

636. Improvement of the legal means of exercising the constitutional right to investigate paternity and maternity requires the institutionalization and widespread extension of the use of DNA testing to prove biological paternity or maternity.

637. The Ministry conducted consultations on the bill on the promotion and protection of responsible parenthood with a number of sectors, including the communication media, the National Assembly, the National Council for the Comprehensive Care and Protection of Children and Adolescents (CONAPINA), agencies of the State, civil society, universities and churches. The bill is currently in the discussion stage in the National Assembly, pending adoption. The policies on responsible parenthood which have been drafted are currently undergoing refinement, pending approval and publication.

ARTICLE 24 (Children's rights and their protection)

638. As mentioned earlier, in the section of this report on article 14 of the Covenant, the State of Nicaragua is a party to the Convention on the Rights of the Child. Article 71 of the Constitution as amended in 1995 elevates the Convention to constitutional status, providing that "children shall enjoy special protection and exercise of all the rights which their status requires; the Convention on the Rights of the Child is fully in force in this regard." This legal recognition was the result of efforts made by civil society in close collaboration with State institutions working with children.

639. In this context, following its signature and ratification of the Convention the State of Nicaragua initiated a number of measures at the international and national levels to make its application a reality. The main advances and problems in the period covered by the present report are described below, in order to underline what Nicaraguan society has achieved on the basis of the country's international contractual obligations.

640. In the period 1998-2002 Nicaragua approved the following international legal instruments:

- (a) The Convention on the Civil Aspects of International Child Abduction, signed on 14 December 2000, approved by Decree No. 81-2000, and entered into force on 1 March 2001;
- (b) The Inter-American Convention on the International Return of Children, approved by Decree No. 58-2002;¹⁰⁴
- (c) ILO Convention No. 182 on the Worst Forms of Child Labour and Immediate Action for Their Elimination, approved by Decree No. 29-2000;¹⁰⁵

¹⁰⁴ Published in *La Gaceta*, Diario Oficial No. 118, of 25 June 2002.

¹⁰⁵ Published in *La Gaceta*, Diario Oficial No. 171, of 8 September 2000.

- (d) The Optional Protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, approved by Decree No. 37-2002;¹⁰⁶
- (e) The Geneva Conventions of 1949 and their Additional Protocols: Nicaragua is a party to the four Geneva Conventions of 1949, which it ratified on 19 July 1999; the Protocols entered into force for Nicaragua on 19 January 2000.

A. Concrete measures to benefit of children

641. The Women and Children Units were established in 1993 as a result of the joint efforts made by the Nicaraguan Women's Institute (INIM), the National Police and women's organizations under the auspices of the Women's Network against Violence. These Units provide specialist care for women, children and adolescents who have been subjected to domestic and/or sexual violence. There are 27 of them deployed throughout the country.

642. According to National Police figures, 76 per cent of the complaints concerning domestic and sexual violence received in the period January-September 2002 related to domestic violence and 24 per cent to sex offences. This problem affects primarily girls aged 10 to 15 years.

643. The National Policy on the Comprehensive Care of Children and Adolescents and the Children and Adolescents Code (CNA) were drafted in 1995-1996 in a participatory process. The Policy was approved in 1996 and the CNA on 24 March 1998. The Policy was incorporated in Book II of the CNA. It thus became a policy integrated in an Act and a mandatory instrument for implementation of the CNA.

644. On 13 June 1996 the Government of Nicaragua and ILO signed a memorandum of understanding on the implementation of the International Programme on the Elimination of Child Labour.

645. Representatives of the State and civil society of Nicaragua took part in the first World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in 1996. That Congress revealed the full extent of the commercial sexual exploitation of children, identified all the challenges, and proposed strategies for halting such exploitation. It was established that with every passing day increasing numbers of children throughout the world were being subjected to sexual exploitation and abuse. The need is therefore clear to put an end to this scourge by means of concerted efforts at all levels: local, national and international.

646. The National Commission for the Progressive Elimination of Child Labour and the Protection of Child Workers¹⁰⁷ was established in 1997 under the Ministry of Labour. Amongst other things, this Commission was responsible for making a diagnosis of the reality of child labour in Nicaragua and drafting a national plan of action on the basis of that diagnosis, in keeping with the National Policy for the Progressive Elimination of Child Labour and the

¹⁰⁶ Published in *La Gaceta*, Diario Oficial No. 82, of 6 May 2002.

¹⁰⁷ By Decree No. 22-97 on the creation of the National Commission for the Progressive Eradication of Child Labour and the Protection of Child Workers, dated 10 April 1997 and published in *La Gaceta*, Diario Oficial No. 66, of 10 April 1997.

Protection of Child Workers, and for promoting, evaluating, selecting and approving programmes and projects to achieve those ends.

647. The National Commission on Violence against Women, Children and Adolescents was established in 1998 under the auspices of INIM. This Commission is a space where representatives of governmental agencies and NGOs can come together to address the topic of domestic and sexual violence. In 2002 it produced the Plan for the Prevention of Domestic and Sexual Violence 2001-2006.

648. This Plan focuses on prevention, detection, care and sanction as means of establishing and consolidating respect for the dignity and rights of all persons and promoting a culture of peace in the family and among children and adolescents in general.

649. The first National Forum on the Commercial Sexual Exploitation of Children and Adolescents, in September 1999, was attended by representatives of national and international organizations, agencies of the State and of organized civil society; it provided a space for joint efforts to highlight and debate this scourge. The participants agreed to carry out the Stockholm commitments with regard to the formulation of a national plan to combat the commercial sexual exploitation of children and adolescents.

650. Act No. 351 on the Organization of the National Council for the Comprehensive Care and Protection of Children and Adolescents (CONAPINA) and the Office of Ombudsman for Children and Adolescents was adopted in May 2000;¹⁰⁸ this Act regulates the organization of CONAPINA as the lead agency for formulating and coordinating the application of the National Policy. CONAPINA is made up of representatives of governmental agencies and NGOs, children and adolescents, civil society, and private enterprise. The Regulations of the Act were approved in July 2000.¹⁰⁹

651. That same year saw the ratification of ILO Convention No. 182 on the Prohibition of the Worst Forms of Child Labour and Immediate Action for Their Elimination.¹¹⁰ This Convention is designed to eradicate the worst forms of child labour as a matter of urgency; it also refers to sexual exploitation. The National Birth-Control Policy drafted in 1997 and its Plan of Action were also approved, in December 2000.

652. This Plan of Action is divided into three interrelated subprogrammes: Education in birth control and sexuality; Sexual and reproductive health; and Spacing of births.

