

639th meetingWednesday, 20 July 1983,
at 10.55 a.m.Chairman: Mr. INGLES

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 2) (continued)

Second and third periodic reports of Nicaragua (CERD/C/103/Add.1) (concluded)

At the invitation of the Chairman, Mr. Icaza Gallard (Nicaragua) took a place
at the Committee table.

1. Mr. KARASIMEONOV said that Nicaragua's report (CERD/C/103/Add.1) followed the Committee's guidelines. The reporting State had made an earnest attempt to share its experience with regard to the implementation of the Convention. It had taken pains to reply to a number of questions asked during consideration of its earlier report and had presented a wealth of information. He was gratified to note the high esteem in which the Committee was held by the Nicaraguan Government, whose constructive attitude was conducive to a continuing fruitful dialogue with the Committee.
2. The representative of Nicaragua had been right to focus on the difficult situation in which that country found itself. Against the odds, the people and Government of Nicaragua were carrying out an imaginative programme to restore the most basic human rights, to bring about economic and social reconstruction and to build a new society. It was unfortunate that even the Committee was not totally immune from the world-wide campaign against the Nicaraguan Government.
3. The representative of Nicaragua had provided concise background information regarding the underprivileged ethnic groups, especially in the Atlantic coast region, who had been victims of segregation under the Somoza régime. The Government had undertaken the immense task of ensuring the full integration of those groups. Given the enormous internal and external challenges facing Nicaragua, its commitment to its obligations under the Convention was especially commendable.
4. He welcomed the progress made by Nicaragua in preparing a preliminary draft constitution and a draft electoral law, which would go a long way towards normalizing the situation in the country. He would welcome further details

(Mr. Karasimeonov)

regarding the composition and terms of reference of the Special Commission of the Council of State, referred to in paragraph 5 of the report.

5. He noted with satisfaction the efforts made by the Government to introduce land reform, restore the rights of the rural population and abolish the privileges of the Somoza oligarchy. He also welcomed the introduction of legislation governing the rights of workers which enunciated, for the first time in Nicaragua, the principle of equal pay for equal work. As to medical care, the data contained in paragraph 188 of the report were particularly impressive.

6. He commended the Government for its efforts to guarantee the right to education and training and for its success in drastically reducing the illiteracy rate. He applauded the decision to initiate a literacy campaign in the languages of the ethnic minorities to supplement the National Literacy Crusade in Spanish (CERD/C/103/Add.1, para. 198). He was pleased that the Government saw the minority languages literacy campaign as the first step towards transforming the Atlantic region into a vast popular, continuing and universal education centre (ibid., para. 201).

7. It was clear that, despite the immense problems of reconstruction and despite the emergency situation created by a virtual state of war, Nicaragua was still fostering international solidarity and playing its part in world-wide efforts to eliminate racism, racial segregation and apartheid. That had been demonstrated by its hosting of a preparatory meeting for the Second World Conference to Combat Racism and Racial Discrimination.

8. Although much still remained to be done and the challenges were many, Nicaragua had managed to make considerable progress in implementing the Convention. He was confident that it would continue its efforts to embody the terms of that instrument in its legislative, judicial and administrative system. The Committee, for its part, should pursue its dialogue with the Government and help it to accelerate the process of achieving full compliance with the Convention.

9. Mr. NETTEL said he agreed that the report (CERD/C/103/Add.1) had to be examined with particular care, because of the special position in which Nicaragua found itself, at the centre of internal difficulties and international political discussion. It was understandable that, in the circumstances, the Nicaraguan authorities should consider legislation regarding racial discrimination to be less

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(Mr. Nettel)

important than the vital problems with which they were preoccupied. While it was only practical to take such factors into account, it should not be forgotten that, under the Convention, racial discrimination had to be combated even in times of war or internal strife.

10. The report, if read only at a superficial level, could provoke political discussion. The Committee should do its utmost to avoid commenting on the political aspects and should consider the report strictly in terms of the Convention. By entering into a political discussion and expressing political preferences, the Committee was likely to undermine its objectivity and credibility. It should focus on the legal and general situation in the country as it related to racial discrimination.

11. The report reflected the extreme sensitivity of the reporting State, and he was afraid that certain remarks might be interpreted as a criticism of the political system and the Government's position. He wished to reassure the reporting State that the members of the Committee were simply trying to do their job; their remarks were not politically motivated.

12. The report clearly showed that the situation of at least one population group in Nicaragua was different from that of the majority. There were signs that racial discrimination existed in that country. If the reporting State believed that it did not, then it should present evidence to that effect.

13. In his opinion, the legal provisions referred to in the report failed to give full effect to article 4 of the Convention. He hoped that the authorities would address themselves to that question as soon as circumstances permitted.

