Report of the Amnesty International Missions to the Republic of Nicaragua

August 1979, January 1980 and August 1980

including memoranda exchanged between the government and Amnesty International

an amnesty international publication

AMNESTY INTERNATIONAL is a worldwide movement which is independent of any government, political grouping, ideology, economic interest or religious creed. It plays a specific role within the overall spectrum of human rights work. The activities of the organization focus strictly on prisoners:

- It seeks the *release* of men and women detained anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence. These are termed *"prisoners of conscience"*.
- It advocates *fair and early trials* for *all political prisoners* and works on behalf of such persons detained without charge or without trial.
- It opposes the *death penalty* and *torture* or other cruel, inhuman or degrading treatment or punishment of *all prisoners* without reservation.

AMNESTY INTERNATIONAL acts on the basis of the United Nations Universal Declaration of Human Rights and other international instruments. Through practical work for prisoners within its mandate, Amnesty International participates in the wider promotion and protection of human rights in the civil, political, economic, social and cultural spheres.

AMNESTY INTERNATIONAL has over 2,500 adoption groups and national sections in 40 countries in Africa, Asia, Europe, the Americas and the Middle East, and individual members, subscribers and supporters in a further 111 countries. Each adoption group works on behalf of at least two prisoners of conscience in countries other than its own. These countries are balanced geographically and politically to ensure impartiality. Information about prisoners and human rights violations emanates from Amnesty International's Research Department in London. No section, group or member is expected to provide information on their own country, and no section, group or member has any responsibility for action taken or statements issued by the international organization concerning their own country.

AMNESTY INTERNATIONAL has consultative status with the United Nations (ECOSOC), UNESCO and the Council of Europe, has cooperative relations with the Inter-American Commission on Human Rights of the Organization of American States and is a member of the Coordinating Committee of the Bureau for the Placement and Education of African Refugees of the Organization of African Unity.

AMNESTY INTERNATIONAL is financed by subscriptions and donations of its worldwide membership. To safeguard the independence of the organization, all contributions are strictly controlled by guidelines laid down by AI's International Council and income and expenditure are made public in an annual financial report.

©Amnesty International Publications 1982
ISBN: 0 86210 047 X
AI Index: AMR 43/02/82
First published: June 1982
Original language: Spanish
Published by Amnesty International Publications

Copies of Amnesty International Publications can be obtained from the offices of the national sections of Amnesty International. Office addresses and further information may be obtained from the International Secretariat, 10 Southampton Street, London WC2E 7HF, United Kingdom.

Printed in Great Britain by Russell Press Ltd., Forest Road West, Nottingham.

Report of the Amnesty International Missions to the Republic of Nicaragua

August 1979, January 1980 and August 1980

including memoranda exchanged between the government and Amnesty International

CONTENTS

PREFACE 1

AMNESTY INTERNATIONAL MEMORANDUM TO THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA, NOVEMBER 1981

I. Introduction 5

The Nicaraguan Legal System 7

II. Law Creating the Special Tribunals, Decree No. 185, La Gaceta No. 75 of 5 December 1979 13

A. Creation of the Special Tribunals 14
B. Jurisdiction 15
C. Composition of the Special Tribunals 16
D. Procedure 17
E. Appeals 21

III. Representative Cases 23

Cases of lesser or reduced penalties 28
Acquittal cases 29
The situation of juveniles 30
Trials in justicia ordinaria (ordinary courts) 31
Cases involving particularly serious abuses 33

IV. Conclusions 35

A. Special Tribunals 35
B. Serious abuses perpetrated in the course of establishing the new government 37
C. The Law for the Maintenance of Public Order and Security 38
D. Notification of arrest 39

V. Recommendations 39

COMMENTS OF THE GOVERNMENT OF NICARAGUA ON THE AMNESTY INTERNATIONAL MEMORANDUM, NOVEMBER 1981 41

Introduction 42
General considerations 42
Somoza's repression and popular indignation 48
The State of Emergency 49
The right to justice and a fair trial 51
The Special Tribunals 52
The office of the Special Prosecutor 53
The proceedings: freedom of evidence and judgment according to conscience 55
Appeals procedure in the Special Tribunals 57
Special Tribunals' competence 59
The right to be heard and tried within a reasonable period 59

The right to be presumed innocent 60
The right to defence and defence counsel 61
Final analysis 62
The validity of habeas corpus 63
The Law for the Maintenance of Public Order and Security 64
Alleged abuses during the establishment of the new government 65
Response to the Amnesty International recommendations 67

AMNESTY INTERNATIONAL RESPONSE TO THE COMMENTARY OF THE GOVERNMENT OF NICARAGUA, APRIL 1982 69

PREFACE

This report is based primarily on the observations of two missions to Nicaragua on behalf of Amnesty International in January and August 1980. The delegates were two jurists, Dr Roberto Alvarez of the Dominican Republic and Senator Hipólito Solari Yrigoyen of Argentina. The report is mainly about aspects of the new legal order established in Nicaragua after July 1979 when the government of General Anastasio Somoza Debayle was overthrown. It deals particularly with two distinct sets of trials: first, the trials in Special Tribunals of former members of the Nicaraguan National Guard and alleged collaborators with the previous government who were charged with criminal offences; second, trials in ordinary courts of people charged with crimes against public order or state security committed since the formation of the new government.

The preparation of the report was facilitated by the cooperation and help given to the Amnesty International delegates by the Nicaraguan Government on each of the trial observer missions. An Amnesty International delegation consisting of a researcher from the International Secretariat and Mexican jurist Dr Arturo Zama had preliminary talks with the new government in August 1979, in the course of which the organization was invited to send further missions of inquiry and to observe the trials of those detained in the aftermath of the revolution. The first trial observation mission, by Dr Roberto Alvarez, took place within weeks of the start of hearings (in December 1979) in the newly established Special Tribunals. The second, by Senator Hipólito Solari Yrigoyen, took place six months later in August 1980.

The defeat of President Somoza's forces and the formation on 19 July 1979 of the new Government of National Reconstruction was followed by a short period in which the entire governmental system was restructured. The new authorities explicitly undertook to abide by internationally agreed human rights standards. The incorporation of basic human rights provisions into Nicaraguan legislation and the ratification of international covenants on human rights is dealt with in the report.

As soon as the Somoza government fell, Anmesty International sought to make contact with the new government and took steps to monitor (and where appropriate influence) human rights matters falling within its terms of reference. The three Amnesty International missions to Nicaragua in 1979 and 1980 revealed two major areas of concern that are dealt with in this report.

The initial and persisting cause for concern during the first mission in August 1979 was the treatment of the estimated seven to eight thousand people reported to have been detained for collaboration with the former government, some of whom had been captured by groups of local residents during the chaotic final days of the collapsing Somoza government. The release of over 1,000 of the original detainees after the new central government had become established left 6,310 prisoners still to face trial in the Special Tribunals on criminal charges specified in the penal code

that had been applied by the Somoza government. The prisoners who still faced trial were mainly former members of the National Guard and officials or alleged collaborators with the former secret police, the Office of National Security. Of those accused 4,331 were later convicted and sentenced to from one to 30 years' imprisonment with no provision for appeal, and 3,174 were still in detention. (These were the figures at the time of writing.) One of this report's major recommendations is for a thorough review of these prisoners' cases to ensure that any possible injustices are remedied.

The second cause for concern is the circumstances of the arrests, trials and imprisonment of people charged with offences against public order or national security since the change of government, who are believed to have numbered as many as 100 at any one time during the past two years. They range from people charged with forming illegal armed groups and making armed attacks on public buildings and government officials or murdering children taking part as teachers in a national literacy campaign to people charged with making statements damaging to the government or nation - this last group including leaders of lawful opposition parties, trade unions and business associations. It is from among people in this last group that Amnesty International has adopted several individuals as prisoners of conscience and called for their immediate release as they were detained solely for the expression of their opinions and had neither used nor advocated violence. In most such cases detention has been for relatively short periods - from two weeks to three months - but this report makes certain fundamental points about both principle and procedure in the application of recent legislation in these prosecutions. One problem that has arisen has been that the application of the appropriate law, the Law for the Maintenance of Public Order and Security, has necessitated a special summary court procedure. This the government has acknowledged in its response (appended to this report). A more serious problem arises from the definition of crimes specified in the law. Particularly imprecise definitions are used with regard to conspiracy and freedom of expression. It is in these areas that the courts have tended to interpret the law arbitrarily, which has led to the detention and conviction of prisoners of conscience.

The main document in the report is a Memorandum based primarily on the findings of the January and August 1980 missions and submitted for comment to the Government of Nicaragua in August 1981. Some of its more technical sections dealing with legal questions have not been reproduced, and the sections on the situation of juveniles and on abuses reported at the time of the change of government take into account information received since the preparation of the Memorandum.

