



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Initial reports of States Parties due in 2006**

**NICARAGUA<sup>\*</sup>, <sup>\*\*</sup>**

[20 June 2007]

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\* 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.

\*\* The annexes to this report may be consulted at the secretariat.

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## **ABBREVIATIONS AND ACRONYMS**

The Convention	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
USCI	International Agreements Monitoring Unit
MIGOB	Ministry of Internal Affairs
DGME	Office of Migration and Alien Affairs
SPN	National Prison System
PN	National Police
PDDH	Office of the Human Rights Procurator
CSJ	Supreme Court of Justice
CENIDH	Nicaraguan Human Rights Centre
CPDH	Standing Committee on Human Rights
PGR	Office of the Attorney-General
UNHCR	Office of the United Nations High Commissioner for Refugees
CEPAD	Council of Pro-Denominational Alliance Churches
CPP	Code of Criminal Procedure
The Constitution	Political Constitution of the Republic of Nicaragua
CSJ	Supreme Court of Justice
IML	Institute of Forensic Medicine
CONAPINA	National Council for the Comprehensive Care and Protection of Children and Young Persons

## Executive Summary

Nicaragua is undergoing profound institutional and legal changes as part of the process of consolidating democracy. There have been considerable changes in the legal sphere with regard to human rights protection both in the Constitution and secondary law.

In line with a policy of openness and transparency, the State of Nicaragua is most willing to strengthen the channels of dialogue and communication with international human rights bodies and Committees.

One of the main questions the Committee against Torture asks of States Parties is whether the definition of torture in domestic law is fully in accordance with the Convention. In that regard the State of Nicaragua can state that the Criminal Code (CP) of the Republic dates from over 100 years ago and therefore does not cover the crime of torture as such except by way of classification of the offence of wounding and abuse of authority. It should nonetheless be noted that a new Criminal Code which includes classification of the offence of torture (article 470) in line with the aspects set out in the Convention is currently being debated in the National Assembly

Additionally, article 36 of the Constitution of Nicaragua states: “Every person shall have the right to respect for his physical, psychological and moral integrity. No-one shall be subjected to torture or to cruel, inhuman or degrading procedures, punishment or treatment. Violation of that right shall constitute an offence punishable by law.”

A new system of criminal procedure has been introduced through the adoption of the Code of Criminal Procedure (CPP); this replaces the Criminal Investigation Code which was in flagrant violation of human rights and the Constitution of the Republic as its rules were incompatible with rights recognized as inalienable in the Constitution. It is important to note the effort made by the Nicaraguan State during this transition stage where both procedures (inquisitorial and adversarial) will exist side by side until such time as proceedings brought under the old Criminal Investigation Code have been concluded.

The CPP contains safeguards, protection and a human dimension with regard to the treatment of prisoners Article 95(5) states that any defendant has the right “Not to be subjected to torture or other cruel, inhuman treatment or treatment degrading to his personal dignity”.

On 23 January 2006, the Human Rights Procurator swore in the **Special Procurator for Prisons**. As a result, the Office of the Human Rights Procurator is able to inspect the treatment given to persons in detention centres (National Police), to persons who are being held for trial or who have been convicted (National Prisons System) and to illegal migrants (Office of Migration and Alien Affairs).

On 11 September 2003, **Act No. 473 of 2003, the “Prison System and Enforcement of Sentences Act”** was adopted. The Act lays down the rules governing the operation of the National Prisons System and prescribes the activities it undertakes while sentences are being served and custodial measures enforced; these include re-education, social reintegration and security in prison of detainees.<sup>1</sup> Pursuant to that Act, on 12 March 2004 Decree No.16-2004

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<sup>1</sup> Published in The Gazette No. 222 of 21 November 2003.

established “Regulations under Act No. 473 of 2003, the Prison System and Enforcement of Sentences Act”.

Apprehension and detention procedures are provided for in the Police Act, Act. No. 228. It should be noted that this Act confers upon the Inspector General the duty of ensuring unfailing respect for human rights. The Inspector General must also deal with both national and international human rights organizations.

The general view is that the rules and measures to help prevent torture and other cruel, inhuman or degrading treatment or punishment have been effective to the extent that instances of physical or psychological ill-treatment or any other procedure prejudicial to a detainee’s human dignity which has been meted out by staff performing duties of control, re-education and prison security have been isolated and duly punished.

Pursuant to international obligations to respect, safeguard and guarantee the right to personal integrity, on 14 March 2007 the Government of Reconciliation and National Unity, which is committed to the prohibition and prevention of the offence of torture, acceded to the Optional Protocol to the Convention against Torture, thereby strengthening the protection of persons deprived of their liberty against torture and ill-treatment by judicial and non-judicial means of a preventive nature, such as regular visits to places of detention.

## INTRODUCTION

1. On 15 April 1985, the State of Nicaragua signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Its instrument of ratification was deposited subsequently on 5 July 2005 and the Convention entered into force 30 days later, in accordance with article 27(2) of the Convention. Thus the domestic and international obligations laid down in the Convention entered into force.
2. In line with a policy of openness and transparency, the State of Nicaragua is most willing to strengthen the channels of dialogue and communication with international human rights bodies and Committees, and for that reason the Government of Nicaragua herewith submits its first report pursuant to article 19(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter “the Convention” or “the Convention against Torture”).
3. The report was drawn up by the International Agreements Monitoring Unit (USCI) at the Ministry of Foreign Affairs, working alongside the Inter-Institutional Committee which was founded with the aim of drafting a country report and involving civil society in the process. The Working Group for the Convention against Torture comprises representatives from the following institutions: the Ministry of Internal Affairs, (MIGOB), the Office of Migration and Alien Affairs (DGME), the National Prisons System (SPN), the National Police (PN), the Army, the Office of the Human Rights Procurator (PDDH), the Supreme Court of Justice (CSJ), the Public Prosecutor’s Office, the Nicaraguan Human Rights Centre (CENIDH), the Standing Committee on Human Rights (CPDH), the Psychiatric Hospital, the Office of the Attorney General of the Republic (PGR), the Institute of Forensic Medicine (IML), and representation from the Office of the United Nations High Commissioner for Refugees (UNHCR) in the form of the Council of Pro-Denominational Alliance Churches (CEPAD).
4. Nicaragua is undergoing profound institutional and legal changes as part of the process of consolidating democracy. There have been considerable changes in the legal sphere with regard to human rights protection both in the Constitution and secondary law through the adoption of reforms of guarantees of due process and protection of the rights of persons deprived of their liberty.
5. The adoption of a new criminal procedure and prisons system which provides guarantees are only two examples of how the Nicaraguan legal system is increasing its attachment to the universal values of respect for human rights.
6. The foundations for a new stage in the defence and protection of the freedoms and fundamental rights provided for in the main international human rights instruments are being laid in Nicaragua. The Nicaraguan State nonetheless admits to the Committee against Torture that although enormous progress has been made, lack of resources means that its efforts have been unable completely to guarantee full respect for the rights of all Nicaraguans.

**GENERAL LEGAL FRAMEWORK GOVERNING THE PROHIBITION  
AGAINST TORTURE AND OTHER CRUEL, INHUMAN  
OR DEGRADING TREATMENT OR PUNISHMENT**

7. Pursuant to the Constitution, Nicaragua is a sovereign State whose sovereignty resides in the people; the people exercise that sovereignty by means of democratic instruments, and by determining and participating freely in the construction and development of the economic, political and social system of the nation within the confines laid down in the Constitution.

**A. Administrative, judicial or other types of court with competence  
in matters covered by the Convention**

8. Article 46 of the Political Constitution of the Republic of Nicaragua states that, “on the national territory every person shall enjoy State protection and recognition of the rights inherent in the human person, unlimited respect, promotion and protection for human rights and the full force of the rights laid down 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, the International Covenant on Civil and Political Rights and the American Convention on Human Rights of the Organization of American States”.

9. Article 36 of the Constitution prohibits the use of torture and in that regard states as follows: “Every person shall have the right to respect for his physical, psychological and moral integrity. No-one shall be subjected to torture or to cruel, inhuman or degrading procedures, punishment or treatment. Violation of that right shall constitute an offence punishable by law”.

10. To that end, article 189 of the Constitution states: “Recourse to habeas corpus is hereby established for those whose liberty, physical integrity and security have been violated or are in danger of so being”. This article provides protection against violations of any of the rights recognized in the Constitution; accordingly, it means that any laws, international treaties, decrees or regulations which are in breach of provisions of the Constitution are unconstitutional.

11. Act 201, “Promotion of Human Rights and Education in the Political Constitution Act”<sup>2</sup> provides that the Constitution and human rights must be taught in pre-primary and primary schooling, secondary schooling and professional and technical training, based on the text of the Constitution and the international legal instruments in the field of human rights which have been ratified by Nicaragua and any which it ratifies in future.

12. Similarly, the Act provides that in military and police barracks and establishments, personnel are to receive instruction in the Constitution and human rights. The National Police operates a study system of weekly “unit-based continuous learning courses” on laws relating to police work, including: the Constitution of Nicaragua, Police Act (Act. No. 228) and the Regulations issued under it, the Criminal Code and the Code of Criminal Procedure, the Disciplinary Regulations governing the National Police, and the Code of Conduct for officials with law-enforcement responsibilities.

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<sup>2</sup> The Gazette Official Journal No. 179 of 26 September 1995.



13. Note should be made of article 7 of Act No. 473 of 2003 “Prison System and Enforcement of Sentences Act”<sup>3</sup>, which states that the prison system “...is based on recognition of the dignity of the person and respect for human rights [...]”, it also prohibits torture and ill-treatment.

14. In accordance with the provisions of article 131 of the Constitution, public employees and officials are personally liable for violations of the Constitution resulting from a lack of administrative integrity and for any other offence or misdemeanour committed in the performance of their duties. Similarly they are responsible before the State for any damage they may cause through despotism, negligence or oversight in the performance of their duties.

15. Within the scope of the United Nations Organization, Nicaragua is a signatory State to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, among others.

16. As far as Inter-American treaties are concerned, Nicaragua is a signatory State to the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

17. Nicaragua has recognized the competence of the Inter-American Court of Human Rights by express declaration; it recognizes the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a State Party alleges that another States Party has committed a violation of a human right set forth in the American Convention on Human Rights as provided for in article 45 thereof, which reads as follows:

“Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.

Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.

A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.

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<sup>3</sup> Published in The Gazette No. 222 of 21 November 2003.

Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization”.

18. These international mechanisms apply once domestic remedies provided for under the judicial system have been exhausted.

19. The sections of this report relating to articles 1,2, and 4 describe in detail the domestic legislation which Nicaragua has adopted to implement the Convention against Torture.

### **B. Position of the Convention in the domestic legal order**

20. The Criminal Code<sup>4</sup> (CP) of the Republic of Nicaragua has been in existence for over one hundred years, and as a result has undergone a number of reforms. It is being reformed and updated once again.

21. Among the offences covered in the new Code is the characterization of the offence of torture in line with the aspects set out in the definition contained in article 1 of the Convention. To that end, article 470, which is soon to be adopted, reads:

#### **Torture**

Anyone who subjects another person to any type of physical or mental torture for the purposes of a criminal investigation, as a means of intimidation, personal punishment, preventive measure, a punishment or for any other purpose, shall be sentenced to a period of imprisonment of between two and five years.