14. The section of the report concerning the right to freedom of movement showed signs of the reporting State's sensitivity to which he had referred. It was stated in paragraph 95 that certain Miskito communities had been moved from their settlements on the banks of the River Coco and that, in some international circles, which wished to destabilize the revolutionary process in Nicaragua, that measure had been interpreted as a restriction on freedom of movement. Because there was a distinct possibility of racial discrimination or restriction on freedom of movement in connection with the resettlement, the question came within the competence of the Committee. An explanation by the reporting State might well show that there was no element of racial discrimination or restriction on freedom of movement. The fact

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that the Committee requested such an explanation did not mean that it wished to destabilize the revolutionary process in Nicaragua. If one section alone of a country's population was displaced, the Committee was duty-bound to consider whether racial discrimination was involved. The final sentence of paragraph 95 showed that the reporting State was on the defensive against any kind of legal criticism.

15. It was stated in paragraph 136 that the Government protected the publication of the newspaper La Prensa. He would not have been surprised to read that the Government tolerated or permitted its publication, but was curious to learn against what or whom it was being protected. As to the right to freedom of assembly and association, he requested more details regarding the police regulations governing the right to demonstrate publicly.

16. It was stated in paragraph 190 that only in the malaria eradication campaign had members of the ethnic groups taken part and that that had prompted a decision by the Government to expand the participation of those groups in all areas of national life. He wondered whether those groups would have been excluded from all areas of national life if they had not taken part in the campaign. He asked what effect their willingness or unwillingness would have on campaigns to eradicate other diseases. He failed to understand the implications of the paragraph and hoped that the reporting State would provide clarification in order to dispel any misunderstanding.

17. Mr. DECHEZELLES said that account must be taken of the fact that Nicaragua had had an extremely turbulent history and that any revolution had both a dark and a light side. However, he wished to know more about the fate of Nicaragua's Indian population, particularly that of the Miskito people, who had had the misfortune to become involved in a de facto war. It could be seen clearly from the report that special measures involving the Miskito people had been adopted, and it was important to establish whether the population in question was the victim of racial discrimination. While he welcomed the report submitted by the Government of Nicaragua, he was aware that everything was in a state of flux in that country. He had the feeling that in the future Nicaragua would be taking the right course where implementation of the Convention was concerned. It would be necessary to adopt

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(Mr. Dechezelles)

measures under article 2 of the Convention in order to guarantee that the Miskito people could exercise their rights.

18. It was important that the Government of Nicaragua should provide a breakdown of demographic data in its following report. He was particularly interested in having information about all the Indian groups, not just the Miskito people. He wondered whether the Government was adopting a policy of integration or segregation of its Indian population. Perhaps both of those approaches were too extreme and a flexible approach should be adopted towards the Indians' customs, languages and way of life. Those who wished to abandon their traditional way of life should have the opportunity to do this.

19. Mr. SHAHI said that it must be recognized that, after many decades of exploitation, Nicaragua was in the throes of a revolution. However, he wished to know whether the Miskito people had been relocated compulsorily. Moreover, he understood that the Government of Nicaragua planned to implement a major land-distribution programme at a rapid pace. He wondered whether the relocated Miskito people were entitled to acquire land under the new scheme in question and, if so, whether they were receiving their fair share of land. He also wished to know, in general, how the Miskito population was being affected by the current land-distribution programme.

20. Mr. STARUSHENKO said that the Government of Nicaragua was acting strictly in accordance with international law. The events in Nicaragua did not constitute a civil war but, rather, open aggression on the part of other States, with support from neighbouring States, in violation of the principle of non-interference in the internal affairs of other States. No State had the right to permit various groups and organizations to use its territory for the purpose of attacking neighbouring States, and any State that was the victim of such acts of aggression could legitimately take steps to defend its territory. However, even if there were a civil war in Nicaragua, the Government of that country would have the right, under article 3 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), to which reference had been made at the previous meeting, to relocate population groups, provided that it acted in accordance with article 17 of the Protocol.

(Mr. Starushenko)

21. Furthermore, although political questions did not fall within the Committee's scope, they must be taken into account. The statements made by the members of the Committee should therefore be regarded as an expression of their concern that problems relating to racial discrimination in Nicaragua should be solved. He wished the Committee's report to the General Assembly to indicate that: the members of the Committee believed that the Government of Nicaragua was sincere in its intention to pursue its policy of eliminating racial discrimination; that the Government of Nicaragua had already adopted a considerable number of measures with the aim of eliminating the conflicts inherited from the reactionary Government that had preceded it; and that the Government of Nicaragua might have been able to achieve more, had it not been for the fact that it had existed for only a relatively short period of time and it was the victim of acts of aggression on the part of another State.