Since the Memorandum was drafted seven prisoners arrested on 21 October 1981 and sentenced under the Law for the Maintenance of Public Order and Security have been adopted as prisoners of conscience by Amnesty International. They include Communist Party leaders Eli Altamirano, Allan Zambrana, Roberto Moreno and Yamilet Bonilla, who received seven-month sentences for having made statements in breach of the above law and who,

except for Yamilet Bonilla, were sentenced in addition to 29 months' detention on charges of having incited take-overs of factories and strikes forbidden by the new Law of the State of Economic and Social Emergency. Detained on the same date were leaders of the Nicaraguan business community: Enrique Dreyfus, Benjamín Lanza and Gilberto Cuadra - each sentenced to seven months' imprisonment for having signed and published a manifesto criticizing the political and economic policies of the government. This was punishable under Article 4 of the Law for the Maintenance of Public Order and Security on the grounds that it constituted an attack on the national economy and national security. The sentences of the detained Communist Party leaders were later reduced on appeal to 17 months' imprisonment. Amnesty International has called for the immediate and unconditional release of all seven prisoners.**

The Memorandum includes conclusions about the Special Tribunals and the cases of individual prisoners tried by these courts, efforts to throw light on the status of people unaccounted for since the end of fighting in July 1979, the Law for the Maintenance of Public Order and Security and its application and the practical application of habeas corpus. These conclusions prompted eight recommendations.

The Government of Nicaragua responded to the Memorandum and its recommendations in a 67-page document received by Amnesty International in November 1981, most of which is appended.* A constructive response was made to the recommendation that the special summary trial procedure used in the application of the Law for the Maintenance of Public Order and Security be abolished, as some of the procedural restrictions criticized in the Memorandum were abolished. Similarly, a recommendation that a complete list of prisoners sentenced by the Special Tribunals be made public led to the publication of the list and its dissemination in November 1981. An administrative order made on 7 October 1981 to establish a body within the police to inform detainees' relatives about arrests would seem to be a constructive response to the recommendation that such an office be set up.

---

* The government reply's extensive references to and quotations from the 1976 Amnesty International report, The Republic of Nicaragua, and the 1978 Inter-American Commission on Human Rights (IACHR) report on Nicaragua have not been included in the report: the complete 1976 and 1978 reports are available to the public from Amnesty International and the IACHR.
The Government's response to the section on juveniles in Amnesty International's Memorandum has also been omitted as it was based on an error in the original Spanish language Memorandum that has been corrected: in the original text the expression "juveniles were judged", rather than the correct "juveniles appeared before the Special Tribunals" was used in describing procedures whereby juveniles were turned over to the appropriate juvenile authorities. In submitting its Memorandum to the Nicaraguan Government, Amnesty International also sent a list of cases about which specific information was requested. Although this was not part of the Memorandum, the Government of Nicaragua addressed it in their reply and included documentation in a 44-page appendix reproducing the text of relevant communications between it and the IACHR, and a section of the final report of the IACHR published in 1981. Neither the list of cases nor the government's comments on it are reproduced here.

** Reports reaching Amnesty International indicate that the three leaders of the Nicaraguan business community mentioned above were released on 15 February 1982.

Although the response to Amnesty International's recommendations about prisoners convicted in the Special Tribunals and of breaches of the Law for the Maintenance of Public Order and Security was not entirely negative it was decidedly less positive than the other responses. The government's document does not mention Amnesty International's serious criticism of the terms and application of the above law as they affect freedom of expression and prisoners of conscience. Nor has the Government of Nicaragua accepted the recommendations that both public order cases - tried by extraordinary procedures before December 1981 - and cases tried in the Special Tribunals be thoroughly reviewed in order to remedy any possible injustices. However, the response to the recommendation that the Law for the Maintenance of Public Order and Security and Special Tribunal cases be reviewed mentions the new Ley de Gracia (Law of Pardon) that came into force in 2 November 1981 and which the government describes as a direct response to the Amnesty International and Inter-American Commission on Human Rights recommendations that provision be made for a review of Special Tribunal verdicts and for their alteration where appropriate. The Law of Pardon applies also to cases of Law for the Maintenance of Public Order and Security convictions, and provides a procedure whereby appeals may be considered and injustices remedied through commutation or reduction of sentence or pardon. This is, however, an administrative and not a judicial procedure.

A letter from Amnesty International to the government is appended welcoming its response to the Memorandum but noting outstanding grounds for concern.

AMNESTY INTERNATIONAL

MEMORANDUM

TO THE

GOVERNMENT OF THE

REPUBLIC OF NICARAGUA

NOVEMBER 1981

I. Introduction

During 1980 Amnesty International sent two investigative missions to Nicaragua. They went in response to an open invitation by the Government of Nicaragua, sent shortly after the downfall of the previous government, to have observers at trials which were to be held by Special Tribunals (1) and to investigate other aspects of the human rights situation.

The two delegates were assisted by Dr Leonte Herdocia, who liaised with the mission, and who has the rank of ambassador attached to the Foreign Ministry. He is National Commissioner for Human Rights and Humanitarian Affairs and head of the autonomous official body, the National Commission for the Protection and Promotion of Human Rights. The two delegates received the cooperation of the staff of the General Directorate for International Organizations at the Ministry of Foreign Affairs, of which Dr Herdocia is also head. He paid considerable attention to the delegates during the two visits, organizing the interviews they requested and seeing that they had access to relevant documents. This was a great help to the two missions.

The first mission was by the Dominican lawyer Dr Roberto Alvarez. He was in Nicaragua from 15 to 24 January 1980 in order to attend the hearings by Special Tribunals, look into the situation of those detained under the jurisdiction of the Special Tribunals and study the new legal system in Nicaragua. He was able to observe various trials, study records and speak to officials and members of the courts as well as defence lawyers.

The former Argentinian senator and jurist Dr Hipólito Solari Yrigoyen was in Nicaragua as an Amnesty International representative from 19 to 27 August 1980 in order to carry on the investigation begun by Dr Alvarez and the Amnesty International Research Department, and in particular to study individual cases of people detained and on trial.

As well as being helped by Dr Herdocia and Foreign Ministry officials, Amnesty International had interviews with many other officials and lawyers, which were very helpful. Particularly useful were the meetings with President of the Supreme Court Dr Roberto Arguello Hurtado and other judges; Coordinator General of the Special Tribunals Dr Mario Mejía Alvarez and his adviser, Dr José María Zelaya; Dr William Frech, Director of the Penal Department of the Bufete Popular (Legal Aid Bureau) of the Universidad Centroamericana (Central American University), who at that time had to coordinate and assist the law students appointed as official defence lawyers by the Special Tribunals; and Dr Nora Astorga Gadea, the Fiscal Especial de Justicia (Special Prosecutor), responsible for prosecutions in the Special Tribunals.

---

(1) The Special Tribunals were created to try the so-called "reos somocistas" (somocista prisoners) — a term used for all detainees under investigation, being tried or having been sentenced for an offence (specified in the penal code), committed while members of the previous government, (whether as soldiers, officials or civil servants) and any others who, because of their links with them, might have been involved in such offences.

During the first mission Dr Alvarez was able to meet the Deputy Minister of Foreign Affairs, Dr Jacinto Suárez, and on another occasion Commander Hugo Torres, Deputy Minister of the Interior (until just before, head of the Department of State Security). Commander Torres told the delegate about the functions of the departments attached to the Ministry of the Interior, especially about the workings of the State Security Department and national prison system. The then director of the national prison system, Francisco de Asís Fernández, explained certain aspects of its reorganization and arranged visits to the Jorge Navarro Rehabilitation Centre (the former "model prison of Tipitapa"), where there were some 2,100 detainees, and the Centro de Readaptación Heroes y Martires de Nueva Guinea (Heroes and Martyrs of New Guinea Rehabilitation Centre), generally known as the Zona Franca, where there were about 2,300 prisoners. Because of the brevity of the mission and because its main purpose was to study the cases of people being tried by the Special Tribunals and the legal system generally, detailed study of the prison system and prison conditions was not possible and is not an essential part of this report.

Finally, Dr Alvarez met the Procurator General, Dr Ernesto Castillo, who confirmed that the government's invitation to Amnesty International to send observers to the country again for the same purpose was still open.

During the August 1980 mission, Senator Hipólito Solari Yrigoyen concentrated on studying actual cases of detainees and people on trial and examining relevant parts of the new legislation promulgated after January 1980. Although his meetings and activities were largely in connection with the judicial bodies, he received the same amount of cooperation from the Ministry of Foreign Affairs and state officials as had Dr Alvarez.

He was also able to meet detainees' relatives and officials from the Nicaragua Permanent Commission for Human Rights, a private body that monitors the human rights situation in Nicaragua and maintains a critical stance towards the present government. This last meeting was attended by Ricardo Paez Castillo, President of the commission, and members of the commission's legal department. During his January 1980 visit, Dr Alvarez had discussed the commission's work with its National Coordinator and Deputy Chairperson of the Partido Social Cristiano (Christian Democratic Party), José Esteban González.