Any authority, official or public employee who carries out any of the acts described in the preceding paragraph shall, in addition to the prison sentence, be sentenced to a period of general disqualification from office for between six and ten years.

Any authority, official or public employee who fails to prevent the commission of any of the acts characterized in the preceding paragraphs where they come to his knowledge and the matter falls within his competence, shall be sentenced to a period of imprisonment of between one and three years and a period of special disqualification from holding public employment or public office for a period of between one and four years. The same penalty shall be imposed on any authority, official or public employee who, having knowledge of the commission of any of the acts referred to in the preceding paragraphs, but without competence in the matter, fails to report the act to the competent authority within the ensuing forty-eight hours.

22. When the new Code is adopted, torture will become a serious offence under criminal legislation, in line with article 1 of the Convention.

23. On another matter, article 138(12) of the Constitution provides that the powers of the National Assembly are:

“To approve or reject international instruments entered into with countries or bodies which are subjects of international law. Those international instruments may only be reported on, debated, approved or rejected as a whole: no changes or additions may be

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<sup>4</sup> Criminal Code Act (Decree 297), The Gazette Official Journal No. 96 of 3 May 1974.

made to the wording. Legislative approval shall give those instruments the force of law inside and outside Nicaragua once they have entered into force at international level by means of deposit or exchange of instruments of ratification or compliance with the requirements or time-limits provided for in the text of the treaty or international instrument”.

24. The final part of the above text provides a rule which identifies first, that once they have received legislative approval, treaties have the same value as laws; secondly that the provisions of a treaty can in no way be amended or derogated from.
25. It should be noted that article 182 of the Constitution states that all laws are subordinate to the Constitution; it also states that no law, treaty, order or provision which conflicts with or alters the provisions of the Constitution shall have any validity.
26. In Nicaragua, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment became part of domestic law as of 26 April 2005 when it was ratified by the National Assembly pursuant to article 138 of the Constitution of the Republic. Like any international treaty ratified by Nicaragua, the Convention constitutes a law of the Republic, and this brings with it an obligation on the part of State officials to implement its provisions directly without the need for any further legislative or administrative act. Thus:

#### **Public Prosecutor's Office**

27. The Public Prosecutor's Office, like other State bodies referred to in this report, was studied in depth in the core document. The Office is an independent body which is structurally, operationally and administratively autonomous. It is responsible for the exercise of public prosecutions, for establishing and investigating the commission of offences and for preparing prosecution cases for the courts. It is subject to the Constitution of the Republic and the law. Its structure takes the form of units which specialize in the role of preparing prosecutions.
28. It is essentially composed of the following bodies: the Public Prosecutor of the Republic, the Assistant Public Prosecutor, the Inspector General, Prosecutors for the Departments and the Autonomous Regions of the Atlantic Coast, Auxiliary Prosecutors and Special Prosecutors.
29. The Public Prosecutor of the Republic, in conjunction with the Director General of the National Police, is responsible for formulating general policy and the priorities which must underlie the investigation of criminal acts, as well as requesting investigation of offences and summoning the appropriate persons to appear in court, intervening in proceedings and assuming all the responsibilities of the Public Prosecutor's Office in criminal trials.

#### **National Police**

30. The National Police is an armed, civilian, professional corps with no deliberative remit governed strictly in line with the Constitution. It is the only police corps in the country and is present throughout the territory of Nicaragua, except in certain remote rural areas.
31. National Police officers are responsible for gathering evidence and testimony relating to the commission of offences and for taking steps to arrest and detain persons caught in flagrante

delicto. Their powers also include the enforcement of judicial orders, including detention orders. Procedures for the arrest and detention of individuals are set out in the Police Act (Act No. 228)<sup>5</sup>.

32. The National Police has the rank of an Office within the structural hierarchy of the Ministry of Internal Affairs and is governed strictly in line with the Constitution, which it treats with respect and abides by.

33. It should be noted that article 19 of Act 228 confers upon the Inspector General of the National Police the duty to ensure unfailing respect for human rights, and responsibility for dealing with both national and international human rights organizations.

### **Public Defender's Office**

34. Every defendant has the right to be advised by a defender appointed by himself or herself or by his or her family or, if he or she so requests, by a public or officially appointed defender. Defendants also have the right to notify a lawyer of their detention (Code of Criminal Procedure<sup>6</sup> art. 95, paras. 10 and 3). Most accused persons and defendants are not in a position to be able to hire a private lawyer. The total number of public defenders in the country is 79.

### **Office of the Human Rights Procurator**

35. It should be noted that until such time as the new Criminal Code, which covers the offence of torture in line with the Convention, is adopted, the Office of the Human Rights Procurator (PDDH) will include complaints of torture in the figures for offences of Wounding and Abuse of Authority.

36. Reports from the Office of the Human Rights Procurator show that acts of ill-treatment are usually linked to bodies with custodial responsibilities, namely the National Police (PN), the National Prison System (SPN), and the Office of Migration and Alien Affairs (DGME).

37. The complaints investigated by the PDDH in relation to the Office of Migration and Alien Affairs are principally based on requests made to that Office by immigrants seeking support in the processing of their deportation or inquiring about the possibility of cooperation with counterpart bodies in their own countries so that relatives can be informed that they have been detained.

38. The bodies involved in the cases investigated by the PDDH act on the reports it issues and punish individual perpetrators. The punishments are carried out in accordance with the laws or regulations governing their post.

39. Despite the fact that provisions have been adopted which promote a culture of respect for the rights of detainees, there are factors which, whether deliberately or accidentally, result in detainees' human rights being violated; one of these is the budget allocated to bodies with responsibility for guaranteeing those rights. The budget does not allow them to have the infrastructure, human and material resources necessary to discharge their responsibilities and duties in accordance with the law governing them.

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<sup>5</sup> The Gazette Official Journal No. 162 of 28 August 1996.

<sup>6</sup> The Gazette Official Journal Nos 243 and 244 of 21 and 24 December 2001.

40. In short, it is necessary to strengthen and support the bodies involved in the detention, investigation, rehabilitation and security of detainees through the adequate allocation and proper administration of funds so that obstacles can be overcome and the Convention can be implemented in full.

## **Article 1**

### **Definition of torture**

41. To date the Nicaraguan courts have investigated and tried acts defined as torture in the Convention as Wounding and Abuse of Authority because criminal law does not characterize the offence of torture in the manner set out in the Convention. That situation will be resolved with the adoption of the new Criminal Code.

42. However, as was stated at the beginning of this report, torture and ill-treatment are prohibited under the Constitution of Nicaragua which states in article 36 that: "Every person shall have the right to respect for his physical, psychological and moral integrity. No-one shall be subjected to torture or to cruel, inhuman or degrading procedures, punishment or treatment. Violation of that right shall constitute an offence punishable by law".

43. A new system of criminal procedure was introduced with the adoption of the Code of Criminal Procedure (CPP), replacing the Criminal Investigation Code, which was in flagrant violation of human rights and the Constitution as its rules were incompatible with rights recognized as inalienable in the Constitution. It is important to note the effort made by the Nicaraguan State during this transition stage where both procedures (inquisitorial and adversarial) will exist side by side until such time as proceedings brought under the old Criminal Investigation Code have been concluded.

44. The Code of Criminal Procedure contains safeguards, protection and a human dimension with regard to the treatment of prisoners Article 95(5) states that any defendant has the right "Not to be subject to torture or other cruel, inhuman treatment or treatment degrading to his personal dignity". Furthermore, article 96(6) states that a defendant has the right "Not to be subjected to techniques or methods which affect his free will, even with his consent"; this provision clearly refers to the prohibition against procedures which may influence a defendant to behave in a particular way, devoids him of legal status or diminishes his physical or mental capacity.

45. Similarly, article 227(2) of the CPP states that "The use of torture, cruel, inhuman or degrading treatment or procedures and of any other method of applying pressure prejudicial to human dignity is prohibited in police investigations".

46. These descriptions characterizing the offence of torture mark a significant step forward in legislative terms by doing away with the criterion relating to the severity of any pain and suffering which may be caused to defendants.

47. As far as evidence is concerned, its lawfulness is guaranteed in the article 16 of the CPP which reads as follows:

"Evidence shall only be valid if it has been obtained by lawful means and incorporated into the proceedings in accordance with the provisions of this Code.

No proceedings which have taken place pursuant to the principle of discretion between the Public Prosecutor's Office and the Parties, including plea-bargaining, shall be admissible as evidence during the proceedings where no agreement has been reached or where it is dismissed by the competent court."

48. This means that evidence cannot be submitted unlawfully in breach of the principles of the Constitution or of the international covenants and agreements in force in Nicaragua

## **Article 2**

### **Administrative, legislative and judicial measures to prevent torture**

#### **A. Legislative measures**

##### **Prison System and Enforcement of Sentences Act**

49. Act No. 473 of 2003, the Prison System and Enforcement of Sentences Act, was adopted on 11 September 2003. The Act essentially establishes the rules governing the operation of the National Prison System and prescribes the activities it undertakes while sentences are being served and custodial measures enforced; these include re-education, social reintegration and security in prison of detainees.

50. Chapter II of the Act states: Article 7. Role and foundation of the National Prison System. "The National Prison System is founded on recognition of a person's dignity and respect for human rights. In no circumstances shall inmates be subject to torture, inhuman, cruel or degrading punishment or treatment. Physical or psychological ill-treatment and any other procedure prejudicial to a detainee's human dignity is hereby prohibited". As a development of that Act, 12 March 2004 saw the establishment of the Regulations pursuant to Act No. 473, given in Decree No.16-2004 published in the Official Journal Gazette No. 54 of 17 March 2004.

##### **Civil Inspectorate**

51. Similarly, the Civil Inspectorate of the Ministry of Internal Affairs, in accordance with the Regulations pursuant to Act 290 "Organization, Powers and Procedures available to the Executive Act",<sup>7</sup> states in article 39 that its functions include investigating cases allocated to it by the Minister for Internal Affairs and processing complaints upon a request by any concerned individual and Human Rights bodies (CENIDH, CPDH, etc.).

##### **Police Act**

52. As far as the National Police are concerned, justice is done in compliance with human rights through the Police Act (Act 228)<sup>8</sup> and its Regulations<sup>9</sup>, the Procedures Manual, the Rules of Ethics, the Manual on the role of Custody Officers, guidance from the Departmental and Municipal National Police delegations, and the Inspector General himself; the latter is responsible for ensuring that the Constitution and other laws are complied with and has the

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<sup>7</sup> The Gazette Official Journal No. 205 of 30 October 1998.

<sup>8</sup> The Gazette Official Journal No. 162 of 28 August 1996.

<sup>9</sup> The Gazette Official Journal No. 32 of 14 February 1997.

Supervision and Control Division and the Internal Affairs Division available to him to investigate complaints from citizens and to provide control internally.

53. Pursuant to the provisions of article 33(2)(2) of the Constitution of Nicaragua, every detainee has the right to be released or brought before the authority designated by law within a maximum period of 48 hours following their detention. Furthermore, article 31 of the Code of Criminal Procedure states that: “where someone is detained police officers shall, within a time-limit not exceeding twelve hours, inform the Public Prosecutor’s Office of the steps taken and shall bring the defendant before the competent court within the time-limit provided for in the Constitution”.