653. The National Strategic Plan for the Prevention and Elimination of Child Labour and the Protection of Child Workers 2001-2005 was drawn up and introduced; this is the core strategic instrument for policies to tackle the phenomenon of child labour in all its aspects

¹⁰⁸ Published in *La Gaceta*, Diario Oficial No. 102, of 31 May 2000.

¹⁰⁹ By Decree No. 63-2000 on the General Regulations of the Act on the Organization of the National Council for the Comprehensive Care and Protection of Children and Adolescents and the Office of the Ombudsman for Children and Adolescents, adopted on 26 July 2000 and published in *La Gaceta*, Diario Oficial No. 148, of 7 August 2000.

¹¹⁰ By Decree No. 79-2000 on Approval of the Worst Forms of Child Labour Convention, adopted on 4 September 2000 and published in *La Gaceta*, Diario Oficial No. 171, of 8 September 2000.

654. This Strategic Plan was drawn up in 2000-2001 under the auspices of the National Commission for the Progressive Elimination of Child Labour. It is based on three strategic approaches: prevention, eradication, and protection, which are related coherently to six areas: three substantive areas (family, education, health) and three support areas (organized and systematic participation of civil society, legal framework, and monitoring, records and research).

655. The Public Policy to Combat the Commercial Sexual Exploitation of Children and Adolescents was drafted and approved in 2001. The preparation of this Policy was placed in the hands of a central planning group made up of representatives of governmental agencies and NGOs working with children, which drafted it on the basis of broad consultation and debate at the national level. The application of this Policy in the country was the most important component of the National Plan.

656. The first consultation on commercial sexual exploitation was conducted in León between August and November 2001 by the Mary Barreda Association; 94 children from the various programmes run by the Association took part in the consultation. Its purpose was to identify the way in which this phenomenon was perceived by the children with a view to updating and adapting the project, with regard to both prevention and eradication, and to boost the awareness of the general public and bring about a cultural change in people's attitudes and in their actual commitment to children subjected to or at risk of commercial sexual exploitation.

657. The second World Congress against Commercial Sexual Exploitation of Children was held in Yokohama, Japan, in 2007. It reviewed developments with respect to the agreements adopted at the first meeting in Stockholm with a view to continuing the follow-up process and reinforcing the determination to protect children against sexual exploitation and abuse.

658. The executive secretariat of CONAPINA began to prepare proposals for the new draft criminal code in collaboration with various State and civil society institutions; proposals were subsequently submitted to the National Assembly.

659. The purpose of these proposals was to address directly the following issues: the principle of universality; emergency protection measures for victims of domestic violence; the statute of limitations; and the infliction of bodily harm, in particular in the commission of domestic-violence offences. One proposal was that the part of the Criminal Code dealing with offences against sexual freedom and sexual integrity should incorporate new offences and a new chapter on the commercial sexual exploitation of children which would establish new offences and penalties.

660. The purpose of the study entitled "Commercial sexual exploitation of children in Nicaragua" (IPEC/ILO, 2002) was to produce a piece of national research on the basis of two local studies, one conducted in Managua and the other in Chinandega, to establish the characteristics of children under 18 who had suffered different forms of commercial sexual exploitation and of the "client" exploiters, and the attitude of the public to the problem and the institutional responses to prevent and eradicate it.

661. It was found that a number of pieces of research had been carried out in Nicaragua and several diagnoses of the problem had been made by governmental and non-governmental organizations; this work provided material for the compilation of partial but typical quantitative data on children subjected to exploitation of this kind. It stated moreover that "since the zone along the country's northern frontier is one of the points of interconnection in the transport of

victims to the south and the north and the point of interconnection with other Central American countries [...] in Nicaragua [...] it is very difficult to put a figure on the number of children exposed to commercial sexual exploitation. [...] Children work as prostitutes all along the Panamerican Highway, in the frontier zones, and are victims of trafficking in these zones; they also work as prostitutes in bars and strip clubs, in massage parlours, in parks in tourist towns, in the Atlantic and Pacific ports, and in the main streets of the capital.”¹¹¹

662. Decree No. 43-2002 on establishment of the National Commission for the Elimination of Child Labour and Protection of Adolescent Workers¹¹² was adopted in 2002 to reorganize the National Commission for the Progressive Elimination of Child Labour and the Protection of Child Workers created by Decree No. 22-97.

663. Training workshops were held in 2002 under the project “Dissemination and publicizing of the Public Policy to Combat the Commercial Sexual Exploitation of Children and Adolescents” for the benefit of various actors in the municipalities identified as places having a serious problem of sexual abuse owing both to their geographical location and to the economic activities carried on there.

664. Another significant event in 2002 was the second National Forum on the Commercial Sexual Exploitation of Children and Adolescents, which investigated the phenomenon in greater depth and studied the international experience of the formulation of plans of action and the lessons learned from the dissemination of the Public Policy. The Declaration adopted at the Forum reiterated the need to step up the efforts to formulate the National Plan and to strengthen the coordination of sectors and institutions working for the progressive elimination of this problem.

665. Joint forums were held in 2002 and 2003 by the Nicaraguan Coordinating Federation of NGOs Working with Children (FECODENI) and the executive secretariat of CONAPINA, at which the participants studied the problem in the light of the Stockholm and Yokohama commitments. Presentations were also made of the findings of research carried out in the Municipalities of Granada, Matagalpa, León and Estelí to obtain inputs and expand the body of experience of this problem, with a view to laying the foundations for the implementation of the Public Policy at the local level.

666. In addition, FECODENI conducted a national consultation, with the participation of children, on commercial sexual exploitation. The research work revealed the true situation of the children affected by this problem, the urgent need for intervention, the risk factors to which the children are exposed, the places where the problem is most commonly found, and the forms which it takes. A forum was also held by the Mary Barreda Association in the Department of León, which cast more light on the problem at the local level, formed concepts and studied the findings of research in which children had participated.

667. The executive secretariat of CONAPINA coordinated the formulation of the National Plan of Action for Children and Adolescents 2002-2011 with all sectors of society.

¹¹¹ “*Caminos hacia la prevención y la erradicación de la explotación sexual comercial de niños, niñas y adolescentes en Centroamérica y República Dominicana*”. ILO-IPEC, August 2001.

¹¹² Adopted on 7 May 2002 and published in *La Gaceta*, Diario Oficial No. 93, of 21 May 2002.

668. The components of the Plan address the specific policy areas of the National Policy (basic social, assistance, special protection, guarantees), programme and project implementation, and attainment of the targets for realization of the rights of the child during the decade 2002-2011. The Plan falls within the framework of the Government's special protection policies.