This report is therefore based mainly on the reports submitted by Dr Alvarez and Senator Yrigoyen to Amnesty International's International Executive Committee at the end of their missions. The report has been amplified, using other data obtained by Amnesty International, and is divided into the following sections:

1) the Nicaraguan legal system;
2) the Special Tribunals;
3) representative cases;
4) conclusions;
5) recommendations.

The Nicaraguan Legal System

This section is an account of the legal system established in Nicaragua after the successful revolution against the government of Anastasio Somoza Debayle -- that is, after 19 July 1979. It begins with an analysis of the Estatuto Fundamental (Fundamental Law) and the Estatuto sobre Derechos y Garantías de los Nicaragüenses (Law for the Rights and Guarantees of Nicaraguans), which may be said to amount to a single legal entity with constitutional status. Various laws are then considered that throw light on certain features of the Special Tribunals and the "reos somocistas", such as the Ley sobre el Mantenimiento del Orden y Seguridad Pública (Law for the Maintenance of Public Order and Security) and the Ley de Emergencia Nacional (Law of National Emergency). In other sections the Ley Creadora de los Tribunales Especiales (Law Establishing the Special Tribunals) and the Ley de Creación y Orgánica de la Fiscalia Especial de Justicia (Law Creating and Governing the Special Prosecutor's Office) are examined.

a) The Fundamental Law of 20 July 1979 (published in La Gaceta, the official gazette, No. 1 of 22 August 1979) and the Statute on Rights and Guarantees of Nicaraguans, Decree No. 52 of 21 August 1979 (published in La Gaceta No. 11 of 17 September 1979).

The Estatuto Fundamental (Fundamental Law) is the constitutional law of Nicaragua and the basis of the state's new political structure and new judicial system. The Fundamental Law repealed and supplanted the Constitución Política (Political Constitution) of 1974 and other constitutional laws (1) and specifies that the powers of state are the Junta of Government (executive), the Council of State (legislature) and the courts of law (judiciary) (2), minus what the previous Political Constitution had termed "poder electoral" (electoral power) (3).

---

(1) The Ley de Amparo (Law of Remedy), Ley Marcial (Martial Law) and the Ley Electoral (Electoral Law).

(2) Fundamental Law, Article 9.

(3) Political Constitution of 1974, published in La Gaceta No. 89 of 24 April 1974. Article 10: "the organs of government are: the Legislature, the Executive, the Judiciary and Electoral Power".

The Fundamental Law also dissolved the "Chambers of Deputies and Senators, the Supreme Court of Justice, the Court of Appeals, the Higher Labour Court [Tribunal Superior del Trabajo] and other structures of the Somoza regime." (4) In addition, the Guardia Nacional (National Guard), the Oficina de Seguridad Nacional (Office of National Security) and the Servicio de Inteligencia Militar (Military Intelligence Service) (5) were dissolved.

Article 6 of the Fundamental Law declared that human rights would be fully respected; it quoted from various international declarations and conventions and stated that the rights and guarantees of Nicaraguans would receive official recognition in a further statute "which would be promulgated at the same time". This was the Estatuto sobre Derechos y Garantías de los Nicaraguënses (Statute on the Rights and Guarantees of Nicaraguans), which was actually promulgated on 21 August 1979, that is one month after the Fundamental Law was promulgated.

The Statute on Rights and Guarantees of Nicaraguans is divided into five sections. The first contains two articles that set forth the inherent political, legal and economic rights of the Nicaraguan people which have been called the "rights of the people". Section II deals with traditional civil and political rights, such as the right to life, "physical integrity", legal safeguards and freedom of expression. It consists of 25 articles. Economic, social and cultural rights are dealt with in Section III and comprise 19 articles (the right to work, the right to belong to a trade union, the right to strike, the right to social security, the right to education). Section IV deals with the grounds for suspension of certain rights and safeguards. According to Article 49, the exceptional or emergency situations that constitute a threat to life or national security and therefore justify the introduction of extraordinary measures (such as a state of emergency) are: 1) international or civil war or threat of the same; (2) disasters or wars; 3) public order or state security matters. The Junta of Government is the sole power authorized to declare a state of emergency without having to get permission to do so from the Council of State.

---

(4) Fundamental Law, Article 4. Naturally the statute established the new courts in Article 21.

(5) Fundamental Law, Article 23. The following article, Article 24, states: "A new national army, patriotic and dedicated to the task of defending the democratic process and the sovereignty and independence of the nation and safeguarding the integrity of its territory, will replace the National Guard of Nicaragua. The National Army will be formed from the Sandinista National Liberation Front [Frente Sandinista de Liberación Nacional] and from soldiers and officers of the National Guard of Nicaragua who have proved their honesty and patriotism as regards the corruption, repression, and treachery of the Somoza dictatorship and from those who have joined in the struggle to overthrow that regime, those who have fought for liberation and wish to join the army, and future army conscripts. Soldiers guilty of crimes against the people will have no place in the new National Army."

Article 49 stipulates that the following rights may not be suspended in any circumstances: the right to life (Article 5) (6); the right to "physical, moral and intellectual integrity" (Article 6); the right to freedom from slavery (Article 7); the right not to be sentenced for deeds and omissions which, at the time when they occurred, were not crimes (Article 2); the right not to be arrested for debt (Article 14); the right to recognition of la personalidad y capacidad jurídica (individuals' legal rights) (Article 17); the right to freedom of conscience and religion (Article 19); the right to nationality (Article 26). The Statute on Rights and Guarantees also, in Article 50, recognizes the right to habeas corpus of all those whose rights or liberties, as laid down by the Statute on Rights and Guarantees or the Fundamental Law, have been infringed (7).

Lastly, Section V of the Statute on Rights and Guarantees deals with the transitory provisions. One of these, Article 51, suspended rights and safeguards, except for those mentioned above, for 60 days "for individuals who are under investigation for crimes covered by the Penal Code and the International Covenants and committed under the Somoza regime."

This period was extended for six months on 20 October 1979 (Decree No. 116), then further extended until 20 April 1980 (Decree No. 364).

b) Law for the Maintenance of Public Order and Security, Decree No. 5 of 20 July 1979, published in La Gaceta No. 1 of 22 August 1979; Law of National Emergency, Decree No. 10 of 22 July 1979, published in La Gaceta No. 2 of 23 August 1979; Law of Special Emergency Tribunals, Decree No. 34 of 7 August 1979, published in La Gaceta No. 4 of 28 August 1979; Law of Ordinary Courts (Tribunales Comunes-Competencia), Decree No. 148, published in La Gaceta No. 55 of 12 November 1979.

These four laws which, unlike the previously mentioned laws and statutes do not have constitutional status, are relevant to an examination of the issues this report deals with.

The Law for the Maintenance of Public Order and Security, Decree No. 5 of 20 July 1979, made punishable a number of crimes against public order and the security of the state (Articles 1 and 2); international crimes (Article 3); illegal possession of firearms, explosives and "war materials" (Article 4); and crimes against morals.

---

(6) Article 49 of the Statute on Rights and Guarantees of Nicaraguans omitted to include the right to life as a right that may not be suspended. This omission was rectified in La Gaceta No. 66 of 24 November 1979, where it was announced that the omission had been an oversight.

(7) The Ley de Amparo para la Libertad y Seguridad Personal (Law for the Protection of the Liberty and Personal Security of the Individual), Decree No. 232, was promulgated on 4 January 1980 and became applicable on 8 January 1980, La Gaceta No. 6 of 8 January 1980. See below for a description of this law.

The same law created special emergency tribunals to deal with these offences (Articles 5-7). They were, however, never actually established. Decree No. 148, Tribunales Comunes-Competencia (Jurisdiction of Ordinary Courts), published in La Gaceta No. 55 of 12 November 1979, gave competence to try breaches of this law to the ordinary courts (8).

Article 4(c) of the Law for the Maintenance of Public Order and Security in its original form prescribed a sentence of from three months' to two years' obras públicas (public works) for those who spread oral or written "statements, proclamations or manifestos intended to harm the public interest and nullify the victories achieved by the people".

Decree No. 488 of 9 August 1980 amended Article 4 of Decree No. 5: it changed the sentence of public works to arrest and public works, and specified four conditions under which the spreading of oral or written statements, proclamations or manifestos were to be dealt with by this law. The amended Article 4, paragraph c, prescribes a sentence of from 10 days' to two years' arrest and public works for those who make statements "with the intention of undermining" the security of the state, the economy, public order, health, morals, the judiciary and "the dignity of people, the reputation and rights of others".