54. Similarly, article 33(2)(1) of the Constitution of Nicaragua states that every detainee has the right to “be informed in detail and without delay, in a language that he understands, of the reasons for his detention and the charge brought against him; to be informed by the police of the fact of his detention and to inform his family or a person whom he considers appropriate of his detention [...]”. Article 34 of that Act also states that all detainees are entitled to “have a defender appointed for them automatically where no defender was appointed at the first interview [...]”. Furthermore, article 232(6) of the Code of Criminal Procedure sets out the obligation incumbent on the National Police to ask the police doctor or the acting police doctor to assess the detainee before he appears in court or where the detainee’s health is in a serious condition.

#### **Prohibition against invoking orders from a superior as a justification for torture**

55. Article 54 of the Police Act, Act. No. 228 implicitly prohibits an order from a superior from being invoked as justification to the extent that it provides as follows: “members of the police are personally and directly responsible for any actions performed by them in the course of their professional duties which infringe or violate the legal rules and regulations governing their conduct”. Nonetheless, article 193(c) of the Regulations pursuant to Act 228 states: “The Police may only have recourse to fire-arms in the following circumstances: c) Upon an order from a superior which has been duly communicated, in defence of the security of the community, in the event of serious disturbance of the peace and in situations involving hostage-taking or acts of terrorism, provided that the order given is not a misuse of power”.

56. The concept of due obedience can have no bearing on a defence in criminal law as a justification either for the commission of acts of torture or other offences, or for cruel, inhuman or degrading punishment; due obedience can be relied upon only in the circumstances provided for in article 193(c) of the Regulations under Act 228 referred to in the preceding paragraph.

57. The same is true of the National Prison System: there is no situation in which the order of a superior can be invoked as a justification for committing acts of torture; this is the result of the fact that the system is organized and structured so that responsibilities are set out clearly in the Manual on Responsibilities in accordance with the provisions of the Constitution, Act 473<sup>10</sup>, the

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<sup>10</sup> Prison System and Enforcement of Sentences Act (Act 473), The Gazette Official Journal No. 222 of 21 November 2003.

Regulations<sup>11</sup> pursuant thereto, and any other law on these matters, or ministerial decisions and arrangements.

### **Legitimate refusal by a subordinate to commit acts of torture**

58. Article 97 of the Constitution provides that the National Police shall be governed strictly in line with the Constitution, which it is to treat with respect and abide by. Article 36 of the same precept states “Every person shall have the right to respect for his physical, psychological and moral integrity. No-one shall be subjected to torture [...]”. The result of this is that if a subordinate is the subject of a disciplinary sanction for refusing to commit an act of torture he/she may invoke the recourse of appeal provided for in article 55 et. seq. of the Disciplinary Regulations governing the National Police<sup>12</sup>.

### **Exceptional circumstances**

59. There are no exceptions whatsoever to the right not to be tortured, whether a state of war, a threat of war, internal political instability or any other public emergency. Article 2 of Act No. 44 “Emergencies Act”<sup>13</sup> states: “In the event of war, where the security or the economic situation in the country so requires, or in the event of a natural disaster, the President of the Republic may suspend, in whole or in part, throughout the national territory or in parts thereof, the rights and guarantees enshrined in the Constitution with the exception of those set out in article 186 thereof”.

60. Article 186 of the Constitution states that in emergencies the President of the Republic may not suspend the rights and guarantees provided for in a number of provisions of the Constitution, including article 36 which reads as follows: “Every person shall have the right to respect for his physical, psychological and moral integrity. No-one shall be subjected to torture or to cruel, inhuman or degrading procedures, punishment or treatment. Violation of that right shall constitute an offence punishable by law”. In other words there are no exceptions whatsoever to the right not to be tortured.

61. Where the offence of terrorism and related offences are concerned, articles 499 and 500 of the Criminal Code of Nicaragua provide that no restrictions are to be placed during the legal process on the constitutional guarantees of persons tried for this type of offence.

### **Children’s and Young Person’s Code**

62. In May 1988 the Children’s and Young Persons’ Code was promulgated<sup>14</sup>. It sets in place a special criminal system for the administration of juvenile criminal justice: Specialized Criminal

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<sup>11</sup> Regulations issued under the Act No. 473, Prison System and Enforcement of Sentences Act (Decree 16-2004), The Gazette Official Journal No. 54 of 17 March 2004.

<sup>12</sup> The Gazette Official Journal No. 33 of 17 February 1997.

<sup>13</sup> The Gazette Official Journal No. 198 of 19 October 1988.

<sup>14</sup> The Gazette Official Journal No. 97 of 27 May 1998.



Justice for Young People. Similarly, in accordance with articles 62 and 63<sup>15</sup> of the Code, the National Council for the Comprehensive Care and Protection of Children and Young Persons (CONAPINA) is established under Act 351 “National Council for the Comprehensive Care and Protection of Children and Young Persons and the Office of the Children’s and Young Persons’ Ombudsman (Organization) Act”<sup>16</sup>. The Office of the Children’s and Young Persons’ Ombudsman is also set up.

63. It is composed of one high-ranking delegate from each of the following bodies: Ministry of Internal Affairs, Ministry of Education, Ministry of Health, Ministry of Labour, Ministry of the Family, Ministry of Finance and Public Credit, the Nicaraguan Institute of Drainage Systems, Nicaraguan Institute of Municipal Development, Office of the Human Rights Procurator, three representatives who are members of the Coordinating Federation of Non-Governmental Organizations working with children and young people, one representative for children and young people, one representative of the Nicaraguan Red Cross and one representative of the Higher Council of Private Enterprise.

64. To incur criminal liability, an offender must be aged 13 and over. The legislation establishes, however, that minors aged between 13 and 15 may not receive custodial sentences and are subject instead to special protection measures. Minors aged between 16 and 18 make up less than 1 per cent of the prison population. Minors may not remain in police detention for longer than the time required to verify their identity and age and not longer than 24 hours. They must immediately be made available to the special procurators for the purpose of initiating the necessary investigations. No minor may be sentenced to a term of imprisonment longer than six years.

65. Detained minors must be sent to special custodial facilities in the outskirts of Tipitapa prison headquarters known as “Gallery 7”. They must await trial there and, if sentenced to custodial penalties, must serve their sentences in these same facilities.

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<sup>15</sup> **Article 62** - The National Council for the Comprehensive Care and Protection of Children and Young Persons is hereby established; it shall be composed of governmental and civil society organizations. Its structure shall be governed by an Act of the National Assembly within sixty days of the entry into force of this Code.

**Article 63** - The Office of the Children’s and Young Persons’ Ombudsman is hereby established as a department of the National Council for Comprehensive Care and Protection, and its principal purpose shall be to promote and protect the rights of children and young people recognized in this Code. The organization and administration of the Office shall be the subject of an Act.

<sup>16</sup> The Gazette Official Journal No. 102 of 31 May 2000.

**Amendments and additions to Act No. 240, Trafficking of Migrants (Control) Act, Acts Nos 240-513.**

66. One essential, outstanding point to note is the amendment of Act 240 “Trafficking of Illegal Migrants (Control) Act”<sup>17</sup>, repealing article 21 of the Act which read as follows:

“An alien who enters the country in any of the ways or forms provided for in article 5 of the present law is committing an offence of illegal entry and/or residence on the national territory and shall be sentenced to three months’ custody without possibility of remission. Having served that sentence the Office of Migration and Alien Affairs shall be ordered to deport the alien concerned to his or her country of origin”.

67. The amendments and additions to Act No. 240 “Trafficking of Migrants (Control) Act”, Acts Nos 240-513, were published in The Gazette, Official Journal N° 20, of 28 January 2005. Articles 3, 21, 23, and 26 of the Act provide that the Office of Migration and Alien Affairs is the guarantor of the second paragraph of article 21, which states: “[...] Illegal migrants shall be held in premises designated as the National Custody Centre for Illegal Migrants under the administration and custody of the authorities of the Office of Migration and Alien Affairs, and the relevant rules and custodial measures shall be adopted until they are deported to their country of origin or provenance once their identities have been verified by the Consulate of their country and they have obtained their return ticket, they shall board their transport in the custody of the authorities of the Migration and Alien Affairs Office”.

68. The amended Act added the following article to guarantee illegal migrants’ human rights:

“**Article 39 - Right to Identity.** Illegal migrants have the right to maintain their cultural, religious, ethnic and national identity in terms of their country of origin, as well as to receive good treatment from the police authorities and officials from the Migration and Aliens Affairs Office respectively.

Under no circumstances may the police or Migration and Aliens Office authorities confiscate detained illegal migrants’ tools or other assets; in the event that such confiscation occurs, the officers or representatives committing those acts shall be tried for the offence of theft and abuse of trust”.

**B. Administrative measures**

**Appointment of the Special Procurator for Prisons**

69. On 23 January 2006, the Human Rights Procurator swore in the Special Procurator for Prisons and, as a result, the Office of the Human Rights Procurator (PDDH) is able to investigate the treatment given to persons held in preventive detention centres (National Police), to prisoners who are being held for trial or who have been convicted (National Prison System) and to illegal migrants (Office of Migration and Alien Affairs).

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<sup>17</sup> The Gazette Official Journal No. 20 of 28 January 2005.

### **Establishment of the Institute of Forensic Medicine**

70. The Institute of Forensic Medicine (IML) was established on 2 June 1999 under the Regulations pursuant to Act No. 260 “Organic Act on the Judiciary of the Republic of Nicaragua” published in Gazette No. 104 of 2 June 1999. The IML is a dependency of the Supreme Court of Justice (CSJ) and enjoys autonomy in the performance of its technical and scientific forensic duties.

71. Its aim is to provide scientific evidence to help shed light on offences<sup>18</sup>. The IML embraces the National Forensic System and all of Nicaragua’s Forensic Doctors, whether they perform their duties at its head office or in any of the local offices to which they were appointed.

### **Adoption of the Disciplinary Regulations governing National Prison System staff and Procedures Manuals governing its Operation and Activities**

72. On 13 May 2004 the Minister for Internal Affairs approved the Disciplinary Regulations governing National Prison System staff<sup>19</sup>, which regulate the duties and rights of prison system staff in their work and performing their role.

73. According to article 236 of the Regulations pursuant to Act No. 473 of 2003 “Prison System and Enforcement of Sentences Act”, the Director General of the National Prison System, has the power to issue manuals on procedures and administrative rules governing the activity and work of the National Prison System, and the Minister for Internal Affairs has the power to approve such manuals; on 21 February 2005 the Minister approved “The Procedures Manuals governing Operations and Activities in the National Prison System”<sup>20</sup>. The purpose of those manuals is to strengthen the institutional fabric of the National Prison System, to guarantee respect for inmates’ human rights, re-educational treatment and governance in penitentiary centres.

### **Selection Committee Recruiting Staff for the National Prison System**

74. The Director of the National Prison System arranged for the Selection Committee Recruiting Staff for the National Prison System<sup>21</sup> to be set up, its purpose being to ensure that the

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<sup>18</sup> **Article 114** - Code of Criminal Procedure. Forensic Medical Expertise. Where, in order to shed light on an offence or misdemeanour committed on any part of the national territory, it is necessary or appropriate to carry out medical examinations, assessments, reports or interim reports, whether post-mortem, clinical or laboratory-based, to establish or evaluate a piece of evidence, the National Police, the Public Prosecutor’s Office and the defence acting through the prosecutor or court may request the Institute of Forensic Medicine or any member of the National Forensic System, as appropriate, to provide assistance and express an opinion on the matter at issue.

<sup>19</sup> The Gazette Official Journal N° 97 of 19 May 2004.