669. Progress has been made in defining the concept of a children's ombudsman and the arrangements for operation of his office. Article 63 of the CNA established the Office of Ombudsman for Children and Adolescents as a service of CONAPINA with the chief function of promoting and protecting the children's rights recognized in the CNA.

670. In order to move this matter forward, in 2003 the executive secretariat set in motion two parallel processes, one concerning the definition of the conceptual framework and the other addressing the compilation of the experience of the protection of children's rights gained at the local level in seven of the country's municipalities; the outcome was a core document proposing a conceptual framework and implementation arrangements based on the actual local situations.

671. In 2003 the regional project for Central America "Strengthening the protection of children against commercial sexual exploitation in Central America", promoted by the organization End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes (ECPAT International) and executed by the Association of Workers for Education, Health and Social Integration (TESIS), conducted a study entitled "Legal and institutional framework for the protection of children against commercial sexual exploitation in Nicaragua: gaps and proposals".

672. This study reviewed Nicaragua's existing legislation on the subject, proposals for amendment of the draft criminal code, legal procedures connected with the commercial sexual exploitation of children, and international human rights instruments relating to women and children which are in force and binding on Nicaragua.

673. Save the Children Canada and Acción Médica Cristiana conducted a study entitled "Commercial sexual exploitation of children in the city of Bluefields in the Autonomous Region of Atlántico Sur: the situation of the commercial sexual exploitation of children and its determining factors", with a view to boosting awareness of the problem in Bluefields.

674. As a result of the publicizing of the Public Policy it was established that the problem was commonest in the following places: Managua, Tipitapa, Ciudad Sandino, Granada, frontier zone of Rivas, León, Chinandega, Corinto, Estelí, Puerto Cabezas, Bluefields, Matagalpa, and the Panamerican Highway.

675. The National Strategic Plan for the Elimination of Child Labour and the Protection of Child Workers offers a preliminary identification of the worst forms of child labour and places at the top of the list commercial sexual exploitation in the Departments of Chinandega, León, Managua, Rivas, Jinotega, Estelí, Nueva Segovia, the Autonomous Regions of Atlántico Sur and Atlántico Norte, Granada, Carazo, Matagalpa and Masaya.

B. Current situation

676. The most recent demographic estimates indicate that 49.4 per cent of Nicaragua's population consists of children and adolescents aged 0-17 years: 50.5 per cent of them boys and 48.4 per cent girls. Fifty-four per cent of the total population lives in areas regarded as urban, and the growth rate for the period 2000-2005 is estimated at 2.6 per cent.¹¹³

677. The overall fertility rate is estimated at 3.2 children per woman, the rural rate at 4.4, and the urban rate at 2.6. With regard to the adolescent fertility rate (15-19 years), it was found that 20.8 per cent of girls were already mothers and that 24.9 per cent had been pregnant at some time.¹¹⁴

678. According to ENDESA-2001, the adolescent birth rate is a subject of acknowledged importance, in terms not only of unwanted pregnancies but also of the social, economic and health implications. The birth rate among women aged under 20 years is also of particular importance in view of its impact on the overall rate.

679. Adolescent birth rates have traditionally been high in Nicaragua. The rate for the period 1998-2001 is estimated at 119 births for every 1,000 females aged 15-19 years; this is an average of widely varying rates for places of residence (the rural rate exceeds the urban rate by over 60 per cent).

680. In the case of the working population, the national standard of living survey conducted in 2001 showed that the very difficult economic circumstances of many Nicaraguan households is the reason for the high rates of economic activity among the young and the elderly.

681. There has been an increase in economic activity rates in the 10-14 age group, larger for boys than for girls. But the biggest increase in this rate is found among adolescents aged 15 to 19 years, and this phenomenon is commonest in rural areas, where 41.6 per cent of children aged 10 to 14 and 84 per cent of adolescents are economically active, with a consequent impact on their education (drop-outs, poor standards of education) or in other words on the future of these groups.

682. Article 86 of the Constitution states: "The employment of minors in work which may affect their normal development or compulsory education is prohibited. Children and adolescents shall be protected against all kinds of economic or social exploitation."¹¹⁵

683. The Labour Code fixes the minimum age for admission to employment at 14 years, with the due consent of the parents or legal representatives, and the legal capacity to conclude contracts at 16 years.

684. The National Survey of Child and Adolescent Labour (ENTIA-2000) found that 314,012 children had worked at some point in their lives; this figure represents 17.7 per cent of the country's population in the 5-17 age group. Of this total, 71.5 per cent were boys and 28.5 per

¹¹³ Figures from the Nicaraguan Demographic and Health Survey (ENDESA-2001).

¹¹⁴ *Ibidem*.

¹¹⁵ Nicaragua ratified ILO Convention No. 138 of 1973 on the Minimum Age for Admission to Employment on 23 May 1981.

cent girls: this may be a reflection of the fact that the work done by girls in the home from an early age remains invisible.

685. The rural sector accounts for 63.3 per cent of the children who have worked at some point in their lives, and the urban sector for 36 per cent. One finding of ENTIA-2000 which may become a national concern is that 44.2 per cent of the country's child workers are below the minimum age for admission to employment (14 years) fixed in the national legislation and that the situation is worse in the countryside.

686. This fact should sound a warning to the whole of society, and especially to the State's labour inspectors, who need to increase the number of inspections in order to ensure compliance with the national legislation and the relevant regulations of the Ministry of Labour. ENTIA-2000 also showed that 36.5 per cent of child workers had started their working lives before the age of 10. It likewise emerged clearly that 76.1 per cent of them worked during the daytime, with predictable consequences for their attendance at school and their continuation and success therein.

687. Twenty-two national programmes on the elimination of child labour have been carried out under ILO/IPEC by NGOs with funding from Spain, Canada, the United States and other countries.

688. These programmes have been executed in the Municipalities of Managua, León, Matagalpa, Jinotega, Chontales, Estelí, Granada and Jalapa. They all had four priority components: education, health, family-income generation, and training and awareness-raising.

689. The following programmes have been carried out:

- (a) Reduction of child labour in the Jonathan González quarter of the City of Managua, 1998-2001. Target population: 385 children;
- (b) Eradication of child labour at the El Fortín rubbish dump in the Municipality of León, 1999-2001. Target population: 200 children;
- (c) Eradication of child labour and prevention of the commercial sexual exploitation of girls working at the bus terminal in the Municipality of León, 1999-2001. Target population: 135 girls;
- (d) Eradication of child labour at the Santos Bárcenas market in the Municipality of León, 1999-2001. Target population: 100 children;
- (e) Eradication of child labour in the Subtiava indigenous community in the Municipality of León, 1999-2001. Target population: 1,300 children;
- (f) Eradication of child labour at the bus terminal in the Municipality of León, 1999-2001. Target population: 120 children;
- (g) Reduction of child labour at the traffic lights and enclosed public spaces in the City of Managua, 2000-2002. Target population: 600 children;

- (h) Prevention and eradication of child labour in the mines at La India de Santa Rosa del Peñon (“From the mines to school”). Target population: 485 children;
- (i) Prevention and eradication of child labour in the tobacco sector in the Municipality of Jalapa. Target population: 750 children;
- (j) “Traffic lights” plan of the Ministry of the Family. Target population: 600 children.