The State of Emergency in Nicaragua began on 22 July 1979 and ended on 29 April 1980. In accordance with Article 8, the Law for the Maintenance of Public Order and Security was to remain in force so long as the State of Emergency "legally established by the Law of National Emergency" persisted (Decree No. 10). However, Decree No. 383 (29 April 1980), which lifted the State of Emergency, repealed Article 8 of the Law for the Maintenance of Public Order and Security and declared that the latter should remain in force (Article 2, Decree No. 383) and that it would be incorporated into the ordinary criminal legislation (Article 3, Decree No. 383). Thus the law was transferred from the extraordinary context of national emergencies to that of ordinary criminal law.

The Law of Special Emergency Tribunals officially came into force on 7 August 1979, although it did not become genuinely effective as the proposed tribunals were not established.

However, Decree No. 148 remitted to the tribunales comunes (ordinary courts) the competence to try contraventions of the Law for the Maintenance of Public Order and Security and the Law of National Emergency, and decreed that in such cases the ordinary courts should apply the same procedimiento de excepción (extraordinary procedure) as that set forth in Articles 5, 6 and 7 of the Law of Special Emergency Tribunals.

---

(8) Articles 5-7 of Decree No. 5 were repealed by Decree No. 34 (7 August 1979).

In accordance with Article 5 of Decree No. 148 trials are to be oral, the period allowed for preparation of defence after an accusation has been made to the court limited to 48 hours, presentation of evidence limited to three days and sentence to be passed within 48 hours.

The extraordinary nature of this legal procedure within the ordinary legal system in Nicaragua was reinforced by Decree No. 195, which amended Article 2 of Decree No. 148 with respect to the rules of evidence:

> "The courts must assess the evidence, using sound judgment, without applying the rule of graded evidence [prueba tasada]."

Article 12 of Decree No. 34 stipulates that a court may pass sentence without specifying or even recording evidence that has been presented.

> "Only the accusation, the sentence and any other part of the proceedings that the court deems indispensable shall be recorded in writing."

c) Ley de Amparo para la Libertad y Seguridad Personal (Law for the Protection of the Liberty and Security of the Individual), Decree No. 231, published in La Gaceta No. 6 of 8 January 1980.

The above law specifies the legal measures available to all to "exercise the right of protection [amparo] with regard to the liberty and security of individuals in order to maintain the effectiveness of the Fundamental Law and the Statute on Rights and Guarantees of Nicaraguans. This law will be used to resolve all issues that arise relative to:

1) Detention or threat of detention on the orders of any official, authority, entity or National Institution, autonomous or other.

2) Acts performed by individuals, restricting the freedom of any citizen of Nicaragua.

3) A detention order issued against someone not yet in detention who claims exemption from the provisions of the order." (9)

The remaining provisions of this law determine the procedure to be followed in requesting the benefit of this remedy and the means of carrying it out.

Article 32 stipulates that amparo will not be available to anyone being tried by a Special Tribunal until the rights suspended in accordance with Article 51 of the Statute on Laws and Guarantees of Nicaraguans

---

(9) Article 1. The terms "recurso de amparo", "habeas corpus" and "exhibición personal" are used interchangeably.

have been restored (10).

d) Law Approving and Ratifying the American Convention on Human Rights signed in San José, Costa Rica, 1969, Decree No. 174, published in La Gaceta No. 67 of 26 November 1979.

Decree No. 174 was published in La Gaceta No. 67 of 26 November 1979, but bears the date 25 September 1979. By means of this decree the government affirms the application of the international convention at national level and at the same time declares that "it pledges on the honour of the nation to observe it". The decree also states that this law, which approves and ratifies the American Convention on Human Rights, "will enter into force today, as soon as it is published, regardless of the publication medium and without prejudice to its later publication in La Gaceta". However, the decree did not include the text of the American convention, a knowledge of whose provisions is essential for the implementation of the decree. This omission was rectified in La Gaceta on 3 March 1980. (11).

The American Convention on Human Rights is a treaty containing provisions with some bearing on the Special Tribunals, trials and the "reos somocistas". Nicaragua, furthermore, is one of the States Parties to the four Geneva Conventions of 1949 on international humanitarian law.

---

(10) This suspension lasted until 20 April 1980 by virtue of Decree No. 116. Although it is true that the "reos somocistas" did not enjoy this right, it was ascertained that, in a certain penal establishment, the legal representative implementing habeas corpus for a particular individual to be produced in court had met him, assessed his physical condition and spoken to him.

(11) It is worth noting that the Ministry of Foreign Affairs recommended to the Junta of Government that Nicaragua should become party to United Nations international human rights agreements, including the Optional Protocol. Nicaragua took the necessary steps to adhere to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol on 12 March 1980.

II. Law Creating the Special Tribunals, Decree No. 185, La Gaceta No. 75 of 5 December 1979

When the government of Anastasio Somoza Debayle was overthrown thousands of National Guard soldiers laid down their arms and surrendered at a number of camps and establishments under the supervision of the International Committee of the Red Cross and the Red Cross of Nicaragua. (1) Shortly afterwards they were handed over to the Government of National Reconstruction as prisoners. At that time the Minister of the Interior, Commander Tomás Borge, declared that no prisoner would be ill-treated, that neither the death sentence nor torture would be used in Nicaragua and that all the accused would be tried in accordance with the existing criminal laws. He also asserted on various occasions that previous members of the National Guard would be considered prisoners of war. (2)

During the first few months after the new government has seized power as many as 8,000 people were being detained in former prisons, military command posts and improvised detention camps. This number gradually decreased as many prisoners were released. (3) In August 1980 the number of prisoners connected with the previous government was estimated to be about 6,000.

In October 1980 the Government of National Reconstruction gave Amnesty International a list, believed to be complete, of those detainees who were under investigation and being tried for criminal activities related to collaboration with the previous security services. These lists, compiled according to individual prison centres, including the headquarters of the national security investigative police, included the names of 5,598 detainees under the jurisdiction of the Special Tribunals. Since then the Junta of Government has pardoned 503 prisoners convicted of offences in support of the previous government (Decree No. 589 of 10 December 1980). On 19 February 1981, the Government of National Reconstruction let it be known that until then the Special Tribunals had tried 6,310 prisoners, 4,331 of whom had received prison sentences.

---

(1) Many other soldiers fled across the Nicaraguan frontier into neighbouring countries where they took refuge.

(2) This statement has certain legal implications which will be returned to later.

(3) According to some Nicaraguan authorities many detainees were released because it was considered that, as they had been members of the National Guard only a short while, and because of the tasks they had carried out and other factors, they were not guilty of any crimes, but that other detainees were released from prison in an arbitrary manner when there was evidence of their criminal activity.

A. Creation of the Special Tribunals

When the Junta of Government decided to create Special Tribunals to try the "reos somocistas" instead of handing them over to the ordinary courts it asked the Supreme Court of Justice to give its opinion on the proposed law whereby the Special Tribunals and the procedure to be used in them would be established. In its statement of 23 November 1979 the Supreme Court of Justice declared: "We appreciate the present situation in our country, yet in the opinion of this court the ordinary courts would be able to deal with the cases concerned if the number of judges were increased and they were distributed throughout the country with adequate staff."(4)

However this opinion was not heeded. On 5 December 1979 Decree Law No. 185 was published establishing the Special Tribunals (5). They were given the task of "trying the crimes covered by the Penal Code and committed by soldiers, officials and civil servants of the previous regime and by any other people who, by virtue of their association with them, had participated in the performance of such deeds, whether as perpetrator, accomplice or accessory and who are in detention or will be during these tribunals' period of existence."(6)

Nine courts of first instance and three appeal courts in Managua (but empowered to move about the country in order to try the cases being brought against the "reos somocistas") were established by this law. (7)

The tribunals were in three buildings all within a radius of approximately 200 yards. The first building housed courts 1, 4, 5 and 8; the second, courts 3, 6, 7 and 9; the third, court 2 and three appeal courts. The working day was from 07.30 am until 17.00 pm; sometimes it lasted longer.

---

(4) Statement of the Supreme Court of Justice No. 3032, 23 November 1979, page 4.

(5) In Section II of this report it is pointed out that the Law for the Maintenance of Public Order and Security, the Law of National Emergency and the Law of Special Emergency Tribunals created special emergency tribunals (never actually set up) that were not meant to try the "reos somocistas" but rather those who had committed any of the crimes specified by these laws, jurisdiction passing to the ordinary courts.

(6) Article 1.

(7) Article 3. This article also stipulates that the number of courts might vary to suit requirements. On the other hand, Article 4 stipulates that appeals against sentences passed by the courts of first, second and third instance are to be heard by the First Court of Appeal; those of the fourth, fifth and sixth by the Second Court of Appeal and those of the seventh, eighth and ninth by the Third Court of Appeal.