<sup>20</sup> Ministerial Arrangement No.13-2005. Published in The Gazette No. 86 of 5 May 2005. Four manuals were approved, namely: Manual on Prison Control Procedures (100 pages), Manual on Prison Security Procedure (86 pages), Manual on Prison Re-Education Procedures (160 pages) and the manual on Internal Order Procedures (65 pages).

<sup>21</sup> Order N° 34-2005 of the Director General.

staff recruited has the personal qualities, public spiritedness and belief needed for the work they will be carrying out.

### **Training of prison doctors**

75. The efforts made to train prison doctors, especially in the basics of forensic medicine, should be noted. Prison doctors have received workshops and seminars on human rights, HIV-AIDS, tuberculosis and other illnesses prevalent in prisons both in Nicaragua and in other Hispanic countries. However, steps must continue to be taken to build up a specialized corps of health staff in the Prison System.

76. Prison doctors are aware of the Code of Conduct for Law-Enforcement Officials; article 6 of the Code states that officials with law-enforcement responsibilities must fully protect the health of persons in their custody and in particular are to take immediate steps to supply medical care where such care is necessary. They also use the “Ethical codes and declarations relevant to health professionals: An Amnesty International compilation”, the ethical principles of the Hippocratic Oath, and especially the Oath of Athens, which set out a number of commitments whose aim is to provide the best possible health care for those who are incarcerated.

### **Bilateral cooperation with the prison authorities of Costa Rica**

77. The National Prison System authorities have cooperated at bilateral level with the prison service of Costa Rica in the implementation of the Inter-American Convention on Serving Criminal Sentences Abroad and as a result 11 Nicaraguans were repatriated in 2005 and seven in 2006.

78. Additionally, one detainee from the United States was repatriated in 2006 as was one detainee from Panama, each with the agreement of both countries pursuant to the Inter-American Convention on Serving Criminal Sentences Abroad.

### **Memorandum of Understanding between Mexico and Central America**

79. As part of the Regional Conference on Migration, May 2006 saw the signature of a Memorandum of Understanding between the Governments of the United Mexican States, the Republic of El Salvador, Guatemala, Honduras and Nicaragua for the dignified, ordered, rapid and safe repatriation of overland migrants who are Central American nationals.

80. That Memorandum states among other things that special treatment will be afforded to vulnerable groups such as minors, pregnant women, persons with disabilities, adults over 60 years old or victims of people-trafficking.

81. The Governments of Honduras, El Salvador, Guatemala, and Nicaragua will, as far as they are able, facilitate the transit across their territory of the vehicles designated by the Government of Mexico to transfer Central American nationals to their countries of origin. They will also supply security for buses and to repatriated migrants during their passage through their respective territories.

## **Signature of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

82. Pursuant to international obligations to respect, safeguard and guarantee the right to personal integrity, on 14 March 2007 the Government of Reconciliation and National Unity, which is committed to the prohibition and prevention of the crime of torture, acceded to the Optional Protocol to the Convention against Torture, thereby strengthening the protection of persons deprived of their liberty against torture and ill treatment by judicial and non-judicial means of a preventive nature, such as regular visits to places of detention.

83. Accession to the Protocol does not entail any legal reforms as the Office of the Human Rights Procurator (PDDH), as an independent body for the protection of human rights, inspects and defends, through the Procurator for Prisons, compliance with the rights and liberties inherent in the nature and dignity of detainees, convicted persons and persons awaiting trial, including visits to and inspections of detention centres. Consequently, the signature and ratification by Nicaragua of the Protocol is likely to strengthen inspection of compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **C. Judicial measures**

#### **Functions of the Courts**

84. Act No. 260 “Organic Act on the Judiciary of the Republic of Nicaragua” published in The Gazette No. 137 of 23 July 1998, states in article 48(4) that the District Criminal Courts have jurisdiction to oversee the enforcement of penalties and respect for detainees’ human rights.

85. To that end, article 403 of the Code of Criminal Procedure “Enforcement of judgment” provides as follows:

**Jurisdiction** - “Sentences shall be enforced by the Enforcement Judges whose jurisdiction shall be provided for in the decision on their appointment made by the Supreme Court of Justice.

The Judge in the proceedings shall have jurisdiction to determine the penalty or custodial measure and the conditions under which it is to be served”.

86. Similarly, article 407 of the CPP, on enforcement of a sentence, provides for the powers vested in the Criminal Enforcement Judges; point 3 includes visits to centres for extended imprisonment at least once a month to ascertain that inmates’ fundamental rights and their rights in prison are being complied with and to authorize any appropriate corrective measures; similarly paragraph 4 refers to resolving petitions or complaints made by inmates in relation to the prison regime and treatment as they affect their rights by means of the procedure provided for in respect of enforcement pleas; paragraph 5 relates to resolving, through remedy at law, the claims made by inmates on disciplinary sanctions.

87. Under article 134 of the CPP, if in any trial for offences where the defendant is “accused of a serious offence”, the judge is unable to pass judgement within three months of the first hearing he must order the defendant’s immediate release and the continuance of the trial.

## **Army of Nicaragua**

88. In so far as purely military courts are concerned, Act No. 566 “Military Criminal Code”, published in The Gazette No. 04 of 5 January 2006, provides as follows:

**Article 1** - “Principle of legality. No-one may be convicted of an act which is not specifically provided for as punishable by the military criminal law in force at the time of its commission, or made subject to a punishment or custodial measure not provided for therein. Neither may a punishment or custodial measure be enforced under conditions different from those provided for in the present Code”.

89. The Military Criminal Code governs potential acts of torture which might occur under strictly military jurisdiction. The Code provides for punishment of military staff who use their position in the hierarchy to abuse their authority and states in that regard:

**Chapter Two - Abuse of Authority: Article 135.** ...A member of the armed forces shall be guilty of an offence of abuse of authority where by abusing powers of command or his/her position in the service he/she:

a) Causes serious harm, treats in a degrading or inhuman manner or ill-treats in word or deed a subordinate, and shall be punished by a period of imprisonment of between six months and five years [...]

c) Misuses his/her authority to prevent a subordinate from exercising one of his/her rights.

**Article 136 - Offence of Abuse of Authority with Wounding or Death:** A member of the armed forces shall be guilty of an offence of abuse of authority where by abusing powers of command or his/her position in the service he/she:

[...]

b) Causes the death of the victim and shall be subject to a penalty of between fifteen and twenty-five years’ imprisonment.

**Chapter Two - Exceeding of powers of authority: Article 147.** Offence of exceeding powers of authority. A member of the armed forces in a position of command who, without committing an offence of abuse of authority:

[...]

b) In the discharge of his duty and without justified cause orders, permits or makes unlawful use of arms

shall be subject to a penalty of imprisonment of between three months and one day and three years.

90. Title III, Abuse of powers, article 225, states that a punishment of arrest of between one day and three months will be imposed for insulting subordinates; where such acts do not constitute an offence, they are to be deemed military misdemeanours of abuse of powers, as shall ordering or enforcing non-regulation punishments. Any member of the armed forces accused of a military misdemeanour or offence must be treated with respect for the dignity inherent in a human being and in accordance with his rank and post. This means that penalties or custodial

measures which involve torture, inhuman, cruel, infamous or degrading procedures or treatment cannot be imposed since punishments must be implemented with the greatest respect for the dignity of the human person and for his/her fundamental rights so as to encourage the convicted individual to live his/her future life without offending.

91. In order to protect prisoners of war, article 215 of the Military Criminal Code provides for criminal violations where military offences are committed against prisoners of war. The article states that a member of the armed forces who intentionally causes the death or serious wounding, torture, rape or inhuman treatment of prisoners of war, carries out unjustified medical or scientific experiments on prisoners of war without their consent and for purposes other than that prisoner's well-being, or purposely causes prisoners serious suffering will be sentenced to a period of imprisonment of between ten and twenty-five years; if the incidents concerned merely place the prisoner's physical integrity or health in serious danger the less severe penalty is to be imposed. Additionally, the same penalties are to be imposed if the offence referred to in the preceding paragraph is committed against wounded, sick or ship-wrecked prisoners or the civilian population.

92. Article 216 refers to other offences against prisoners of war which, under the Code are to be punished by a period of imprisonment of between two and eight years; those offences include failing to provide essential foodstuffs or necessary medical care, and denying prisoners their right to an impartial trial.

93. Article 217 (offence of stripping the enemy), provides that a penalty of a period of imprisonment of between two and eight years is to be imposed on a member of the armed forces who in the theatre of operations strips a body, or a wounded, sick, shipwrecked person or prisoner of war of their clothes or other effects for the purpose of appropriating them for himself, where the consequence of those actions is either to cause wounds to that person or body which were not previously there or a worsening of the person's condition; in the event that the person dies as a result the penalty may be increased to twenty-five years.

94. Additionally, article 218(a) on the violation of facilities and staff protected by international humanitarian law states that a penalty of between two and eight years' imprisonment is to be imposed on a member of the armed forces who:

“knowingly violates the protection due to establishments, moving formations, means of transport and health equipment, prisoner of war camps, areas of refuge for the civilian population and places of internment marked by the established emblems or whose nature is unquestionably clear from a distance”.

95. Generally speaking, the rules and measures to help prevent torture and other cruel, inhuman or degrading treatment or punishment are deemed to have been effective since the instances of physical or psychological ill-treatment or any other procedure prejudicial to inmates' human dignity which have arisen and been carried out by staff responsible for supervision, re-education and prison security, have been isolated and duly punished.

### Article 3

#### **Prohibition against the expulsion, return (refoulement) or extradition of a person to another state where it is suspected that he would be subjected to torture**

##### **A. Extradition**

96. Article 43 of the Constitution provides that: “There shall be no extradition from Nicaragua for offences classified in Nicaragua either as political offences or as ordinary offences connected with political offences. Extradition for ordinary offences shall be governed by the law and international treaties”.

97. The Government of Nicaragua has no power to sign any type of treaty, agreement or law which allows torture, as such an act would be unconstitutional. Accordingly it is impossible for the Government of Nicaragua to expel, return or extradite anyone to a country where it knows that person may be tortured.

98. In accordance with the international agreements ratified by Nicaragua, foreign nationals may be extradited provided that the requesting country agrees to and complies with conditions imposed by the Nicaraguan State; one such condition could be that the national in question is not to be subjected to torture or to cruel or degrading treatment; the requesting country must guarantee also that the extradited person will be tried only for the offence set out in the final extradition request and not for another offence.

99. The power to consent to or refuse extradition in Nicaragua lies with the Criminal Chamber of the Supreme Court of Justice, but the decisions made by that Court are to be notified to the requesting or requested State through the Executive.

100. Nicaraguan nationals are not subject to extradition; a judicial proceeding relating to aliens is set out in articles 348 to 360 of the Code of Criminal Procedure, as follows: The foreign Government shall request the extradition of anyone present on Nicaraguan territory; the Office of the Chief Public Prosecutor of the Republic shall then forward that request to the Criminal Chamber of the Supreme Court of Justice with the necessary documentation.

101. The requesting State must submit:

- a) Information identifying the accused or prisoner.
- b) Documentary evidence of the arrest warrant or detention order or, where appropriate, the final conviction;
- c) A certified copy of the records of pleadings providing proof or at least reasonable evidence of the guilt of the person concerned, and
- d) An authentic copy of the relevant enactments, a statement of the offender’s involvement, details of the applicable penalty and any time-bar.