690. According to the ILO/IPEC study carried out in 2002, migration abroad is another phenomenon which has had an impact on the lives of many Nicaraguans. It is estimated that there are a million Nicaraguans living abroad. Some 20 per cent of households receive remittances from abroad, which account for 6.2 per cent of personal incomes. The Central Bank estimated total remittances at \$300 million in 1999; other sources calculate that remittances total over 600 million.

691. Some individuals take advantage of this migration, which has economic, political, cultural, demographic, environmental and other causes, to commit crimes such as trafficking in children and sale of children.

692. Given this situation and in order to protect migrants against violations of their human rights by traffickers, the Ministry of the Interior, through the DGME, monitors and authorizes the exit and entry of foreign and Nicaraguan children. This work is coordinated with State agencies such as the Judicial Assistance Department of the National Police, the Office of the Public Prosecutor, and the Judiciary.

693. Violence is another phenomenon which has a direct impact on the situation of children. In the light of various international instruments, the Constitution of the Republic and the national legislation on the protection of human rights, the State of Nicaragua has recognized domestic and sexual violence as a problem of public health and safety and as an offence of commission; it has been established as a crime in law and is subject to prosecution and sanction.

694. The National Plan for the Prevention of Domestic and Sexual Violence 2001-2006 contains projects and measures to contribute to the progressive elimination and the punishment of domestic and sexual violence in Nicaragua and it has a specific intersectoral component on a back-up project on prevention of the commercial sexual exploitation of children, including a diagnosis of the incidence of such exploitation in Nicaragua.

695. There has been no national study of the whole problem of the commercial sexual exploitation of children to provide comprehensive statistics on the situation countrywide. But there are studies showing that the phenomenon does exist and describing the situation of children subjected to this kind of exploitation, as well as the risk factors, the factors of protection, the impact on the children’s development, the points of concentration, etc.

696. One such study is entitled “Violence and commercial sexual exploitation in Latin America”, which does deal with the case of Nicaragua; it was conducted by the Inter-American Institute of the Child in 1998 and in 2000; another is the regional study conducted in Mexico and Central America by Casa Alianza and ECPAT.

697. The National Plan of Action 2002-2011 states the need for more resources to be allocated to basic social policies and for strategies to be developed and implemented to secure a gradual

reduction of the entry of children into the labour market, especially in rural areas, where there are greater numbers of children who work.

698. One of the actions taken to tackle this problem, in accordance with the provisions of the CNA, is the response by the Ministry of Education to the need to provide special protection for children at high social risk; it now has 84 protection centres furnishing temporary assistance to children who for various reasons find themselves in a family and social environment which exposes them to serious physical and mental risk.¹¹⁶

699. The statistics for the period 2002-2006 vary from one year to the next, and it should be kept in mind that success means that a child is placed in a family-style institution or returned to his or her biological family, as shown in the following table.

Coverage of social protection by type of action, 2002-2006

No.	Care by group of children	Actual Implementation				
		2002	2003	2004	2005	2006
III	Rights restored	24 278	32 343	34 447	45 074	24 536
	Adopted	32	13	40	56	48
	Repatriated	5	28	24	83	55
	Returned to biological family	171	743	1 226	2 705	826
	Placed in foster family	423	299	313	410	248
	Admitted to protection centre	389	292	232	147	242
	In protection centre	3 341	4 003	3 059	2 930	1 995
	Placed in family-style institution	720	2 312	2 547	2 588	1 215
	In community children's homes	460	460	479	479	440
	Provided with maintenance and conciliation services	9 057	12 626	10 144	19 293	17 558
	Admitted to government and NGO programmes	9 680	11 567	16 383	16 383	1 909
	Total	195 244	350 165	548 872	341 468	245 320

Updated figures: 15 January 2007, Ministry of the Family.

700. In conjunction with other State agencies and civil society the Ministry of the Family is executing the Programme on Comprehensive Care of Children and Adolescents at Risk (PAINAR). And since June 2000 it has been executing, with support from the United Nations Office on Drugs and Crime (UNODC) and UNICEF, the project "Awareness-raising and prevention measures for children at risk of drug abuse and/or sexual exploitation".

701. The general purpose of this project is to make a contribution to the application of the outcome document of the twenty-seventh special session of the General Assembly of the United Nations on children, with a view to the formulation of programmes, projects and strategies to improve children's quality of life by transforming their needs into rights through measures of

¹¹⁶ Temporary assistance should be understood to mean the time needed for the social reintegration of children assisted by the centres.

prevention, promotion, protection and defence and by encouraging a culture of respect for and recognition of children's human rights.

702. The Office of the Procurator for the Protection of Human Rights (PDDH), an agency of the State created to carry out activities connected with the promotion and protection of human rights and human rights education, has helped, through the Office of the Special Procurator for Children and Adolescents, to highlight commercial sexual exploitation as one of the worst violations of children's rights, as cruel, inhuman and degrading treatment, as a crime against humanity, and as a product of the gender and generational violence which, regrettably, is still rife in Nicaraguan society.

703. Constant efforts have been made to denounce publicly the cases of commercial sexual exploitation of children which have come to light in Nicaragua and to provide the victims and their families with permanent support in judicial proceedings in order to ensure that the personnel of the justice system do not infringe the victims' human rights (access to justice, equality before the law, prompt justice, and other procedural guarantees). As a result of the work of the Office of the Special Procurator, these offences do not go unpunished: at the very least the perpetrators of sexual exploitation are convicted of the offence of corruption of minors, in the continuing absence of the offence of commercial sexual exploitation of children.

704. Civil society is contributing to the formulation of programmes and projects for children in situations of social risk through bodies operating under the auspices of the Nicaraguan Coordinating Federation of NGOs Working with Children (FECODENI) and other organizations, which carry out measures to safeguard children's right to special protection.

**ARTICLE 25 (Political rights and right to participate
in the management of public affairs)**

705. According to article 47 of the Constitution, only "citizens enjoy the political rights provided by the Constitution and the laws, without any limitations other than those based on age." Citizens are "Nicaraguans who are at least 18 years of age."