22. The CHAIRMAN, speaking as a member of the Committee, said that account must be taken of the fact that Nicaragua had been labouring under particular difficulties owing to the Revolution and the national emergency and that it was the victim of external interference in violation of the Charter of the United Nations.

23. He noted, in connection with the right to own property, that one of the goals of the Government of Nicaragua was to combat discrimination by eliminating economic injustice. Furthermore, the campaign to eliminate illiteracy was aimed at guaranteeing the right to education and training.

24. It had been necessary to relocate the Miskito people, because external forces were trying to invade, if not actually invading, the territory of Nicaragua. Once conditions had become normal once again and the external threat to the inhabitants of the country, particularly the Miskito Indians, had passed, the Government intended to permit the Miskitos to return and would legalize their ownership of land in accordance with paragraph 5 of the Declaration of Principles of the Sandinista Popular Revolution with regard to the Indigenous Communities of the Atlantic Coast.

25. He wished to point out, in connection with the references made in the Committee at the previous meeting and the current meeting to Protocol II to the Geneva Conventions, that the Miskito Indians had not been relocated by an invading

(The Chairman)

army or occupation forces. The measures in question had been adopted by the Government of Nicaragua.

26. The International Covenants on Human Rights permitted derogations from certain rights, such as the right of assembly and the freedom of association, in times of national emergency. With regard to the right to form political parties, he noted the statement in paragraph 147 of the report. It was his view that, where the rights enumerated in article 5 of the Convention were concerned, the International Covenant on Civil and Political Rights should prevail. However, the right to own property, referred to in article 5 (d) of the Convention, was not mentioned in that Covenant. That right seemed to be respected by the Government in the mixed economy which had been established. Where the principle of non-discrimination was concerned, the Convention should have primacy.

27. In most Latin American countries, the remedy of amparo was available to citizens seeking redress for the violation of their rights by public officials. In Nicaragua, that remedy seemed to extend to violations by private individuals but, only in the case of deprivation of liberty.

28. Mr. PARTSCH, referring to the statement made earlier by Mr. Starushenko, said that the Government of Nicaragua had cited several times its report to the Human Rights Committee (CCPR/C/14/Add.2) and had annexed extracts from that report to its third periodic report. In paragraph 373 of document CCPR/C/14/Add.2 the Government referred to article 3 common to the four Geneva Conventions, which related to measures to be taken in conflicts which were not of an international character. That was the only provision of the 1949 Conventions which related to civil war. Protocol II to the Geneva Conventions was an elaboration on article 3 and also applied to conflicts which were not of an international character. It was absolutely legitimate to apply those provisions to the case of Nicaragua.

29. Mr. ICAZA GALLARD (Nicaragua) expressed gratitude to the members of the Committee for their understanding of the difficulties which his country was facing and the historic situation it was going through. The concerns and interest expressed by members related primarily to two matters, namely the situation of the Miskito Indians and their resettlement which the Government had found it necessary to carry out, and future political arrangements relating to the right of participation, the rights of political parties and elections.

(Mr. Icaza Gallard, Nicaragua)

30. With regard to the former, the Government had, precisely for the purpose of responding to the international campaign of detraction which was being waged against Nicaragua, invited the Inter-American Commission on Human Rights to visit the country to make an on-the-spot investigation into the situation of the Miskitos. The visiting mission had conducted its investigation in May 1982 and had had access to a wide range of individuals and organizations concerned with the matter. On 15 June 1982 the Government had reiterated its request to the Inter-American Commission on Human Rights to help to reach a friendly settlement in accordance with article 48 (1) (f) of the American Convention on Human Rights. On 20 September 1982, the Commission had agreed to do so and had appointed a special committee for that purpose, which had held numerous meetings, most recently in Geneva, at which the Executive Secretary of the Commission, the United Nations High Commissioner for Refugees and the International Committee of the Red Cross had been represented. The Government had accepted all the Commission's recommendations with the aim of reaching a solution to the problem, which could entail the relocation to new settlements of the 8,500 Miskitos who had been moved from their homes. The resettlement of the Miskitos had been a matter of life and death owing to the increasing incursions of armed bands into the area in which the Miskitos lived, and had been ordered in accordance with the Government's duty to protect the lives of its citizens. The Government had given an undertaking in writing to the Inter-American Commission to allow those who wished to do so to return to their homes when the emergency ceased and when the state of war which had been created by the invasion of Nicaragua by members of Somoza's former national guard, with the complicity of the Government of Honduras and material support from the United States, no longer existed.