102. The person whose extradition is sought is placed under the authority of the Criminal Chamber of the Supreme Court of Justice and, while the extradition is being processed, may be held in preventive custody for a maximum period of two months. Once the process has concluded, the defendant, his/her defender and the Public Prosecutor’s Office are to be given a hearing of up to twenty days, ten of which are to be for the purpose of putting forward evidence,



and the remaining ten for refuting it. A decision consenting to or refusing extradition is to be given within the ten following days.

103. The Criminal Chamber of the Supreme Court of Justice must request and obtain from the requesting country a formal promise that the extradited person will not be tried for an offence committed previously other than that for which he is being extradited and that he will not be subjected to penalties different from those prescribed for the offence or handed down in the judgment, a copy of which is to be forwarded to the Nicaraguan courts by the requesting country. In the event that extradition is refused the accused is to be released.

104. Expulsion is an administrative act decided upon or implemented by the Minister for Internal Affairs, in accordance with the provisions of articles 62, 63 and 64 of Act 154 "Aliens Affairs Act"<sup>22</sup> which read as follows:

**Article 62.**- Expulsion is the order given by the Ministry of Internal Affairs by which an alien is required to leave the national territory within the time-limit laid down to that end.

**Article 63** - Reasons giving rise to expulsion are: (a) In the event of revocation of permission to reside or remain pursuant to the provisions of article 29 of this Act. (b) The serious nature of an offence committed or repeat offending renders the alien harmful or dangerous to society. (c) Where in the view of the competent authority, criminals, idlers, drug addicts and habitual drunkards are potentially dangerous or may be prejudicial to society. (d) The alien obtains proceeds from the trafficking of people, drugs or arms. (e) Where circumstances arise in respect of which special laws provide for expulsion.

**Article 64** - Where an alien is refused entry, deported or expelled, he/she shall not be required to leave the country by a route which would take him/her to the territory of a Government which is pursuing him/her on political matters.

105. By contrast, deportation is an administrative act whereby the Director of Migration and Alien Affairs orders an alien to be removed from the national territory where any of the following situations applies:

- a) He/she has entered the country unlawfully.
- b) He/she has obtained leave to enter or remain in the country by means of a false declaration or upon presentation of a false document.
- c) He/she remains in the country once the period of the stay allowed by law has elapsed.
- d) He/she remains in the country once the right to reside or remain has been lost or revoked and the deadline for leaving the country has expired.
- e) He/she belongs to the crew of a vessel entering waters under Nicaraguan jurisdiction without the proper authorization from the competent national authority.

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<sup>22</sup> The Gazette Official Journal No. 81 of 3 May 1993.

## **B. Refugees**

106. On 28 March 1980 Nicaragua ratified the 1951 Convention relating to the Status of Refugees and the Protocol thereto of 1967. It also ratified the American Convention on Human Rights (Pact of San Jose), on 25 September 1979.

107. Since 1997 the Council of Pro-Denominational Alliance Churches (CEPAD) has represented the Office of the United Nations High Commissioner for Refugees (UNHCR) in Nicaragua. Its initial task was to begin to try and legalize the refugees living in Nicaragua who at that point had no papers; one of the main objectives was to legalize Salvadorians, who make up 99% of refugees and have been living in the country for over 28 years.

108. One of the major concerns of the UNHCR in Nicaragua relates to the fact that there is no law in force on refugees. This is because the Nicaraguan Institute of Social Security and Welfare (INSSBI) was replaced by the Nicaraguan Social Security Institute (INSS) at the beginning of the 1990s following a number of shake-ups in the institutional fabric. The INSSBI had non-delegable powers in respect of refugees and the National Office for Refugees reported to it. Article 1 of the National Office for Refugees (Establishment) Act<sup>23</sup> provided as follows:

“The National Office for Refugees is hereby established as a dependency of the Nicaraguan Institute of Social Security and Welfare, with the following objectives:

- a) To establish refugee status within the territory of Nicaragua in conjunction with the body with competence for migration controls;
- b) Coordinate, with other state bodies, policies and actions intended to implement programs specifically for integrating refugees into the economic life of the country without prejudicing the employment of Nicaraguans;
- c) To work with the competent authorities for proper control of immigrants who have been granted refugee status, and to maintain a perpetual, duly up-dated register;
- d) To work with the appropriate State bodies to implement and execute all programmes of assistance to refugees in the fields of health, housing, education and other services necessary to serve their basic needs;
- e) Oversee and implement the plans, projects and agreements signed by the Government of Nicaragua and the Office of the United Nations High Commissioner for Refugees or other national and international bodies with the same objectives;
- f) To administer the funds supplied for those purposes by the United Nations through the Office of the High Commissioner for Refugees and other donations made by other international bodies or through other channels;
- g) All other operations necessary to achieve the objective of providing protection for people who have sought refuge in the country”.

109. An average of between 40 and 50 applications for refuge are dealt with every year.

110. In 2004 UNHCR decided to try and promote a Refugees Act and to that end called a meeting of representatives from the Migration Office (DGME), Ministry of Foreign Affairs,

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<sup>23</sup> The Gazette Official Journal No. 215 of 13 September 1982

Ministry of Internal Affairs (MIGOB), the Office of the Human Rights Procurator (PDDH), and some civil society organizations such as the Nicaraguan Human Rights Centre (CENIDH); as a result of the meeting the Migrations Network was formed which currently comprises 24 institutions.

111. At the time of writing, the authors of the Draft Refugees Act have submitted the law directly to the Population Committee at the National Assembly so that the Committee, which through its Chairman has the right to initiate legislation, can present it to the National Assembly.

112. The proposal for a law is very up-to-date as far as refugees are concerned: it draws on treaties and agreements and also cites the Cartagena Declaration of the 1980s. To that end it should be noted that it contains a transitional provision on refugees who have lived in Nicaragua for over 28 years, and refers to refugees who entered the country between 1982 and the present day; it proposes that they should obtain a fiscal pardon.

#### **Article 4**

##### **Torture as an offence under criminal law.**

##### **A. Actions by the Nicaraguan State**

113. The definition of public servants which appears in Act 476 “Civil Service and Administrative Career Act”<sup>24</sup> is used for the purposes of implementing the Convention in respect of the individuals with whom responsibility lies; that definition reads as follows:

**Article 7 - “Categories of Public Servants.** Public servants may be Public Officials or Public Employees:

**Public Officials:** “Public Official” means any natural person appointed to administer the civil service as part of a career or temporary contract who holds a post in the Management Service hierarchy. “Principal Public Officials” who are elected, whether directly or indirectly, do not form part of the Civil Service.

**Public Employees:** All natural persons who work in the civil service pursuant either to an indefinite contract as part of a career or to a temporary contract”.

114. In conjunction with the Disciplinary Regulations governing Prison System staff<sup>25</sup>, penalties for authorities which break the rules are regulated by the Criminal Code in accordance with the criminal rules schedule (wounding, abuse of authority). The penalties which appear in the Criminal Code Book II, Title I, Offences against the Person, range from four months’ to ten years’ imprisonment under article 369 of the Criminal Code; penalties for the offence of Abuse of Authority stand at between one and three years.

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<sup>24</sup> The Gazette Official Journal No. 235 of 11 December 2003.

<sup>25</sup> The Gazette Official Journal No. 97 of 19 May 2004.

115. Where appropriate, the Prison System applies administrative corrective measures in line with Chapter VII<sup>26</sup> of the Disciplinary Regulations governing National Prison System Staff, classified as follows:

**Article 14** - Very minor disciplinary sanctions:

- a) Private warning.
- b) Warning during a meeting with civil servants of the same or higher rank.
- c) Extension of service of between 1 and 3 hours for a maximum of three days, without pay for the extended hours.
- d) Suspension of permission to leave the place of service on between 1 and 3 occasions.
- e) Confinement to the Prison Centre for up to 3 days.

**Article 15** - Minor disciplinary sanctions:

- a) Extension of service of between 1 and 4 hours for a maximum of seven days, without pay for the extended hours.
- b) Confinement to the place of service for between 4 and 15 days.
- c) Extension of service of between 1 and 4 hours for a maximum of 15 days.

**Article 16** - Serious Disciplinary sanctions:

- a) Removal from post and of title
- b) Removal from post and transfer to the administrative unit of the same establishment
- c) Confinement to the place of service for between 16 and 30 days,
- d) Dismissal from the prison service.

116. Article 14(15) of the Disciplinary Regulations governing the National Police, currently undergoing amendment, classes “Failure to respect the physical and moral integrity of detainees and other rights covered in the Constitution” as a very serious breach.

117. To that end, the Regulations provide for the following disciplinary sanctions for breaches, as set out below:

**Article 15** - The disciplinary sanctions for minor breaches shall be as follows:

- a) Private warning.
- b) Warning during a meeting with fellow officers of the same or higher rank.
- c) Extension of service of between 1 and 3 hours for a maximum of three (3) days.
- d) Suspension of permission to leave the place of service on between 1 and 3 occasions.

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<sup>26</sup> Disciplinary Regulations governing National Prison System Staff Chapter VII Concept and classification of disciplinary sanctions.

- e) Confinement to a Disciplinary Unit for up to (3) days.
- f) Confinement to a cell for (1) one day.

**Article 16** - The disciplinary sanctions for major breaches shall be as follows:

- a) Extension of service of between 1 and 4 hours for a maximum of (7) days.
- b) Confinement to the place of service for between 4 and 15 days.
- c) Confinement to a Disciplinary Unit for up to (30) thirty days.
- d) Confinement to a cell for up to (15) fifteen days.

**Article 17** - The disciplinary sanctions for very major breaches shall be as follows:

- a) Extension of service of between 1 and 4 hours for a maximum of 15 days.
- b) Confinement to the place of service for between 16 and 30 days.
- c) Confinement to a Disciplinary Unit for up to 45 days.
- d) Confinement to a cell for up to 30 days.
- e) Transfer to a less important post.
- f) Demotion by one grade.
- g) Dismissal.

118. In January 2007 The Nicaraguan Centre for Human Rights (CENIDH) investigated the case of five people who were subjected to physical ill-treatment after being detained by three National Police officers.

119. The medical reports, conduct and the version given by the officers confirmed the version of events given by the detainees in which they claimed that they had been subjected to physical ill-treatment.

120. By way of disciplinary measures, the National Police Board dismissed one non-commissioned police officer from the Nueva Guinea Police, and two volunteer constables were withdrawn from the ranks pursuant to a decision of the National Police General Inspectorate, as they had been found to have used excessive force against the three detainees suspected of theft in the town of Nueva Guinea.

121. Moreover, the Police not only dismissed them, but also left open the possibility that the matter may be referred the Public Prosecutor's Office for them to face trial in the ordinary courts.

122. The Director-General of the National Police acknowledged that the offence committed by the officers in Nueva Guinea was a wholly isolated incident among police ranks and said:

“They are isolated incidents, they know the steps we take and we are acting in this type of incident, working to educate officers and taking corrective measures”.

## Article 5

### Jurisdiction of the Nicaraguan State

123. The State of Nicaragua shares the common interests of nations to follow and apply criminal provisions recognized worldwide to anyone who carries out actions in contravention of rights which are protected internationally by agreements, pacts or rules of international law.