Next the legality of the Special Tribunals, created after the commission of certain crimes, should be briefly considered in the light of the general principles of law and the commitments undertaken by Nicaragua at international level. The principle must be borne in mind whereby criminal law is not retroactive, which prevents the application of a new law to deeds done before it became applicable. There are a number of exceptions to this rule; according to one, a new criminal law applies retroactively when this is favourable to the person who is sub judice or serving a sentence. It is therefore possible to speak of the non-retroactive nature of the law when it is unfavourable to the defendant. On the other hand, with respect to the law of procedure there is general agreement that it can usually be applied retroactively, always provided that the rights of the individuals who are going to be affected by it are protected. Examples are the right to defence and the right to present witnesses in court. However, it is generally accepted that the courts (although not necessarily the rules of procedure the courts have to observe) must exist before the commission of the crime. Indeed the American Declaration on the Rights and Duties of Man, adopted at Bogota, Colombia, in 1948, includes this principle in Article 26, which states:

> Article XXVI. Every accused person is presumed to be innocent until proved guilty.
>
> Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

Moreover this principle is also incorporated in the American Convention on Human Rights, ratified by Nicaragua on 25 September 1979, which pledged, on the honour of the nation, to observe it. (8) Article 8 paragraph 1 of the American convention stipulates that "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law...".

B. Jurisdiction

With respect to territorial jurisdiction (ratione loci) the Special Tribunals exercised their jurisdiction throughout the country. (9) Jurisdiction with respect to people (ratione personae) was clearly defined insofar as it was stated that the tribunals were to try crimes committed by any soldier, official or civil servant of the previous regime and by any other individuals who, through their association with the afore-mentioned, had participated in the commission of such crimes. (10)

---

(8) See Section I.
(9) Article 2.
(10) Article 1.

The only people guilty of crimes committed under the previous regime in the above-mentioned terms who are outside the scope of this law are juveniles and those detained as a result of extradition. (11) Lastly, with respect to jurisdiction as regards the nature of the offences concerned (ratione materiae), Article 1 of the Nicaraguan Penal Code defines punishable offences as either delitos y faltas (crimes or misdemeanors). And Article 1 of the Law of Special Tribunals states that the Special Tribunals are to try "the crimes covered by the current Penal Code ...".

C. Composition of the Special Tribunals

The Special Tribunals of first instance and appeal comprised three people (regular members according to the law), one of whom acted as president.(13) They were appointed by the Junta of Government. (14) The members of each Special Tribunal then selected the clerk of the court, assistants and staff.(15)

According to Decree Law 185 members of the Special Tribunals or their deputies had to be people over 21 and of good reputation. (16) A further provision stipulates that members should be qualified to fulfil their role but does not indicate what this means. However, people who are presidents of the courts of first instance or courts of appeal must, in addition to having the previously mentioned qualifications, be lawyers or law students in the last two years of their courses.(17) In August 1980 there were only six lawyers in the 12 courts of first and second instance.

Like all special courts, the Special Tribunals were temporary and supposed to be dissolved once they had tried all the "reos somcistas".(18)

---

(11) Ibid.

(12) The Special Tribunals are not competent to try civil actions, which must be brought before ordinary law courts.

(13) Article 5. All the judges had deputies.

(14) Decree No. 200, which came into force on publication in La Gaceta on 13 December 1979, contains the names of the regular members of the Special Tribunals of first instance and appeal. It was not possible to establish exactly who voted and how candidates for regular membership of the Special Tribunals were selected. Evidently grass roots organizations put forward the names of the candidates, from which a list was drawn up that the Junta of Government used for the appointment of judges.

(15) Article 7.

(16) Article 8.

(17) Ibid.

(18) Article 26.

D. Procedure

The authority responsible for investigating the "reos somocistas" was the Departamento de Seguridad del Estado (Department of State Security), which is a branch of the Ministry of the Interior. (19)

When a Special Tribunal received an order for committal for trial, it ordered the provisional arrest of the accused and started trial proceedings. (20) It was then that the formal detention order was issued, removing the accused from the jurisdiction of the executive. Once the ruling to initiate criminal proceedings had been made the tribunal had three days in which to receive from the accused the latter's declaración indagatoria con cargos (answer to charges) after the charges had been read out.(21)

The "reos somocistas" were affected by a number of legal provisions curtailing their rights. First there was Article 51 of the Statute on Rights and Guarantees of Nicaraguans which suspended the rights and safeguards (apart from those listed under Article 49 of this law) of those on trial for offences covered by the penal code and committed under the previous regime.(22) And Article 32 of the Ley de Amparo para la Libertad y Seguridad Personal (Law of Habeas Corpus and Personal Liberty and Security) laid down that people being investigated by the Special Tribunals were to be deprived of the right to habeas corpus until the rights specified in Article 51 of the Statute on Rights and Guarantees of Nicaraguans were restored.(23) Similarly, Article 17 of the Law of Special Tribunals precluded the possibility of the "reos somocistas" being released on bail.

After declaración indagatoria (the defendants' answer to charges), judges had to inform them of their right to appoint defence counsel who did not necessarily have to be lawyers. If defendants did not appoint defence counsel or could not afford to pay for this the courts officially assigned them counsel. (24) The Special Tribunals had a list of practising lawyers and a list of law students in their final two years of study at the Central American University. Defence counsel

---

(19) Article 11(b). The Fiscal Especial de Justicia (Special Prosecutor), Dr Nora Astorga Gadea, was appointed by Decree 187, La Gaceta No. 75 of 5 December 1979.

(20) Article 11(c) (d).

(21) Article 11(d).

(22) See Section I.

(23) See Section I.

(24) Article 11(d) (e).

were selected from these lists.(25) Once they had been appointed and notified by the court of the appointment they had 24 hours in which to study the cases and prepare the defence.(26) In practice this period was generally extended as it turned out to be too short to study the case, interview the accused and draft an adequate defence.(27)

Once a written statement from the defence had been submitted to the court the latter could receive evidence for up to eight days. During this period both the prosecution and the defence could submit whatever evidence or pleas they saw fit, following a procedure of submission and receipt of statements in writing. All forms of evidence were admissible, including those not covered by legislación procesal común (ordinary procedural legislation) then in force.(28) If the court considered it necessary, the period for hearing evidence could be extended by a further four days -- making a total maximum of 12 days. (29)

The admissibility of all forms of evidence arises from the principle that judges must act in accordance with their íntima convicción (personal conviction) -- which is the system established by the Decree-Law in question. In other words, there is no prueba legal (legal evidence) -- the method whereby the value of evidence is established beforehand and classified or graded.(30) According to the system of "personal conviction" it is admissible to prove a matter by any available means, judges remaining completely free to reach decisions in accordance with the impression made on their minds by the various pieces of evidence presented in debate at the hearing. (31)

---

(25) The article provides that the lawyers and law students were obliged to carry out the task of defence counsel on penalty of a fine of between one and 3,000 córdobas and, in addition, disqualification for six months after they qualified as lawyers. However, this provision was not invoked often since the government launched a campaign to spread awareness of the "reos somocistas'",right to defence. All the defence counsel nominees the delegates spoke to considered being defence counsel a civic duty and responsibility.

(26) Underlined by the author.

(27) In a statement of 23 November 1979 the Supreme Court recommended to the Junta of Government that the period for preparation of the defence should be three days. This suggestion was not accepted.

(28) Article 11(g).

(29) Article 11(h).

(30) This was the system used by French law in the past.

(31) This is the system used in most countries influenced by French law.

However, the fact that all forms of evidence were admitted did not imply that, in the case of prueba literal (documentary evidence), certain procedures guaranteeing its authenticity could have been dispensed with-- such as a clear statement about where an official document introduced as evidence was registered; the clear and precise identity (rather than pseudonyms) of the public officials who drew up formal statements, especially when these documents were going to be presented at trials. The delegates noted these deficiencies and others as regards evidence submitted by the prosecutor's office in a number of cases tried by the Special Tribunals.

On the other hand it should be pointed out that traditionally there have been some exceptions to the principle of freedom of evidence, such as the inadmissibility of a confession obtained by means of torture or evidence obtained by illegal means.(32) In addition, experience has shown that only relative value can be attached to certain methods of obtaining evidence, such as by confessions. Similarly, repeated observations and accumulated knowledge handed down and perfected from generation to generation have led to the creation of a logical procedure for the examination of the facts presented as evidence and for the appraisal of their validity. If justice is to be done it is essential to assess the evidence by means of a logical process of selection and elimination. This procedure has developed as a guide, to help to exclude questionable evidence that could lead to errors; improvisation is therefore rejected. It is thus very difficult to expect lay judges with no legal training or experience to be able to use this logical method of legal procedure. Two of the three regular members of the Special Tribunals of first instance and appeal are not required to be qualified lawyers. The difficulty involved in methodical evaluation of the evidence by lay people does not apply to this aspect of procedure only, since Article 25 of the Law of Special Tribunals stipulates that "any question which arises during the hearing that is not covered by this law shall be resolved by this court." This means that any issue of a legal nature that arises during the trial which is not covered by the law must be resolved according to the criteria of the regular members; this is a truly onerous responsibility for people not versed in the law.