706. Article 48 goes on to establish "the unconditional equality of all Nicaraguans in the enjoyment of political rights; in the exercise of these rights and in fulfilling their duties and responsibilities there shall be absolute equality of rights between men and women."

707. All citizens have "the right to vote in elections and to be elected and to seek public office" subject to the restrictions established in the Constitution (art. 51).

708. Decision No. 103 of the Supreme Court of Justice states in this connection: "The right of citizens to vote is embodied in articles 44 to 55 of the Constitution, which incorporates 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, as recognized in article 46."¹¹⁷

¹¹⁷ Issued at 10 a.m. on 8 November 2002.

709. The Elections Act (Act No. 331)¹¹⁸ has been in force since 2000; it revoked the earlier Elections Act (Act No. 211)¹¹⁸ and the amendments thereto (Act No. 266).¹²⁰

710. This Act, which has constitutional status (Constitution, art. 184), is designed to regulate the procedures for the election of the President and Vice-Presidents of the Republic, members of the National Assembly, deputies to the Central American Parliament, members of the councils of the Autonomous Regions of the Atlantic coast, municipal mayors and deputy mayors, and members of municipal councils.

**A. Decision of the Inter-American Court of Human Rights reaffirming
the political rights YATAMA**

711. As a result of the amendments made in the Elections Act in 1999, the regional party Yapti Tasba Masraka Nanih Asia Takamka (YATAMA) was excluded from participation in the municipal elections of 2001.

712. On 16 June 2003 the Inter-American Commission on Human Rights brought an action before the Inter-American Court of Human Rights alleging violation of political rights, judicial guarantees and the right to judicial protection and failure to respect the rights established in the American Convention on Human Rights to the detriment of the YATAMA candidates for posts of mayor, deputy mayor and councillor in the municipal elections of 5 November 2000 in the Autonomous Regions of Atlántico Norte and Atlántico Sur.

713. The Commission submitted the case so that the Court might decide whether the State of Nicaragua had infringed article 8 (judicial guarantees), article 23 (political rights) and article 25 (judicial protection) of the American Convention, all in relation to article 1.1 (obligation to respect rights) and article 2 (duty to adopt provisions of domestic law) of the Convention, to the detriment of the candidates for the posts of mayor, deputy mayor and councillor nominated by YATAMA.

714. The action was based on the fact that Nicaragua had not established a remedy which would have enabled the members of YATAMA to defend their right to participate in the elections and to be elected and that it had not adopted the necessary legislative or other measures to give effect to the rights established in the Convention and had in particular failed to make provision in the Elections Act to facilitate the political participation of indigenous organizations in elections in the Autonomous Regions, in accordance with the customary law, values, habits and customs of the indigenous peoples.

715. On 23 June 2005 the Inter-American Court found the State of Nicaragua guilty of excluding the YATAMA candidates from the municipal elections of 2000 by an arbitrary and unconstitutional decision of the Supreme Electoral Council of the Supreme Court of Justice, and it declared that Nicaragua had violated judicial guarantees, the right to judicial protection, political rights and the right to equality before the law.

¹¹⁸ Adopted on 19 January 2000 and published in *La Gaceta*, Diario Oficial No. 16, of 24 January 2000.

¹¹⁸ Published in *La Gaceta*, Diario Oficial No. 6, of 9 January 1996.

¹²⁰ Published in *La Gaceta*, Diario Oficial No. 174, of 11 September 1997.

716. The Commission had alleged that these persons had been excluded from participating in the municipal elections of 5 November 2000 in the Autonomous Regions of Atlántico Norte and Atlántico Sur as a result of a decision issued on 15 August 2000 by the Supreme Electoral Council.

717. The Inter-American Court noted the reported violations and ordered the State of Nicaragua to ensure that such infringements of the Convention were not repeated by adopting legislative measures and publishing the decision in the media in the languages of the indigenous communities of the Atlantic coast and to pay token compensation and the costs of the case.

718. The Court specified that the measures in question should include a guarantee of access to a simple, prompt and effective legal remedy against decisions of the Supreme Electoral Council affecting political rights, the elimination of provisions impeding exercise of such rights, and amendment of the Elections Act of 2000 (Act No. 331) in order to establish clearly the consequences of failure to comply with the requirements of electoral participation.

719. The Court also ordered amendment of the provisions of the Elections Act which were incompatible with the American Convention on Human Rights so as to ensure that the indigenous and ethnic communities of the Autonomous Regions could participate effectively in electoral processes in the light of their traditional ways and customs.

Compliance and the present situation

720. The State of Nicaragua is in the process of complying with the Court's requirements; it has created for this purpose a special commission made up of representatives of the Foreign Ministry, YATAMA and CENIDH.

721. Nicaragua is complying with the Court's decision. But the decision has still not been published in the Rama language or broadcast on the radio. The reason for this is that so few people speak Rama. And Nicaragua has not yet paid the \$95,000 in compensation and legal costs, plus interest for not paying within one year.

722. Amendments have still not been made to the Elections Act to establish a simple, prompt and effective legal remedy against decisions of the Supreme Electoral Council affecting human rights and to provide for the measures needed to enable members of the indigenous and ethnic communities to participate effectively in electoral processes in the light of their traditions and customs.

B. Most recent presidential elections

723. Where the political rights of the Nicaraguan people are concerned, attention must be drawn to the local elections in the Caribbean regions and to the general elections, held on 5 March and 5 November 2006 respectively.

724. The chief outcome of that election year was the election of Daniel Ortega Saavedra as President of Nicaragua for a term of office starting on 10 January 2007, to govern with a National Assembly composed of four benches (parliamentary groups).

725. The Legislature currently has the following composition: Partido Liberal Constitucionalista (PLC) - 25 deputies; Frente Sandista de Liberación Nacional (FSLN) - 38; Alianza Liberal

Nicaragüense (ALN) - 22; and Movimiento Renovador Sandinista (MRS) - 5; Alternativa Cristiana (AC) has no seats. The presence of four benches with significant political power means that ordinary legislation, constitutional amendments and appointments of judges requiring a majority of 60 per cent of all the members of the National Assembly have to be negotiated.

C. Local and international monitoring of elections

726. In both the regional and the general elections the participation of the people in the political process was intense, with thousands of local monitors. In general terms, the election-monitoring exercise was highly satisfactory, as was the level of civic responsibility shown by voters.

727. In terms of international participation, the Organization of American States, the Carter Center and the European Union sent observer missions; together with the foreign individuals invited to observe the elections they agreed that there had been no major disputes to disqualify the essential results of the elections, in particular the election of the President of the Republic.

729. Civil society organizations with specialist experience of electoral matters, such as Ética y Transparencia, the Institute for Development and Democracy (IPADE), the Movement for Nicaragua, and other organizations and individuals waged a constant and intensive campaign to achieve a massive registration of voters, a campaign unprecedented in previous elections.