124. To that end, article 19 of the Code of Criminal Procedure sets out the universal principle which enables Nicaraguan Criminal Law to be applied to acts of international scope regardless of the nationality of the perpetrator or the place of commission. It reads as follows:

“**Article 19** - Extension and limits. Criminal jurisdiction shall extend to offences and misdemeanours committed wholly or in part on the national territory and to offences and misdemeanours which produce effects therein; it shall also extend to offences and misdemeanours committed outside the national territory pursuant to the principle of universality provided for in the Criminal Code, except as laid down in other laws and in international treaties or agreements ratified by Nicaragua. The limits of jurisdiction shall not apply to persons who enjoy immunity or to minors”.

## Article 6

### Detention and extradition

125. For the purpose of detaining individuals who are to be extradited on suspicion of committing torture, the Nicaraguan State relies on the provisions of the Constitution, the Code of Criminal Procedure and treaties and agreements which have been signed and ratified. It should also be pointed out that the authorities responsible for implementing the various aspects of this article are the Office of the Chief Public Prosecutor of the Republic, the Criminal Chamber of the Supreme Court of Justice, the Ministry of Foreign Affairs and the National Police.

126. According to article 356 of the Code of Criminal Procedure, the presence of a person suspected of committing torture is assured by holding that person in preventive detention on the basis of the extradition request from the requesting State; the duration of a preliminary investigation into the facts is two months.

127. The Police Act (Act. No. 228) guarantees a detainee the means to communicate by telephone with a representative from his country. Accordingly, each time the Police detain a suspect of this kind, they give written notification of the detention and the circumstances justifying it to the Ministry of Foreign Affairs so that the Ministry can notify the detention to the diplomatic representatives of the suspect's country.

128. Extradition must be requested by a States Party and can be made by any means of communication, provided there is an order for the detention of the defendant and the requesting State promises to comply with the requirements of the procedure. The person who is the subject of the extradition request is brought before the Criminal Chamber of the Supreme Court of Justice; a formal promise must be requested and obtained from the requesting country that the subject of the extradition request will not be tried for an offence committed previously other than that for which he is being extradited and that he will not be subjected to penalties different from those prescribed for the offence or handed down in the judgment.

129. In the event that extradition is refused by the Nicaraguan Government the accused is to be released. If, however, the request is granted, the subject of the extradition is to be placed at the disposal of the Public Prosecutor's Office, and the National Police, for transfer along with all items in his/her possession which are the product of the alleged offence or any items which may serve as evidence of it, provided that doing so does not prejudice third parties. If the Requesting State fails to claim the accused within two months of being allowed to do so, he/she shall be released.

130. Article 43 of the Constitution states that in the event that the subject of the extradition is Nicaraguan he/she may not be extradited and consequently must be tried by the Nicaraguan courts; in that event the penalty which would apply would be that for the offence of wounding or abuse of authority.

## **Article 7**

### **Prosecution of the alleged perpetrator in the reporting State**

131. If the Nicaraguan State decides to prosecute an individual suspected of committing acts of torture it will bring proceedings under the offence of wounding or abuse of authority as the current Criminal Code makes no provision for the offence of torture; that situation will change, however, once the new Code has been approved. The standards of evidence required for prosecution and conviction would in no way be less stringent than those which apply in any other offence. Additionally, fair treatment is guaranteed at all stages of the proceedings; all these guarantees are set out in the Code of Criminal Procedure, which reads as follows in this respect:

**Article 1 - "Principle of legality.** No-one may be made subject to a penalty or a custodial measure other than by a final ruling handed down by a competent court in proceedings which comply with the rights and guarantees enshrined in the Political Constitution, the provisions of this Code and the treaties, conventions and international arrangements signed and ratified by the Republic".

**Article 2 - "Presumption of innocence.** Any person accused of an offence shall be presumed innocent and shall at all times in the proceedings be treated as such until declared guilty in a final ruling handed down in accordance with the law.

Until a guilty verdict is handed down, no public official or employee may portray someone as guilty or supply information in his or her regard to that end.

In the event of failure to appear or default information essential to apprehend the individual concerned may be published by order of the court.

Where there is reasonable doubt as to the defendant's guilt he/she shall be absolved when the ruling or verdict is given".

**Article 3 - "Respect for human dignity.** In criminal proceedings every individual shall be treated with the respect due for the inherent dignity of the human person, with protection of the rights arising there from and in conditions of equality".

**Article 4 - "Right to a defence.** All defendants and persons charged with an offence shall be entitled to substantive, specialist defence. For that purpose the State shall, through the Public Defender's Office, ensure the provision of legal advice from a public defender for persons who do not have the economic means to pay the costs of a private lawyer.

Persons charged with an offence who fail to appoint a defence lawyer shall have a public defender or duty defender appointed for them pursuant to the procedure provided for in the Organic Act on the Judiciary. The same procedure shall be followed in cases of abandonment, revocation, death, resignation or disqualification of the defender.

Any authority which intervenes in the proceedings shall ensure that the defendant is made immediately aware of the substantive rights conferred on him under the legal order”.

**Article 8 - “Principle of free and prompt justice.** In Nicaragua justice is free. The courts and the Public Prosecutor’s Office shall in their proceedings be responsible for justice being done promptly and in a transparent and effective fashion.

All defendants in criminal trials shall be entitled to obtain a decision within a reasonable period of time free of any bureaucratic procedures which may infringe their constitutional guarantees.

**Article 9 - “Intervention by the victim.** In accordance with the Constitution of the Republic the victim of the offence shall be entitled to be heard as part of the criminal proceedings from their outset and at all instances; exercise of that right shall be limited by the rights of others, the security of all and the legitimate requirements of the common good”.

**Article 11 - “Lawful court.** No-one may be tried by courts other than those specified in accordance with the law prior to the commission of the acts which are the subject of the proceedings. Consequently no-one can be removed from the jurisdiction of a competent, lawfully established court or brought before an ad hoc court. Special courts are prohibited”.

132. The articles referred to above clearly show that everyone on the territory of Nicaragua has access to justice under Nicaraguan criminal law without any discrimination whatever.

## **Article 8**

### **The offence of wounding is an extraditable offence in every extradition treaty**

133. It is important to note that since torture is not covered in the Criminal Code, the Code regulates the punishment of those accused of committing acts of torture in accordance with the criminal rules provided for in respect of the offences of wounding and abuse of authority; consequently wounding and abuse of authority are extraditable offences in respect of other States party to the Convention.

134. Extradition in Nicaragua is conditional on the existence of a treaty. However, if the Nicaraguan Government receives a request for extradition from a States Party with which it has no extradition treaty, the Convention against Torture will be considered as the legal basis for extradition; the principle of international reciprocity applies at the same time.

## **Article 9**

### **Cooperation in criminal proceedings**

135. Where cooperation is concerned, Nicaragua affords the greatest measure of assistance to requests from foreign authorities provided they are made in accordance with the provisions of the treaties and international agreements which have been incorporated into our legal order.



136. Nicaragua has signed and ratified the Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Nicaragua, El Salvador, Guatemala, Honduras, Costa Rica and Panama. The treaty entered into force following publication in The Gazette No. 158 of 22 August 2002.

137. It was signed on 20 October 1993 in San Jose, Costa Rica, and its aim is to establish a legal framework to provide mutual assistance in criminal matters which come before the relevant courts of justice.

138. Article 138 of the Code of Criminal Procedure has the following to say on cooperation in criminal proceedings:

“Request to foreign courts. A request form shall be used for foreign courts. The court or tribunal concerned shall send the request to the Ministry of Foreign Affairs via the Supreme Court of Justice, for forwarding through the diplomatic channel.

However, in urgent circumstances, communications may be addressed directly to any foreign court or authority in advance of the formal request or reply”.

## **Article 10**

### **Education, information and training in the prohibition against torture**

139. The laws published in the State of Nicaragua relating to the duties and functions of public servants with law-enforcement responsibilities include the prohibition against torture and other cruel, inhuman or degrading treatment or punishment; among those laws are the Constitution, Act No. 473 “Prison System and Enforcement of Sentences Act”, the Regulations issued under it, the Police Act (Act No. 228) and the Regulations issued under it.

140. Through seminars and workshops given in the Prison Studies school respect for detainees’ human dignity is hammered home, as is instruction on ethical values, human relationships and the basic principles of conduct. It is important to note that instruction is given on the basis of the Code of Conduct for Law-Enforcement Officials. Instruction is also given on prison law by senior Prison System staff specializing in the relevant field on topics including Act No. 473 of 2003 “Prison System and Enforcement of Sentences Act”, the Regulations issued under that Act, the Disciplinary Regulations for Prison System Staff, and the Procedures Manuals governing prison work.

141. Other training is also provided using human rights manuals provided by human rights organizations such as the Standing Committee on Human Rights (CPDH) and the Office of the Human Rights Procurator (PDDH); it should be noted that the PDDH ran a course on Human Rights for Detainees replicating the work of the PDDH. The course allowed detainees to acquire greater knowledge of their rights and how to assert them.

142. The rules and instructions published on the duties and functions of law-enforcement officials include the prohibition against torture and other cruel, inhuman or degrading treatment or punishment; the rules can be found in articles 23 to 40 of the Constitution, Title IV, Rights, Duties and Guarantees of persons and detainees. The prohibition is also found in Book IV of the

Code of Criminal Procedure, Act 212 “Act on the Office of the Human Rights Procurator”, and Act 411 “Act on the Office of the Attorney-General”<sup>27</sup>.

143. No specific training has been given to medical staff in the prison system on how to recognize cases of torture, the effects of physical or psychological torture or other cruel, inhuman or degrading treatment or punishment.

144. The National Police, through the “Walter Mendoza” Police Academy, its Centre for Higher Study, includes topics relating to the promotion of human rights among its study plans for example study of Act 212, “Act on the Office of the Human Rights Procurator”, National Police Regulations on Ethics, Police Doctrine and Basic Principles of Conduct as provided for in article 7 of Act 228 the Police Act relating to legality, professionalism, treatment of detainees, community relations, rational use of force and use of firearms.

145. Other topics are also explored such as gender-based violence, the Children’s and Young Person’s Code, the Criminal Code (Amendments and Additions) Act<sup>28</sup> (Act 230); furthermore, each local Police delegation has a Gender Council which draws women officers together.

146. Non-governmental organizations have been very actively involved in providing training and information on the prohibition against torture. A good flow of communication has been achieved between law-enforcement officials, representatives of the various human rights organizations and the Enforcement and Monitoring Judges, and this has helped achieve greater preventive control over the possibility of these types of acts occurring.

147. Staff at the Psychiatric Hospital has been instructed in the underlying basis of the main guidelines set out in the Principles for Protecting the Sick and Improving Mental Health Care.

## **Article 11**

### **Systematic review of rules and procedures with a view to preventing acts of torture**

148. The domestic legal order has conscientiously assumed responsibility for ensuring that interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under State jurisdiction is kept under systematic review. This has been achieved through Act 406 “Code of Criminal Procedure”, Act 144 “National Police Functions (Judicial Assistance) Act”<sup>29</sup>, Act. No. 228 “Police Act”, Act No. 473 of 2003 “Prison System and Enforcement of Sentences Act”, along with the Manuals on Prison Re-Education, Internal Order, Prison Security, Prison Control and Health Regulations.

149. Also worthy of note is the fact that inmates are able to lodge complaints and petitions with the prison administration, human rights organizations and through the courts with the Prison Monitoring and Enforcement Judges.

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<sup>27</sup> The Gazette Official Journal No. 244 of 24 December 2001.

<sup>28</sup> The Gazette Official Journal No. 191 of 9 October 1996.