Once the evidence has been heard the court can begin to assess the crime and determine the innocence or guilt of the defendant. (33)

---

(32) The UN Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (9 December 1975) states, in Article 12, that "Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment may not be invoked as evidence against the person concerned or against any other person in any proceedings."

(33) No time-limit is specified within which the court must reach a verdict, but as far as could be told the verdict was pronounced fairly soon. Furthermore, a number of judges declared that, although there was no formal time-limit, it should take no longer than three days to reach a decision.

To reach this decision the judges, apreciando según su conciencia (according to their individual consciences), analyse the evidence that has been presented and the interventions that have been made by the defence, the prosecution, (34) and the defendants themselves. The jury reaches its verdict in camera by majority vote. If the verdict is "innocent" the court must order the immediate release of the defendant.(35) But if the verdict is "guilty" it must pass the appropriate sentence within three days, taking into account the defendant's degree of criminal involvement and any aggravating or extenuating circumstances, in accordance with the current penal code, and stating the date on which the sentence will have been completed.

It is important to stress that this provision, which lays down that the sentences applicable are those stipulated by the existing penal code, respects the general and fundamental principle of law expressed in the maxim: nullum crimen, nulla poena sine praevia lege which acquired universal recognition in the Declaración Francesa del Hombre y del Ciudano (French Declaration of Man and Citizen) of 26 August 1789. (36) Furthermore, this principle is embodied in the Universal Declaration of Human Rights (Article 11), in the International Covenant on Civil and Political Rights (Article 15) and in the American Convention on Human Rights (Article 9). (37)

---

(34) Article 11(i). In establishing this procedure it is clear that the legislator has sought to establish an order of priority for consideration of the evidence. However, the president of one of the courts of first instance, during an interview, set forth the order in which evidence should be considered thus: the indagatoria (accused's statement); prueba testifical (the witnesses' evidence); documentary evidence and certificates of good conduct.

(35) Article 11(j). Clearly there is a concentration of jurisdictions in the Special Tribunals insofar as the latter perform both the function of jurisdicción de introducción (preliminary examining authority) and that of jurisdicción de juicio (trial judge). Naturally the functions and procedures of the Special Tribunals differ considerably from those of the ordinary courts.

(36) Article 8 of the declaration states that "the law shall not make provision for penalties longer than are strictly and obviously necessary, and no one may be punished except by a law promulgated before commission of the crime and legally applied."

(37) Nicaragua adheres to the Universal Declaration of Human Rights and is a State Party to the International Covenant and the American Convention.

This means that the Government of Nicaragua has respected the principle of legality and retroactivity, which establishes that only deeds and omissions declared punishable by law preceding commission of the crime are punishable and that a crime cannot be punished by a penalty that was not prescribed by law before its commission.

E. Appeals

The law states that sentences may be appealed against within three days of their being passed.(38) The other party, the apelado, (prosecution against which the appeal is made) also has three days in which to contest it "before the court of first instance itself, which shall immediately pass on the documents that have been presented to the relevant court of appeal." (39) The latter, in turn, has three days in which to reach a verdict "against which there shall be no recourse to cassation or appeal of any other kind." (40)

As regards the sentence appealed against, the court of appeals cannot pronounce judgment on "the verdict of the innocence or guilt of the accused; its task is only to determine according to conscience [en conciencia] the nature of the crime, the penalty and other circumstances determined by the sentence. If the sentence appealed against is amended by the court of appeal, the former will be finally confirmed and the trial dossier returned to the court of first instance which will then impose the definitive sentence". (41)

An appeal is generally held to be not only the most important ordinary legal remedy but also the one most frequently used. This remedy guarantees the parties a re-examination of and judgment on the substance of appeal by a different legal body from the one that passed the sentence appealed against. The object of an appeal is to get a verdict passed by a lower court judge totally or partially overturned by a higher court judge.

---

(38) Article 18. The appeal must be made to the court of first instance that passed sentence "in writing and expressing grievances". If the sentence of the court of first instance is not appealed against within three days, of if it is confirmed by the court of appeal, it is considered firme y ejecutoriado (definitive) --Article 20. Furthermore, Article 23 points out that an appeal and the plea of nullity are the only admissible remedies.

(39) Article 19.

(40) Ibid.

(41) Article 20.

The appeal procedure, as laid down by the Law of Special Tribunals, was a limited remedy, as the appeal court could not review the facts but only consider matters of law. It was to some degree a form of casación (appeal for annulment to a court of cassation), but without the prerogative to remit the sentence annulled for retrial to a different court from the one that originally passed sentence. On the other hand the right of defence is restricted insofar as the parties concerned cannot go to the court of appeal and exercise their rights.(42)

The Statute on the Rights and Guarantees of Nicaraguans lays down in Article 11 that all suspects have the right to the following minimum safeguards:

"i) Anyone found guilty of a crime is entitled to submit the verdict and sentence to a higher court, as prescribed by law."

The American Convention on Human Rights, ratified by Nicaragua, states in Article 8 that: "Every person is entitled with full equality to the following minimum guarantees: ....

h) The right to appeal the judgment to a higher court."

The International Convention on Civil and Political Rights, recently ratified by Nicaragua, stipulates in Article 14:

5) "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

Lastly, the Geneva Convention on Prisoners of War states in Article 106:

"Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so."

---

(42) In its statement of 23 November 1979 the Supreme Court of Justice of Nicaragua recommended in addition that within the period permitted for the parties to make their appeal to the appeal court the appellant should be allowed to appear in person and back the appeal. This suggestion was not adopted.

III. Representative Cases

An examination of several trial dossiers illustrates the role of prosecutors, counsel and judges in these trials and how far human rights appear to have been safeguarded or infringed.

Emilio Páez Bone

The case opened in Special Tribunal No. 6 on 17 December 1979 with the prosecutor claiming that the prisoner was guilty of murder (Article 134 of the penal code), as an accessory (Article 22, paragraphs 2,26 and 79) and of incitement to crime and criminal association (Article 493). The prosecutor requested a sentence of 20 years' presidio (imprisonment with public works) for the first crime and three years' prisión (imprisonment) for the second. The penal code stipulates that presidio (which can last from three to 30 years) is to be served in a penal establishment whose inmates must do industrial or agricultural work within the establishment or outside public work. Prisión sentences on the other hand, which can range from one to 12 years, must be served in an establishment intended for this purpose and the prisoners need not work outside it (Articles 56, 59 and 60 of the penal code).

In the preliminary examination the defendant made his plea and named his defence counsel. His father produced documentary evidence. Counsel for the defence contested the charge and produced in evidence character references that were verified, and subsequently submitted a request to enlarge on the evidence given by witnesses. Both counsel for the defence and the prosecutor supplied further documentary evidence, the former on the character of the accused, the latter gave a report and records linking the accused with the Office of National Security (OSN) and the National Guard. This evidence was contested by the defence, who requested that a verdict of innocent be returned.

On 10 January 1980 the court pronounced a verdict of guilty and two days later sentenced the accused to the maximum penalty of 30 years' presidio with the abonos y accesorías de ley (plus the additional privileges and restrictions). The sentence read as follows: "The accused, Emilio Páez Bone, an adult, married, a lawyer by profession and living locally, is sentenced to 30 years' imprisonment for atrocious murder and criminal association committed against the people of Nicaragua. The sentence will be completed on 5 November 2009." The verdict went to appeal and the defence presented its case. On 25 January 1980 the Second Special Appeal Tribunal upheld the sentence.

An examination of the proceedings shows that the defence performed its task efficiently and that the court applied the maximum penalty -- a heavier one than the prosecutor had requested. Even if the Office of National Security (OSN) records indicated connections between the

prisoner and the organization, no specific accusation was made, nor was there any proof of murder having been committed by him; nevertheless he was sentenced for atrocious murder (Article 135) — that is for aggravated murder, insofar as no extenuating circumstances were taken into account. The trial lasted for 40 consecutive days and 23 working days (the Special Tribunals did not sit between 23 December and 1 January).

Rodolfo de Jesús Siero Araica

The prosecutor charged the prisoner in Special Tribunal No. 8 with criminal association (Article 493); crimes against international order (Article 551); (1) robbery (Article 267 paragraph 3 in accordance with Article 270 paragraphs 1 and 2); murder (Article 134 in accordance with Article 79); and atrocious murder (Article 135 paragraphs 2 and 3). He called for the maximum penalty of 30 years' presidio.

The prosecution brought a number of specific charges against the prisoner but these centred on his activities during the eight years when he had belonged to the former National Guard. (The National Guard is defined as "a criminal organization which showed supreme indifference to human dignity, especially with regard to prisoners of war, who were degraded and humiliated by virtue of their condition as prisoners.")