31. With regard to political parties and elections, he emphasized that the country was in the process of creating new institutions. A Special Commission had been set up to draft a law relating to political parties and its report was currently being considered by the Council of State. Some articles had already been approved. Key provisions of the law spelled out the right of political organizations to take power and govern the country. Work was also proceeding on a draft electoral law. Both laws were expected to be adopted by the end of 1983 and elections should therefore be held in 1984.

(Mr. Icaza Gallard, Nicaragua)

32. Several members had requested more specific information or statistics regarding the composition of the population, investments, and health and education programmes, especially as they related to ethnic minorities. As members were aware, the country was in the midst of a war, and the Government was not in a position to provide such statistics at the current time. It would endeavour to respond fully to all the comments and questions of members in its next report.

33. He did not understand how anyone could draw the conclusion from the report that his Government was reticent or over-sensitive with respect to any of the matters dealt with in it. His Government was indeed sensitive when others used certain issues to attack the country but it had no fears vis-à-vis international organs which dealt with human rights. His Government recognized the objectivity, competence and professionalism of the Committee, and had no reason for fear. Only four years after the Revolution, Nicaragua could boast of having ratified most of the international legal instruments for the protection of human rights, of having received three visiting missions of the Inter-American Commission on Human Rights at its own request, and of having an active national human rights commission.

Mr. Icaza Gallard (Nicaragua) withdrew.

Initial report of China (CERD/C/101/Add.2)

At the invitation of the Chairman, Mr. Song Shuhua (China) took a place at the Committee table.

34. Mr. SONG Shuhua (China) said that China had a history of suffering similar to that of other developing countries, and had been the victim of colonialist and imperialist aggression and oppression, as well as of national oppression and discrimination over a long period. Since the founding of the People's Republic of China, the Government and people had unswervingly opposed racism and racial discrimination and supported the activities of the United Nations aimed at eradicating them. Effective legal measures had been taken to eliminate all forms of national oppression and discrimination.

35. As indicated in the report, China was a unitary multinational State with 56 nationalities, 55 of which were minorities. The area inhabited by the minorities in compact communities made up nearly 60 per cent of the total land area.

36. In order to eliminate national discrimination and oppression, a Common Programme had been adopted by the Chinese People's Political Consultative

(Mr. Song Shuhua, China)

Conference in 1949, which had declared all nationalities to be equal, prohibited discrimination, stipulated that areas where minorities lived in compact communities should enjoy regional autonomy and recognized the right of all nationalities to use and develop their own languages, to preserve or reform their own ways and customs, and to practise their religion. The Common Programme further provided that the Government should assist all minorities in their political, economic, cultural and educational development.

37. The provisions of the Common Programme had been incorporated into the various constitutions adopted over the years. To ensure the effective implementation of constitutional provisions, the Government had enacted specific legislation and issued decrees.

38. In 1951, the Government had banned all pejorative forms of address and place names. Laws had been enacted to ensure the participation of minorities in State and local affairs on an equal footing with all other nationalities. At the Sixth National People's Congress, held in June 1983, all minority nationalities had been represented, and 13.5 per cent of all the deputies were members of minority nationalities, which was twice the proportion of minorities in the total population. Minorities were appropriately represented at all levels of local government and in State organs. A Nationalities Committee under the Standing Committee of the National People's Congress was responsible for studying matters having a bearing on the nationalities and drafting relevant legislation. That important body was headed by a Tibetan and many of its members belonged to minority nationalities.

39. The granting of regional autonomy to areas with large minority populations was China's fundamental policy in its efforts to solve problems among nationalities. In descending order of size, there were autonomous regions, autonomous prefectures and autonomous counties. The governments of the autonomous areas managed the administrative, financial, economic, cultural, educational and scientific affairs of their respective areas, and also had legislative powers. The language of the locality was used for all official purposes. The minority peoples used their own languages in their every-day life. Citizens of all nationalities were entitled to use their own language in court proceedings, and interpretation and translation services were provided.

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(Mr. Song Shuhua, China)

40. The Government had always respected the customs and ways of minority nationalities, while educating them to respect each other's ways and customs. Interference by government officials with minority customs and manners was punishable under article 147 of the Criminal Code.

41. The State was making every effort to promote the economic and cultural development of the minorities, and had increased investments in infrastructure in the minority areas. Thanks to government assistance and the hard work of the people, the minority areas had made remarkable economic and cultural progress. Since the founding of new China, industrial and agricultural output had increased markedly, school enrolment had registered impressive growth, and the number of medical establishments and personnel had increased tremendously.

42. A genuine political equality had been achieved among all nationalities, whether large or small, and relations characterized by equality, unity and mutual assistance among nationalities had been forged. As part of the country's efforts toward socialist modernization, the Government would take further measures to end the economic and cultural backwardness of the minority nationalities and to promote the prosperity of all nationalities.

The meeting rose at 12.55 p.m.

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