<sup>29</sup> The Gazette Official Journal No. 58 of 25 March 1992.

150. It should be pointed out that the governmental authorities and human rights organizations regularly visit Prisons for supervisory and advisory purposes, and this provides a means of finding out both the manner in which internal controls are carried out and the level of respect for the applicable rules, as well as how individuals behave in the performance of their duties and their skills-set.

151. These rules and procedures are continually applied, providing guidance on building experience with which to readjust and improve the means by which the prison rules are implemented.

152. Detainees are able to lodge complaints with the following bodies:

- a) Through the courts with the Prison Monitoring and Enforcement Judges.
- b) The Prison Governor
- c) The Office of the Human Rights Procurator.
- d) Human Rights Committees.
- e) The Civil Inspectorate of the Ministry of Internal Affairs.
- f) The General Inspectorate of the Prison System.

153. Article 165 of the Regulations issued under Act 473<sup>30</sup> “petitions and complaints” provides that in order to resolve a complaint in the Prison System inmates may, where the matter at issue falls strictly within the remit of the prison administration, address their complaints to the Prison Governor and to that end the Governor has five working days to resolve the matter as he deems appropriate; in the event that the Governor’s response is unsatisfactory, the inmate retains the right to lodge his complaints with the competent authorities.

154. The police have drawn up a Manual on the Supervision of Detainees, which staff with custodial responsibilities are required to abide by. The Manual sets out the duty of the police officer to check detainees’ cells every day, note the detainees’ state of health and transfer them to the prison doctor or health centre in the event of illness. Their main function is essentially to protect the detainees’ human rights.

155. The way the police work is based on the Fundamental Principles of Conduct: a) Lawfulness, b) Professionalism, c) Treatment of Detainees, d) Community relations, e) Rational use of force and use of firearms, as provided for in article 7 of Act 228; at the same time they work in accordance with the National Police Regulations on Ethics. There is also a six-monthly assessment process for all National Police staff where aspects of conduct, ethics and discipline are evaluated.

156. Articles 32 to 40 of the Constitution of Nicaragua recognize the rights of detainees and article 227 of the Code of Criminal Procedure provides for the prohibition in the course of a police investigation against the use of torture, cruel, inhuman or degrading procedures or treatment and any other method of applying pressure which may prejudice human dignity.

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<sup>30</sup> Prison System and Enforcement of Sentences Act, The Gazette Official Journal No. 222 of 21 November 2003.

157. Nicaraguan prison law takes great account of the following principles: minimum standards for the treatment of long-term prisoners; basic principles for the treatment of long-term prisoners; principles for the protection of all persons subjected to any form of detention or imprisonment; principles of medical ethics applicable to health care staff, especially doctors, to protect captives and detainees from torture and other cruel, inhuman or degrading treatment or punishment; and the Code of Conduct for law-enforcement officials.

158. The foregoing are set out and covered in the prison law in force which regulates and provides for the activities the system undertakes while sentences are being served and custodial measures enforced; these include control, re-education, prison security and social reintegration of detainees. The primary aim of enforcing a punishment is to re-educate and reintegrate detainees into the life of society.

**A. Safeguards to ensure that all custodial establishments are officially recognized and the prohibition against solitary confinement**

159. The National Prison System has eight prisons throughout the country including a women's prison and a rehabilitation centre for young people, and they are recognized by society in general and particular in the legal order in Act 473 and the Regulations issued under it. The family unit is promoted through ordinary, special and conjugal visits. Civil society, religious groups, human rights organizations, schools, universities, legal advice centres and members of charitable organizations have free access. The same is true of public institutions such as the Public Defender's Office, Public Prosecutor's Office, the Office of the Attorney-General, courts of all levels, etc.

160. Solitary confinement does not exist.

161. Article 178 of the Code of Criminal Procedure states that persons who have been remanded in custody are to serve that custody in the country's prisons. The same law provides for the figure of the Prison Monitoring and Enforcement Judge whose powers as set out in article 407(3) include visiting centres for extended imprisonment at least once a month to ascertain that inmates' fundamental rights and their rights in prison are being complied with and to authorize any appropriate corrective measures.

**B. Protection of persons at risk (the mentally ill)**

162. The Prison System provides both physical and mental health care to detainees. Psychiatric patients are a group with a very particular profile and special attention is paid to them. They are given regular medical checks.

163. The National Prison System has been making progress in inter-institutional cooperation on prison matters, and there are agreements with the Ministry of Health for the provision of appropriate treatment. All patients with mental problems, whether temporary or permanent, are referred to specialized Ministry of Health units for treatment. Detainees who are described in a prison doctor's report as having a permanent mental disorder are transferred to the National Psychiatric Hospital following contact with the health authorities and authorization from the competent legal authority.

164. Local Police Delegations have machinery for coordinating with health centres to arrange the transfer of the mentally ill to Mental Health Units.

## Article 12

### Prompt and impartial investigation

165. The only authorities with powers to instigate and carry out a criminal investigation are the National Police and the Public Prosecutor's Office. Disciplinary misdemeanours within prisons lie within the remit of the Prison Governor.

166. As far as the National Prison System is concerned, in order to ascertain whether acts of abuse of authority or wounding have occurred, administrative investigations are carried out by the General Inspectorate in accordance with article 11 of Act 473; in the event of irregular conduct on the part of prison officials, the procedure for issuing recommendations to the Director General is not instituted.

167. This procedure is implemented when carrying out administrative investigations in all cases where human rights violations are known to have occurred as it is the responsibility of the prison system to guarantee and protect the life, physical and moral integrity, security and safety of detainees both inside and outside prison facilities.

168. The prison system has no guidelines governing how to draw conclusions from the administrative investigations; nonetheless, all decisions are reasoned and based on prison law; this legal framework for conduct provides the investigators with a perspective from which to study and review the incident, the measures taken, and the conclusions drawn.

169. For the purposes of administrative review of sanctions imposed, article 164 of the Regulations issued under Act 473 states that without prejudice to the appeal for review referred to in the final paragraph of article 162, all inmates who are penalized have the right to seek a review from the Prison Governor of the penalty imposed. To that end the following procedure is provided for:

- a) The appeal for prison review must be lodged within 24 hours of notification of the penalty by the interdisciplinary team. It must be delivered by the inmate or relative in writing, individually, and bear the name of the inmate or the relative making the appeal.
- b) The request for prison review must be submitted to the Prison Governor who will confirm, amend or revoke the penalty within a period not exceeding five working days following its submission. The penalty must not be imposed until a decision has been made on the review except for reasons a flagrant administrative or criminal breach of prison security.

170. The channels by which an inmate can refer a petition for review to a higher body are as follows:

- a) Head of Prison Re-education.
- b) Head of Section/Wing.
- c) Team Leader.

171. In the event that the review is lodged by relatives, the person responsible for allowing the appeal will be the Prison Governor.

172. An appeal may be made to the Criminal Enforcement Court against any disciplinary penalty applied to an inmate in accordance with the provisions of article 407(5) of the [Code of Criminal Procedure](#).

173. Similarly, article 104 of Act 473 provides as follows:

“**Article 104** - Correction and implementation of penalties as against an inmate. Corrective disciplinary measures against detainees shall be carried out in accordance with the guidelines provided by statute; the penalties expressly laid down in this Act and the regulations provided under it shall be applied; the corrective measures shall be determined by the interdisciplinary team.

Inmates may lodge an appeal with the Criminal Enforcement Court against any corrective measure or disciplinary sanction applied to him/her”.

174. The cases where the authorities do not carry out an investigation to ascertain whether acts of torture or other cruel, inhuman or degrading treatment or punishment have been committed are those where prison officials are caught in the act; they are detained by the National Police and brought before the competent judicial authority; however, there are instances where this does not preclude an administrative investigation.

175. When the National Police have information about a possible act of physical ill-treatment or abuse of authority on the part of law-enforcement officials it is investigated as a criminal matter by the Judicial Assistance Department working alongside the Public Prosecutor’s Office, and as a disciplinary matter by the Internal Affairs Department.

176. Article 232(6) of the Code of Criminal Procedure provides for the duty of the National Police to ask the police doctor or the acting police doctor to assess the detainee before he appears in court or where the detainee’s health is in a serious condition. In practice this requirement for a preliminary examination is not complied with for all detainees because of limited resources; however, where a detainee requests medical attention he/she is immediately transferred to the health centre; upon transfer to the prison system he/she will as a general rule have to have been examined previously by the police doctor.

### **Article 13**

#### **Right to complain and legal protection of victims against ill-treatment or intimidation**

177. In the State of Nicaragua any individual who alleges he has been subjected to torture and/or other cruel, inhuman or degrading treatment or punishment has the right to complain to the competent authorities and to have his case promptly and impartially examined by them. The mechanisms and procedures which guarantee that right are provided for in Act 473 on the Prison System and the Regulations issued thereunder, the Code of Criminal Procedure, the National Police Disciplinary Regulations, Act 212 “Office of the Human Rights Ombudsman Act”, and Act 346 “Organic Act on the Public Prosecutor’s Office”<sup>31</sup>.

178. The Standing Committee on Human Rights (CPDH) has informed detainees about Act 473 in informal discussions and provided each inmate with their own booklets so that they can learn in detail how to assert their rights.

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<sup>31</sup> The Gazette Official Journal No. 196 of 17 October 2000.

179. The criteria used by the competent authorities to investigate allegations of torture are in principle used when information is obtained in a report or a complaint from the person concerned, or his or her relatives (directly); reports received via the various media (radio, television, newspapers) are investigated automatically.

180. It is important to note that no competent authority may refuse to investigate a case; at the same time prison and Criminal Procedural law leaves open the possibility for inmates or their relatives to avail themselves of all the resources those laws allow, including human rights organizations.

181. In the prison system, to protect a complainant and witnesses, the accused is instructed to avoid contact with the individual making the complaint and to that end the accused is temporarily withdrawn from the area to prevent any confrontation.

182. Where the National Police are concerned, reports of ill-treatment against police officers are heard by the Internal Affairs Division, either centrally or through the Division's local offices at the local delegations; under the Disciplinary Regulations, the officers who are the subject of the complaint are suspended from duty by the Inspector General, the only person empowered to impose a suspension, thus preventing contact between officers and complainants and witnesses.

183. To prevent further trauma, investigations into matters which constitute violations of the National Police Disciplinary Code are referred from the outset to the specialists in the Internal Affairs Division who reach a conclusion on the matter which takes the form of an administrative decision.

184. The relevant police departments which deal with alleged cases of torture, ill-treatment and violence against women are the Internal Affairs Division, which has representation in all the country's local police offices; and the Office of the Commissioner for Women and Childhood, which deals with cases of violence against women, children and young people.

#### **Article 14**

##### **Compensation and redress**

185. The Criminal Code provides that any person with criminal liability is also civilly liable and required to make good material and moral damage caused by the offence committed. The Criminal Code has the following to say on the matter:

**“Article 43** - In their ruling on restitution, the Courts shall make an order for redress for damage caused and compensation for damages”.

186. Similarly, articles 46 to 49 of the Criminal Code state that compensation for damages is to be assessed reasonably by the Court which, in the absence of proof, shall determine the value of the material or moral damage caused by the punishable act and especially the damage to the victim's life and health. Compensation for damages covers not only the damages to the actual victim but also any damages arising from the offence which were caused to the victim's family or a third party.