730. The registration period was extended by 15 days by a last-minute amendment changing the election timetable; nevertheless, right up to the last day of registration some of these organizations were complaining to the Supreme Electoral Council that millions of people had not been registered, even though the Council had designated and equipped places for the mass issuance of registration cards.

731. Information was requested from the Council on several occasions, for the purposes of the present report, but without result; such information cannot therefore be included here.

ARTICLE 26 (Equality before the law and principle of non-discrimination)

732. Article 27 of the Constitution establishes the equality of all Nicaraguans before the law. It adds that aliens “have the same rights as Nicaraguans with the exception of political rights and the rights specified by the laws; aliens may not intervene in the country’s political affairs.”

733. Nicaragua has ratified the principal human rights instruments, which also accord equality before the law to all citizens, and it now has a broad legal framework and institutional policies designed to safeguard the full equality and participation of all inhabitants of the country, without any distinction inconsistent with human dignity.

734. The proclamation of the Office of the Procurator for Human Rights (Establishment) Act (Act No. 112) marked a step forward in safeguarding the rights of all citizens by creating the Offices of the Special Procurators for Children and Adolescents, Women, Indigenous Peoples and Ethnic Communities, Persons with Disabilities, Persons Deprived of their Liberty, and Civic Participation, in an effort to monitor respect for and the exercise of human rights.

A. Persons with disabilities

735. The following legislation has been enacted to safeguard the human rights of persons with disabilities:

- (a) The Act establishing safeguards of the rights and benefits of persons with war disabilities who are veterans of the People's Sandinista Army and the forces of security and order of the State (Act No. 98);¹²¹
- (b) The Victims of War (Benefits) Act (Act No. 119);¹²²
- (c) Decree No. 7-92 of 14 February 1992 establishing the Institute for Care of Victims of War (INVICTA);¹²³ and Ministerial Agreement No. 4-95, the Regulations of the Institute for Care of Victims of War;¹²⁴
- (d) The Persons with Disabilities (Rehabilitation and Equality of Opportunities) Act (Act No.202),¹²⁵ adopted on 23 August 1995, article 13 (b) of which provides that all private and mixed State enterprises must recruit or have recruited at least one disabled person for every 50 members of the workforce;
- (e) Mandatory Technical Regulation No. 12006-04, adopted by the Executive on 19 May 2004, entitled "Nicaraguan Mandatory Technical Regulation on provision of access for all persons who, for whatever permanent or temporary cause, have limited or reduced mobility".

736. These instruments were adopted in order to safeguard the human rights of persons with disabilities and establish the concept of accessibility, adapting it broadly to the space requirements of persons with limited or reduced mobility, in particular persons using wheelchairs.

737. One most important point is that Nicaragua signed the Conventions on the Rights of Persons with Disabilities on 30 March 2007.¹²⁶ This was an act of compliance with the human rights commitments entered into by the Government of Reconciliation and National Unity to enhance the development of Nicaraguan society and its vulnerable groups, in particular persons with disabilities, who had been neglected in recent years.

738. The signature of this important Convention marked a historic step forward by virtue of its provisions on the equality of status and respect for the rights of persons with disabilities, who make up about 10.3 per cent of Nicaragua's population.

¹²¹ Adopted on 20 April 1990 and published in *La Gaceta*, Diario Oficial No. 97, of 27 May 1990.

¹²² Adopted on 17 December 1990 and published in *La Gaceta*, Diario Oficial No. 2, of 3 January 1991.

¹²³ Published in *La Gaceta*, Diario Oficial No. 35, of 14 February 1992.

¹²⁴ Published in *La Gaceta*, Diario Oficial No. 245, of 29 December 1995.

¹²⁵ Published in *La Gaceta*, Diario Oficial No. 180, of 27 September 1995.

¹²⁶ This was the first United Nations human rights convention to be adopted in the twenty-first century.

739. The Convention is a legal instrument binding on the signatory States, which are required to amend their domestic legislation in order to improve and promote the access to education and jobs of persons with disabilities. They also have to take steps to improve such persons' quality of life, providing them with access to suitable education arrangements and to information and enabling them to move about without physical obstruction.

740. Another of the purposes of the Convention is to protect and guarantee for persons with disabilities the full enjoyment of their rights and full equality with other persons in such areas as participation in public life and access to the judicial system and to social welfare.

B. Voting facilitators for persons with disabilities

741. According to the INEC, more than 600,000 persons in Nicaragua have some kind of disability. The number of such persons increases with age group, especially after age 45, when more females (11.3 per cent) than males (9.1 per cent) are affected.

742. Nicaragua has a number of civil society organizations which promote and protect the rights of persons with disabilities, their economic and social advancement, and the realization of their human rights.

743. The post of voting facilitator for persons with disabilities was established for the national elections of 5 November 2006.

744. Article 19 of the Elections Act provides that "persons with a physical impediment may be accompanied by a person whom they trust when exercising their right to vote. This shall be noted in the record ... When the impediment affects the upper extremities, any visible part of the body may carry the indelible-ink mark, and this shall be noted in the record."

745. In order to facilitate compliance with the Act, several civil society organizations arranged for each polling station to have a voting facilitator to help persons with disabilities: persons using wheelchairs or crutches, persons with Downs syndrome, the elderly, and persons with any other kind of functional disability.

746. The persons authorized to perform this function must be Nicaraguan nationals duly entered in the electoral roll and in possession of a valid identity card or similar document.

747. The facilitators receive the persons with disabilities at the entrance to the polling station. In coordination with the polling officers they locate their names in the electoral roll and then conduct them to appropriate reception desk. At this point the elections police give them priority; once they have voted the facilitators accompany them to the exit of the polling station.

748. For the presidential elections in November 2006 there were 4,296 facilitators covering every polling station in the country.