The prosecution affirmed that "the National Guard had carried out and concealed thousands upon thousands of summary executions ordered without prior trial by the military authorities". It concluded that "the prisoner, by his conscious and voluntary membership in the ranks of the National Guard, endorsed, consented to and participated in the commission of the crimes committed by the organization referred to."

The verdict held the prisoner responsible for the offences of criminal association, assault (Article 230), abduction (Article 228), rape (Article 195) and crimes against international order, and imposed the maximum penalty. The Third Special Appeal Tribunal upheld the entire sentence.

On appeal defence counsel, a public defender, stressed correctly the fact that the verdict of first instance had condemned the accused for assault, abduction and rape — crimes that did not feature in the prosecutor's accusation and concerning which no actual evidence was

(1) Article 551 - "It is a crime against international order, during an international or civil war, to commit serious offences in contravention of international agreements concerning the use of weapons of war, the treatment of prisoners and other standards prevailing in wartime, and the crime shall be punished by a sentence of 10 to 20 years' presidio. If the deeds do not have serious consequences for the individuals concerned, the sentence shall be two to 10 years' prisión " (Penal Code of Nicaragua).

presented. Presumably therefore the sentence was based essentially on the accused's rank of infantry sergeant in the National Guard, and possibly on his final post in the Coyotepe Fort where, according to the charge, many murders had been committed and, during the final offensive, "genocide". The trial lasted from 27 March to 13 May.

Alejandro Bravo Blanco

The prisoner was charged in Special Tribunal No. 1 with atrocious murder (Article 135, paragraph 3), criminal association and incitement to commit crime (Articles 493 and 494). The court requested the maximum penalty of 30 years' presidio. The accused had been a member of the National Guard.

The court of first instance accepted the prosecutor's request. The First Special Appeal Court, although it amended the sentence for the offence of incitement to commit crime, which was only one year's detention, confirmed the maximum sentence of 30 years' presidio. The trial lasted from 17 December 1979 to 24 January 1980.

José René Sánchez López

A former police judge, he was accused by the prosecutor of having committed a number of crimes and the maximum sentence of 30 years' presidio was requested. According to Special Tribunal No. 3's verdict: "The defendant is sentenced to the maximum penalty of 30 years' presidio for complicity in the murder of Francisco Quintero Reyes, complicity in causing serious injury to Eudilia Calero Jarquín, causing injury to José Dionisio Carballo Jarquín, Federico Ampié, a son of Julia Arias Mercado and a youth whose name is not known."

The First Special Court of Appeal upheld the maximum sentence, but made certain amendments as regards the description of the crimes. Proceedings lasted from 17 December 1979 to 21 January 1980.

Eusebio Armando Nurinda Ramírez

The prosecutor accused the prisoner in Special Tribunal No. 9 of having committed a number of crimes of which, after evidence had been heard, he was found guilty. He was sentenced to the maximum penalty of 30 years' presidio for murder (Article 134) and criminal association (Article 493).

Counsel for the defence appealed but the sentence was upheld by the Third Special Court of Appeal. In this case, as in others, no actual evidence was presented about the alleged murders, and the offence of criminal association was considered proved because of the prisoner's connections with the OSN.

Adrián Espinales González and Uriel Cruz Espinoza

The prosecutor accused the above members of the National Guard of 11 and 12 years' standing respectively of having "supported, consented to and participated in the commission of the crimes perpetrated by the National Guard." He requested a sentence of 10 years' prisión and three years' presidio for crimes against international order (Article 551 and International Conventions) and for criminal association (Article 493). The state-appointed counsel for the defence rejected the argument that mere membership of the National Guard could be evidence that the accused had committed an offence, as this was a legitimate organization established by Article 271 of the Political Constitution which had remained in force until 19 July 1979.

The verdict returned by Special Tribunal No. 3 was that both the accused were guilty of criminal association and that Espinales González was guilty also of crimes against international order. The Third Special Court of Appeal upheld the sentence of 13 years' passed on Espinales González. Counsel for the defence had accepted the three-year sentence passed on Uriel Cruz Espinoza. The trial lasted from 31 January until 29 February 1980.

The evidence presented did not reveal beyond doubt that the accused had committed the said offences, unless it were accepted that membership of the National Guard was an offence in itself. Nor is it understandable that one of the accused was sentenced to 10 years' more than the other.

Alberto Enrique Suhr Reyes*

The prosecutor accused the prisoner, an architect, in Special Tribunal No. 1 of criminal association and causing injury, and called for a sentence of four years' prisión for the first offence and five years' for the second. The proceedings in this case reveal certain facts conducive to a better understanding of the situation, namely:

a) In the indagatoria the accused pointed out that he had been detained and subsequently released without charge on 30 April 1980, after which he had denounced the State Security Service for ill-treatment and torture.

b) The prosecutor referred in the evidence to the existence of letters the accused had sent to the Soviet and Mexican Embassies some years before which had apparently been intercepted by the previous government.

c) In an appeal for amparo before the second detention, which formed the basis of this case, the government replied "that there was no threat to detain the accused".

---

* Alberto Enrique Suhr Reyes was released in October 1981 through the good offices of the National Commission for the Promotion and Protection of Human Rights.

d) There had been a dispute between the accused and Noel Gómez Ortega as a result of which the former had been injured (there were medical records to prove this). It is not clear whether the dispute had political overtones. It occurred on 11 October 1978. The National Guard arrested Noel Gómez but released him two days later.

The court of first instance sentenced Suhr Reyes to three years' prisión for criminal association and seven years' presidio for attempted murder. The First Special Court of Appeal dismissed the charge of attempted murder and considered him liable to a charge of accessory to the crime of causing injury and of criminal association, which led to the sentence being reduced to six years' prisión.

The evidence presented did not indicate that the accused had committed either of the two crimes, least of all in the case in which injury had been caused and in which he had been the victim, not perpetrator, of the crime. The sentence seemed arbitrary.

Salvador Baltodano Conrado

In this case a sentence of first instance was completely out of proportion to the offences committed by the accused and was quashed in second instance thus correcting the error. It established ample legal precedents concerning the attributes of the court of appeal, since it declared the prisoner innocent of a number of crimes of which he had been found guilty in first instance. According to this interpretation the appeal court could have declared the accused innocent of some of the crimes for which he was sentenced in first instance. On the other hand, a narrow interprepation of Article 20 of the Law of Special Tribunals (Decree 185) would have prevented the appeal court from pronouncing the accused innocent of any of the charges for which he had been sentenced in first instance, restricting its task to considering the correctness of the definition of the crime and of the sentence imposed by the lower court.

In the indictment, as was customary, the prosecutor claimed the accused belonged to the OSN and could be held generally responsible for crimes committed by that body. Among other things, it was stated that "the OSN had been one of the principal bulwarks of the Somoza military dictatorship" and that "thousands upon thousands of Nicaraguans were murdered by the agents of death of the OSN". It was stressed that this organization "committed its crimes and murders while cowardly hiding beneath the cloak of anonymity, since its agents always mingled with the innocent civilian population and did not wear anything with which to identify themselves, much less an OSN uniform. This enabled them to commit their crimes easily and in cold blood -- crimes that always went unpunished in the absence of any real justice". The maximum sentence of 30 years' presidio was requested for the prisoner because "by his conscious and voluntary membership of the OSN he had supported, consented to and participated in the crimes of this organization."

The sentence pronounced by Special Tribunal No. 7 found "the defendant Salvador Baltodano Conrado, an adult, married and a civil engineering student, guilty of criminal association, crimes against international order and of being an accessory to murder", for which he was sentenced to 30 years' presidio.

In the petition by the state-appointed counsel for the defence, Francisco José Acevedo junior, it was pointed out that no crime had been proved at any point in the trial of his defendant, who had joined the OSN as a technical designer as he was unemployed. The Third Special Court of Appeal found him guilty of criminal association only and reduced the sentence to one year's prisión due to have been completed on 18 February 1981.

Cases of lesser or reduced penalties

The Special Tribunals have tended to pass severe sentences, including the maximum penalty of 30 years' prisión; there have, however, been some exceptions. A case in point is that of Ricardo Aguinaga Marín, who was accused by the prosecutor in Special Tribunal No. 4 of criminal association and crimes against international order. He was found guilty on only the first of the two counts (Article 493), and sentenced for this to one year's prisión. He was arrested on 15 April 1980 so he completed his sentence on 15 April 1981. It should be pointed out that after the forensic doctor had confirmed that he suffered from "hypertension, palpitations and acute migraine", the tribunal, "having observed the prisoner's precarious state of health" stated that he might serve his prison sentence at home.

Other cases of drastically reduced sentences include the following:

Yadira de Fátima Domínguez Marota: Special Tribunal No. 4 had sentenced her to two years' prisión for criminal association and 11 years' presidio for crimes against international order. The Second Special Court of Appeal confirmed the two-year prison sentence but considered the offence against international order unproved.