187. Article 52 states that all proceedings in respect of compensation for damages or redress for damages are to be heard in a civil court once the ruling establishing the perpetrator's criminal

liability has been declared enforceable with respect to such compensation or redress, unless the offence is the subject of a specific action where the applicant expressly waives the right to criminal proceedings in order to institute solely civil proceedings.

188. To that end Chapter VII of the Code of Criminal Procedure, (Bringing a civil action) reads as follows:

“**Article 81 - Admissibility.** Once the conviction has been made final and immunity from criminal liability declared but not immunity from civil liability in accordance with the Criminal Code, or once the court has conditionally stayed the criminal prosecution the person who, pursuant to this Code is deemed the victim or subject of the offence or, where appropriate, the Office of the Attorney-General of the Republic, may apply to the court which gave the decision in the criminal matter seeking restitution provided that an order for restitution and payment of damages, as appropriate, had not already been given in the decision.

The application shall state the identity of the person convicted and of any person who may appear as civilly liable in law or pursuant to a contractual relationship”.

## **Article 15**

### **Invalidity of statements obtained as a result of torture**

189. The State of Nicaragua ensures that no statement which is established as having been made unlawfully may be invoked as evidence in any proceedings, as provided for in the Code of Criminal Procedure (CPP) as follows:

“**Article 15 - Freedom to provide evidence.** Any fact related to the object of the trial may be proved by any means of lawful evidence. The evidence shall be assessed on rational criteria observing the rules of logic.

**Article 16 - Lawfulness of evidence.** Evidence shall only be valid if it has been obtained by lawful means and incorporated into the proceedings in accordance with the provisions of this Code. No proceedings which have taken place pursuant to the principle of discretion between the Public Prosecutor’s Office and the Parties, including plea-bargaining, shall be admissible as evidence during the proceedings where no agreement has been reached or where it is dismissed by the competent court”.

190. In a similar vein, article 191 of the CPP reads:

“Evidence on which the ruling is based. Where a ruling is given in a public oral proceeding it may only be based on the lawful evidence produced or incorporated therein pursuant to the provisions of this Code.

Where a ruling must be given prior to the proceeding its basis shall be an acceptance of liability on the part of the defendant or an act proved by one of the causes of the stay of proceedings”.

Those articles set out the judicial controls on obtaining forms of evidence for incorporation into proceedings. The procedural sanction for an administrative or judicial proceeding which transgresses those parameters is incurable nullity.



## Article 16

### **Prohibition against cruel, inhuman or degrading treatment or punishment**

191. As pointed out in the information in other parts of this report, Nicaragua operates various types of safeguard for individuals against acts and conduct which while not constituting torture, nonetheless violate human rights in terms of individuals' dignity and physical and emotional integrity.

192. The measures in law which prohibit acts which constitute cruel, inhuman or degrading treatment or punishment are set out in the process governing the application of the penalties provided for in the Criminal Code concerning the offences of wounding and abuse of authority. Furthermore, the administrative sanctions provided for in the Police Acts, namely Act No. 144 "National Police Functions (Judicial Assistance) Act"<sup>32</sup>; Act. No. 228 "Police Act", along with the administrative sanctions provided for in Act No. 473 "Prison System and Enforcement of Sentences Act", the Regulations issued under them and the Procedures Manuals. [sic]

#### **A. Living conditions in custodial centres**

193. The facilities of the local offices of the National Prison System and National Police were visited so that a true reflection of living conditions in custodial centres could be given; the Office of Migration and Alien Affairs and the Psychiatric Hospital were also visited.

194. In short, the study arising out of the inspection visit concluded that there are two main points of difficulty:

a) **The budget allocation.** Because of the low allocation of resources some of the rights of detainees and officials are being infringed. The low budget has given rise to some serious problems including:

- i) Defective infrastructure.
- ii) Lack of resources to repair and maintain facilities. More prisons need to be built.
- iii) Inadequate food for inmates and staff.
- iv) Low wages for officials.
- v) Poor water distribution and supply. There is a most pressing need to put the water distribution system right and construct wells to fully meet the demand for water in many places where it is scarce.

The whole of the budget must be allocated, not just part of it.

b) **Staff.** They are demotivated because of the low wages they earn, and this has a direct influence on the unwillingness of many of them to treat inmates appropriately.

#### **Overcrowding**

195. All the prisons are overcrowded to some degree although the levels differ, but overcrowding is significant in the prisons in Chinandega, Juigalpa, Bluefields, and La Esperanza.

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<sup>32</sup> The Gazette Official Journal No. 58 of 25 March 1992.

196. Overcrowding adversely affects detainees' living conditions by giving rise to continuous tension, depression, lack of self-esteem, anxiety, monotony, and conduct which subsequently finds an outlet in violent and aggressive behaviour. The situation is making prison life increasingly strained, inhumane and difficult because it reduces space and access to basic services, and creates a climate of instability which poses a latent threat to governance and smooth running.

197. Bluefields Prison is an obsolete structure which lacks even the most basic facilities to accommodate detainees; it has ten multiple-occupancy cells and the capacity to house 60 inmates yet it is currently accommodating 98 detainees and so is oversubscribed to the tune of 38 inmates, meaning it is 65% over its capacity.

198. Housing conditions are subhuman because it does not have the electrical system it needs to comply with security regulations; there is no sewage system, no drinking water and the infrastructure as a whole is completely dilapidated with walls and windows in a state of partial collapse.

199. The deplorable state of the infrastructure, overcrowding and the problems with the supply of basic services is a matter of utmost concern to the National Prison System Board because they have a significant impact on detainees' morale, self-esteem and conduct; these elements build up and may subsequently be vented in violent, aggressive and hostile behaviours.

200. Regardless of how one looks at it, the situation described here is a breach of this prison's inmates' human rights and human dignity and at the same time increases the likelihood of events such as:

- a) A riot
- b) Escapes or escape attempts
- c) Accidents
- d) Disturbances of the peace etc.

201. There is an urgent need to accommodate inmates in the various regional prisons to prevent overpopulation and ensure that relatives are nearby. The prisons which urgently need to be built are:

Bluefields Prison:

- a) León Prison.
- b) Puerto Cabezas Prison.
- c) Jinotega Prison.
- d) Boaco Prison.
- e) Rivas Prison.
- f) Nueva Segovia Prison (Ocotal).

202. As far as the National Police are concerned, overcrowding is a problem in the Bluefields prison system: prisoners who have been convicted or who are waiting trial are not allocated to the Bluefields system as it is overcrowded and cannot accommodate any more inmates.

203. The situation in this police area is serious as it means some of the inmates will have to serve longer sentences: because they cannot work they cannot benefit from the system of remission in exchange for work. They also suffer because of water pollution, poor food, lack of lighting and of natural and artificial ventilation; there is no water supply or sewerage system in the wings.

204. There is no programme whatsoever providing them with re-education because there are no recreational or sporting activities and no staff or specialists in the prison to run them.

205. There is no prison in the Autonomous Region of Atlántico Norte, of which Puerto Cabezas is the regional capital. As in the Bluefields district, convicted prisoners and those awaiting trial are held at the local police headquarters (Bilwi) and the conditions in which the detainees live are the same as those for Bluefields' inmates.

### **Violence among prisoners**

206. According to prison system figures, the records show that breaches of discipline among the prison population were 50% up in 2006 compared to 2005.

<b>Period</b>	<b>Breaches of discipline</b>
<b>Year 2005</b>	<b>1,262</b>
<b>Year 2006</b>	<b>1,902</b>

207. That figure is due to the following:

- a) Increase in illnesses which are psycho-somatic in nature or origin.
- b) Overcrowding.
- c) Increased vulnerability of security measures because of the deteriorating infrastructure.
- d) Level of depletion in operational strength and staff dealing with detainees on the wings.
- e) Greater demand for technical resources and equipment.

### **Disciplinary measures imposed on detainees**

208. The disciplinary measures which are imposed on detainees are carried out pursuant to article 162 of the Regulations issued under Act 473 "Prison System and Enforcement of Sentences Act" which provides for the procedure whereby sanctions are applied, which is as follows:

- a) The prison re-education officer, upon being apprised of a breach by an inmate, draws up an operational report and delivers it to the Head of the Prison Re-education Department who in turn submits it within 48 hours to the Chair of the inter-disciplinary team.
- b) The interdisciplinary team will inform the inmate within 24 hours of receiving the report on the breach attributed to him/her and will hear the arguments in his/her defence; subsequently

c) The interdisciplinary team assesses and determines the sanction to be applied, and it is explained to the Governor/Deputy Governor of the Prison, who must approve it or disapprove it in writing within a maximum of three working days.

d) Where the sanctions concerned are minor as set out in article [Article 161](#)<sup>33</sup>(1) 1.1, 1.2, and 1.3 this procedure does not apply as the power to apply these measures lies with the Prison Governor, the Head of Prison Re-Education and the Head of Wing.

e) In the event of a flagrant criminal or administrative misdemeanour or an offence, preventive measures are to be taken while the interdisciplinary team determines the measure to be applied.

209. Where the sanctions at issue involve confinement to an individual cell under a secure regime, the prior written authorization of the Prison Governor is required; the prison doctor is to carry out a medical check on inmates and must visit inmates held under that regime every day.

210. Article 163 of the Regulations issued under Act 473 Prison System and Enforcement of Sentences Act provides as follows: measures involving confinement to an individual cell or the holding of a prisoner under a secure regime shall not apply to young people or to pregnant or breast-feeding mothers until 12 months after delivery or to mothers whose children are with them.

211. When dealing with young people the procedure to be followed is that set out in article 213 of the Children's and Young Person's Code, Act No.287, Published in The Gazette, Official Journal No. 97 of 27 May 1998.

212. The statistics for the year 2006 appear below:

	<b>Inmates involved in breaches of discipline</b>	<b>Sanctions imposed</b>
<b>Total</b>	<b>2,818</b>	<b>2,604</b>

#### **Conditions of detention for minors and access to food**

213. The only prison where minors are housed on a separate wing is Tipitapa Prison; in other prisons adolescents are held in a separate cell but on the same wing as adults; the food they receive is the same as the adults'.

214. Through various projects the National Police have managed to overhaul and improve the custody cells in police stations. Detainees' living conditions in local police stations have been improved by the construction and fitting out of 15 custody cells with support from the Government of Japan, the UNDP and SIDA, with separate cells for women, young people, and people involved in traffic accidents.

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<sup>33</sup> Prison System and Enforcement of Sentences Act (Act 473), The Gazette Official Journal No. 222 of 21 November 2003.

## CONCLUSIONS

215. The Nicaraguan State has made far-reaching changes in eliminating all forms of torture and/or cruel, inhuman or degrading treatment or punishment and in that regard it has worked to implement the Convention. However, other measures which are not exclusively legislative in nature need to be put in place as existing legislation is insufficient to prevent such acts.

216. There are still many complaints from the Nicaraguan people and human rights organizations about abuses of authority and the slow pace of justice; these may be attributable to practices which are inconsistent with human rights, and this may reverse the progress which has been so hard-won.

217. In submitting this report the State of Nicaragua reiterates its willingness and commitment to comply fully with the undertakings it entered into when it became party to the Convention and ratified it. For this Government, the policy of communication and dialogue with the Treaty Bodies plays a very important role as it is the only way we can see for us to move forward and make greater changes in favour of human rights in the administrative and legislative fields.

218. The Government is also committed to promoting a culture fostering the eradication of these types of acts and continued cooperation with international human rights protection mechanisms.

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