ARTICLE 27 (Rights of ethnic, religious and linguistic minorities)

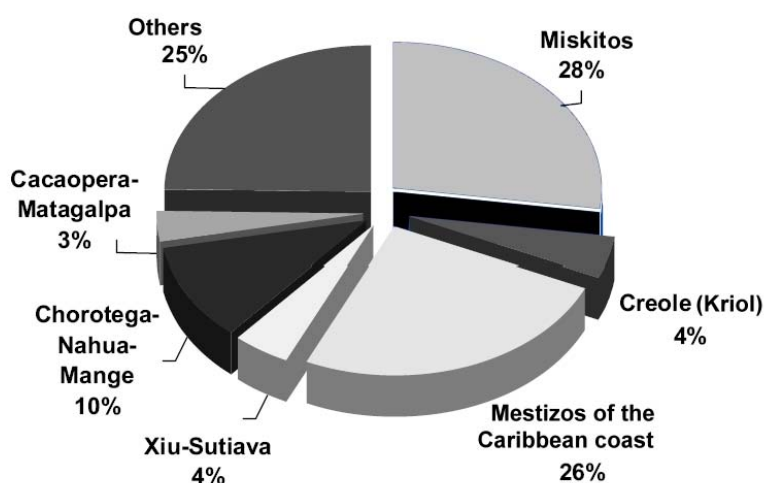
749. Article 8 of the Constitution recognizes Nicaragua's multi-ethnic nature and guarantees the specific rights of its indigenous peoples. According to the most recent INEC census, conducted in 2005, 8.6 per cent of the country's total population identifies itself as belonging to a specific indigenous people or ethnic community.

750. Eleven per cent of the persons identifying themselves in this way also assert that they do not know which ethnic group they belong to; when the persons responding "don't know" to the initial question are added, the figure rises to 15 per cent.

751. This fact ought to act as a pointer for local leaders, education and health officials, etc., to the importance of this segment of the population in their efforts to raise the awareness of the general public and restore the sense of identity of these communities.

752. The biggest group is the Miskitos (27.2%), followed by Mestizos of the Caribbean coast (25.3%), Chorotega-Nahua-Mange (10.4%), Creole (*Kriol*) and Xiu-Sutiava (4.5% each), Cacaopera-Matagalpa (3.4%), Nahoa-Nicarao (2.5%) and Mayanga-Sumu (2.2%), as the following chart shows.

Members of indigenous peoples and ethnic communities (2005 census)



Source: INEC, *National Population Census VIII* and *National Housing Census IV*.

753. Unlike the population as a whole, these peoples are mostly rural dwellers (56.8%), and their way of life differs according to the indigenous people or ethnic community in question. The Creoles have a clear urban presence (90.5%), followed by the Xiu-Sutiava (80.4%), the Garífuna and the Ulva (62% each).

754. As a result of the political developments in Nicaragua in the 1980s, including the 1987 amendments to the Constitution, the regional autonomy of the indigenous peoples of the Atlantic coast was incorporated in Chapter IV of the Constitution, on the rights of the communities of the Atlantic coast (arts. 89-91).

755. The second paragraph of article 89 provides in fact that the communities of the Atlantic coast “are entitled to preserve and develop their cultural identity within the unity of the Nation, to adopt their own forms of social organization, and administer their local affairs in accordance with their traditions.” The third paragraph recognizes “the communal forms of land-ownership of the communities of the Atlantic coast [and] the enjoyment, use and exploitation of the waters and forests of their communal lands.”

756. The autonomy granted to the Autonomous Regions of Atlántico Norte and Atlántico Sur by these provisions of the Constitution provides the institutional basis on which these regions plan and control their own development.

757. In the preceding period of Government (1984-1989), following the adoption of the Statute of Autonomy of the Regions of the Atlantic Coast of Nicaragua (Act No. 28),¹²⁷ the State, acting through the Nicaraguan Institute for Agrarian Reform (INRA), awarded to indigenous communities the first land titles issued in the period 1984-2004.

758. Following the approval of the new Constitution in 1987 and the Statute of Autonomy, that period saw significant changes in the Agrarian Reform Act¹²⁸ (Decree Law No. 782) and in its subsequent implementation. The Agrarian Reform (Amendment) Act (Act No.14),¹²⁹ adopted on 11 January 1986, referred for the first time to the specific demands of the indigenous communities of the Caribbean coast, and article 31 stated that “the State shall provide the necessary land for the communities of Miskitos, Sumos, Ramas and other ethnic groups of Nicaragua’s Atlantic coast, with a view to enhancing their standard of living and contributing to the social and economic development of the Nation.”

759. Between 1986 and the elections of 1990 this provision brought about a change in the policies of the State, which recognized the lands of the indigenous communities of the Caribbean coast and awarded title to them.

760. Between 1986 and 1989 the State awarded nine titles in all, for a total of 93,833 hectares, but only to the Sumo/Mayagana communities. Titles were also awarded to three Tasba Pri settlements (Wahminona, Sahsa and Sumubila), for a total of 14,000 hectares.

761. A total of 107,833 hectares of communal land was recognized and registered, a larger area than the 70,448 hectares awarded by the Title Commission of La Mosquitia or the 76,887 hectares awarded during the regime of the Somoza family.

762. Since the war, many refugees from Costa Rica and former resistance fighter have established “poles of development”, supported by the Government of Violeta Barrios de Chamorro, on land claimed by the indigenous communities in San Francisco, Río Kubra, Punta Gorda, Ponder y Pedregal, and Laguna de Perlas.

¹²⁷ Adopted on 7 September 1987 and published in *La Gaceta*, Diario Oficial No. 238, of 30 October 1987.

¹²⁸ Published in *La Gaceta*, Diario Oficial No. 188, of 21 August 1981.

¹²⁹ Published in *La Gaceta*, Diario Oficial No. 8, of 13 January 1986.

763. The “Establishment of the regional councils of the Autonomous Regions of the Atlantic coast” was approved on 23 August 1989 by Legislative Decree No. 53.¹³⁰ These regional councils took office on 4 May 1990.

764. Article 91 of the Constitution establishes the State’s obligation to “enact laws to promote measures to ensure that no Nicaraguan is subjected to discrimination by reason of his or her language, culture or origin.”

765. Article 121 of the Constitution states: “The indigenous peoples and ethnic communities of the Atlantic coast are entitled in their region to inter-cultural education in their mother tongue, in accordance with the law.” On the basis of this provision the Atlantic Coast (Language Education) Act was adopted by Decree Law No. 571¹³¹ on 25 November 1980; it provided that the ethnic groups of the Atlantic coast and of the rest of Nicaragua should be able to exercise the right to education in their mother tongue and that bicultural and bilingual education should be introduced to meet the integration needs of the minority ethnic groups, firstly in the Department of Zelaya: Miskitos, Sumos, Ramas and Criollos.

766. The provision of article 191 of the Constitution was developed further with the adoption on 22 June 1993 of the Languages of the Communities of the Atlantic Coast (Official Use) Act (Act No. 162),¹³² which established Miskito, Criollo, Sumo, Garífona and Rama as official languages in the Autonomous Regions of the Atlantic coast. It also accorded to the Miskito and Sumo communities which had lived in times past in the Departments of Jinotega and Nueva Segovia full respect for and enjoyment of the rights established in the Act.

767. Act No. 162 establishes the State’s obligation to introduce programmes for the preservation, restoration and promotion of the Miskito, Sumo, Rama, Criollo and Garífona cultures and any other indigenous culture still found in Nicaragua and to study the feasibility of education in the mother tongues in the future.

768. The Act provides that the powers of the administrative bodies of the Autonomous Regions include the study, encouragement, development, preservation and dissemination of the linguistic heritage of these communities and that State should introduce programmes for the preservation, restoration and promotion of the cultures of the indigenous peoples and ethnic communities.

769. The General Environment and Natural Resources Act (Act No. 217)¹³³ was adopted on 27 March 1996; it recognized the competence of the regional governments to formulate and execute land-management plans in the two Autonomous Regions. It also recognized the administrative competence of the regional councils to administer the State-owned natural resources of the Caribbean coast (art. 60).

770. Act No. 445¹³⁴ on the communal ownership system of the indigenous peoples and ethnic communities of the Autonomous Regions of the Atlantic coast and of Ríos Bocay, Coco, Indio

¹³⁰ Published in *La Gaceta*, Diario Oficial No. 188, of 5 October 1989.

¹³¹ Published in *La Gaceta*, Diario Oficial No. 279, of 3 December 1980.

¹³² Published in *La Gaceta*, Diario Oficial No. 132, of 15 July 1996.

¹³³ Published in *La Gaceta*, Diario Oficial No. 105, of 6 June 1996.

¹³⁴ Published in *La Gaceta*, Diario Oficial No. 16, of 23 January 2003.

and Maíz was promulgated on 13 December 2002. The Regulations of Act No. 28¹³⁵ on the Statute of Autonomy of the Regions of the Atlantic Coast were approved on 9 June 2003 by Legislative Decree No. 3584, and Act No. 471,¹³⁶ amending the Office of the Procurator for the Protection of Human Rights (Establishment) Act (Act No. 212) was adopted on 9 September 2003; this Act appointed the Special Procurator for Indigenous Peoples and Ethnic Communities.

771. The first summit meeting of the Garífuna peoples of Central America and the Caribbean was held at Corn Island, Autonomous Region of Atlántico Sur, from 11 to 13 November 2005; the outcome document urged the participating Governments to recognize the importance of establishing a Garífuna national day. As a result, Executive Decree No. 37-2006,¹³⁷ on the Declaration of National Garífuna Day, was approved on 15 June 2006.

772. The fundamental advances marked by the Statute of Autonomy, Act No. 445 and the Decision of the Inter-American Court of Human Rights in favour of the Sumo/Matagna community of Awas Tingni are manifested best in the award of titles to five indigenous territories in the Bosawás reserve in May 2005.

A. Decision of the Inter-American Court of Human Rights in favour of the Awas Tingni community

773. It should be pointed out as background to the Awas Tingni case that on 4 June 1998 the Inter-American Commission on Human Rights had brought before the Court an action against the State of Nicaragua deriving from complaint No. 11,577, received by the Commission's Secretariat on 2 October 1995.

774. Three important rulings were made in this case: two by the Inter-American Court of Human Rights (the Decision itself and a Resolution on precautionary measures) and one by the national courts on an application for *amparo*.

775. Firstly, on 17 September 2001 the Inter-American Court announced its Decision finding against the State of Nicaragua for violating the right to judicial protection and the right of ownership established in article 25 in relation to article 1, paragraphs 1 and 2, and article 21 of the American Convention.

776. On 9 September 2002 the Court issued a Resolution on precautionary measures against the State of Nicaragua in favour of the indigenous community; it called for the adoption of measures to protect the use and enjoyment of the ownership of the lands belonging to the community and their natural resources. The State was further called on to allow the applicants to involve themselves in the measures in question and keep them informed about the planning and execution thereof.

777. The State was also required to investigate the substance of the complaints which gave rise to the Resolution in order to identify and punish the persons responsible. Lastly, the State was required to report on the implementation of the interim agreement recognizing the community's

¹³⁵ Published in *La Gaceta*, Diario Oficial No. 186, of 2 October 2003.

¹³⁶ Published in *La Gaceta*, Diario Oficial No. 191, of 9 October 2003.

¹³⁷ Published in *La Gaceta*, Diario Oficial No. 122, of 23 June 2006.

rights of use, occupation and exploitation and to report every two months on the precautionary measures adopted.

778. On 16 January 2003 the representatives of the community lodged an application of *amparo* against representatives of the State with the appeals court of Puerto Cabezas for failure to comply with the Decision on violation of constitutional rights.

779. On 13 December 2006, updating the application of 3 May 2005, the representatives of the community submitted to the Inter-American Court a new application for additional compensation for harm caused by the State of Nicaragua through its continuing violation of the community's rights recognized by the Court in its Decision and Resolution.

780. The State of Nicaragua is now in the process of complying with the Court's Decision, which ordered inter alia that the State should demarcate and issue title to the geographical area where the Awas Tingni community lived and carried on its activities.

**B. Act concerning the indigenous peoples of the Pacific,
central and northern regions**

781. Since the indigenous communities of the Atlantic already had legal means of asserting their rights (under Act No. 28 on the Statute of Autonomy of the Atlantic Coast Regions and Act No. 445 on the communal ownership system of the indigenous peoples and ethnic communities of the Autonomous Regions of the Atlantic coast and of Ríos Bocay, Coco, Indio and Maíz), the Government agreed to draft an instrument for the indigenous peoples of the Pacific, central and northern regions of the country.

782. The members of the National Assembly's Committee on Ethnic Affairs and Indigenous Communities met on 2 August 2006 to approve the indigenous peoples bill, which had been transmitted to the Secretariat of the National Assembly on 16 July 2004.

783. On 8 September 2006, during the resumed third regular session of the twentieth Legislature, a decision was taken to transmit the bill to the Committee for approval. Finally, the Committee transmitted the bill to the Office of the First Secretary of the National Assembly on 15 December 2006, with a view to its adoption.

784. One innovative feature of the bill is the creation of an institution to attend to indigenous peoples' affairs, whose functions would include reinforcing indigenous unity and promoting the economic and cultural development of the indigenous communities; the bill also provides for an appropriation under the State budget, in accordance with article 5 of the Constitution.

785. It should be pointed out that the Ownership Schedule of the indigenous sector defines indigenous community and communal ownership and the form of collective ownership of the property of the indigenous peoples, consisting of land, water, forests, etc., designated in titles to land and resurveyed land which had traditionally belonged to these peoples. These forms of community ownership are also recognized by the Constitution.

786. One last matter of relative importance is the election of the indigenous authorities, which has given rise to much controversy and many disputes owing to intervention in such elections by the municipal authorities, which up to the time of the adoption of the bill were responsible for certifying the election results; this function has now passed to the municipal electoral councils.