María Margarita Orozco: Special Tribunal No. 4 sentenced her to two years' prisión for criminal association and to 14 years' presidio for offences against international order. The Second Special Court of Appeal upheld the first sentence and reduced the second to 10 years' presidio.

Oscar Antonio Álvarez Reyes: Special Tribunal No. 3 sentenced him to 28 years' presidio for criminal association, offences against international order and complicity in atrocious murder "committed against the heroic people of Nicaragua". The First Special Court of Appeal passed

a sentence of five years' presidio for crimes against international order and three years' prisión for criminal association and dropped the atrocious murder charge.

Bayardo Ramón Rivas Vado: Special Tribunal No. 3 sentenced him to 13 years' presidio for criminal association and offences against international order. The First Special Court of Appeal reduced the sentence to three years' prisión for criminal association, pointing out that the nature of the offence against international order "did not correspond to that alleged by the lower court".

Carlos Alberto Cajina Gutiérrez: Special Tribunal No. 5 sentenced him to 15 years' presidio for crimes against international order and to three years' prisión for criminal association. The Second Special Court of Appeal reduced the sentence to four years' prisión for criminal association and jeopardizing the safety of others.

César Augusto Fajardo Jiménez: Special Tribunal No. 5 sentenced him to 20 years' presidio for crimes against international order and to three years' prisión for criminal association. The Second Special Court of Appeal reduced the sentence to 10 years' presidio and one year's prisión respectively for these offences.

José Guadalupe Arauz Ubeda: Special Tribunal No. 7 sentenced him to 30 years' presidio for criminal association, crimes against international order and attempted murder. The Third Special Court of Appeal reduced the sentences to one year's prisión for criminal association, three years' presidio for attempted murder and 10 years' presidio for crimes against international order.

Acquittal cases

The prosecutor charged Thelma María Vivas Molina (aged 25) in Special Tribunal No. 4 with criminal association (Article 493) and called for a sentence of three years' prisión. The charge stated that the detainee had been a voluntary member of the Basic Training Infantry School from 5 February till 30 April 1979. According to the prosecution "attendance at the school was voluntary and its members were fully aware that they were receiving military training in brutal methods of repressing the Nicaraguan people in support of the Somoza regime. As an active member of the school the accused supported, consented to and was aware of the crimes committed by most of the members of this criminal association, who performed such deeds with total impunity." Tribunal No. 4 reached a verdict of innocent and ordered the prisoner's release. The case lasted from 27 June till 19 August 1980.

Another acquittal case was that of Angel Domingo López Altamirano, also dealt with by Special Tribunal No. 4. The prosecutor had requested three years' prisión for criminal association (Article 493) because he had been a member of the National Guard. The evidence indicated that

he had been employed merely as a gardener by the National Guard from 30 June 1975 to 31 October 1975 and that he had been dismissed "as undesirable". He was found innocent.

By August 1980 the Special Tribunals had acquitted only 35 people, including the above-mentioned and Calixto Terencio Chávez Vargas, who was not released as he was serving a previous sentence. During this period it was Special Tribunals Nos. 8 and 9 that reached the most verdicts of innocent -- in nine and eight cases respectively.

The situation of juveniles

A number of juveniles were brought before the Special Tribunals, but in every case proceedings were suspended once it was known that the defendants were minors.

In Special Tribunal No. 3 the prosecutor accused Pánfilo Bustillo Silvestre, aged 18, a former member of the National Guard of five months' standing, of criminal association (Article 493 of the penal code) and crimes against international order (Article 551 of the penal code, in accordance with Article 3 of the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949 which was ratified by Nicaragua on 17 December 1953). The prosecutor requested three years' prisión and 20 years' presidio.

When called upon to make his initial sworn statement Bustillo Silvestre declared that he was 17, which was accepted by the prosecutor and assessed by means of "simple observation". "With the prosecutor's consent it was resolved not to pursue the investigation and to remit the case to the competent authorities".

The law protecting juveniles, passed in 1973, defined as juveniles those under the age of 18, although this age-limit was then lowered to 15, which was also the age-limit for legal responsibility (the age below which the individual is not deemed criminally responsible in law). The Special Tribunals nevertheless suspended proceedings involving people under 18, as a draft law was under review that would raise the age of legal responsibility to 18.

On 22 October 1979 the Government of National Reconstruction promulgated a law amending the law protecting juveniles, putting them under the jurisdiction of the Ministry for Social Welfare and establishing a Centre for the Protection of Juveniles to replace juvenile courts (Decree 111).

Another case in Special Tribunal No. 9 was that of José Angel Ortega Alvarez (aged 16) accused of criminal association and offences against international order. In accordance with Article 25 of the Law of Special Tribunals the court suspended proceedings when counsel for

the defence pointed out that a law extending the age of legal responsibility to 18 was being reviewed. Article 25 of the Law of Special Tribunals (Decree 185) states that "any matters arising during the hearing which are not covered by this law shall also be resolved by the court".

The same court heard also the case of Marcos Antonio Castro Mairena (aged 17) accused of criminal association and crimes against international order because he had belonged to the National Guard from 1 April to 19 July 1979 -- that is until the date of the victory of the Sandinista revolution. Counsel for the defence, María Ivania Hernández Fonseca, produced the defendant's birth certificate, dated 13 July 1963, and on 12 June 1980 the court suspended proceedings.

By early 1980 all the minors detained in the aftermath of the fall of the Somoza government for alleged crimes committed while they belonged to the former security forces had been put in the care of the juvenile welfare services of the Ministry of Social Welfare or had returned home.

Trials in justicia ordinaria (ordinary courts)

On the assumption that 31 individuals had broken the Law for the Maintenance of Public Order and Security, the prosecutor preferred charges against them in the First District Criminal Court in Managua, presided over by Judge Alfonso Dávila Barboza. As the charges related to offences committed after the collapse of the previous regime these proceedings were not conducted by the Special Tribunals but were within the competence of the ordinary courts using a special procedure similar to the one established for the Special Tribunals (Decree 148).

According to the charge, the accused had formed a counter-revolutionary group, Fuerzas Armadas Democráticas (the Democratic Armed Force), known as FAD. After the initial sworn statements had been made, defence counsel had been appointed and statements responding to the charges made, further evidence was presented for three days. The judge then pronounced the verdict, one of whose clauses ran as follows: "We have considered the cases of individuals who founded, promoted and proclaimed the objectives of FAD, as well as of those who had weapons and used them, or who in one way or another were trying to raise funds, or who organized meetings and openly encouraged people to join this group, even bribing or tricking people known to have revolutionary connections into doing so. Bearing in mind that the defence counsel of many of those under investigation did not produce firm evidence to refute the serious charges brought against them, and although it is true that many of the accused admitted having attended some of the meetings, it has not been conclusively proved that they were engaged in activities damaging to the state, that they possessed weapons, or that they had caused any trouble or had played an active part in FAD."

The sentence passed on the 16 was apparently based exclusively on the statements made by three of them while they were being held incommunicado in the Department of State Security and which they subsequently retracted in court. Although the Department of State Security later refused to answer a formal question put by the court about the circumstances in which the statements had been made, in the verdict the statements were accepted as evidence and a conclusion recorded that "the statements made by the accused while in custody [of the Department of State Security] had been made spontaneously..."

As regards the charge of possessing arms, the assistant prosecutor Ayerdis Miranda, at the request of the defence, asked State Security for "the arms seized from a number of defendants, [to] be handed over to the court." However, it is clear from the sentence that the arms were never produced: "... the arms requested were not sent, so neither the inspection nor identification of the arms ordered by the court occurred."

Nevertheless, the sentence ruled that "the crime of illegal possession of weapons and military equipment appropriate for use against the security of the state is well proved". As in other aspects of this trial, the evidence that would have established the corpus delecti and guilt of the accused appears to have consisted only of documents presented by the Department of State Security, automatically considered valid by the court.

The prosecutor's charge was recorded on 16 August 1980 and the sentence of first instance was passed on 25 August. The sentence was subsequently appealed against.

Melvin Wallace, Isidro Téllez, Juan Alberto Enríquez, Ricardo Guevara and Carlos Cuadra

On 3 June 1980 the Junta of Government pardoned the above (Decree 431), whose cases were pending or who were already serving sentences. The group consisted of journalists and editors of the daily paper, Pueblo, who, according to Amnesty International's records, had been sentenced for "spreading verbally or in writing statements, proclamations or manifestos that sought to damage the public interest and undermine the victories won by the people" (Article 4, paragraph c of the Law for the Maintenance of Public Order and Security - Decree No. 50).

The authorities said the group pardoned were Frente Obrero (Trotskyists). They accepted that they had played a part in the struggle against the Somoza regime but accused them of having tried to speed up the revolutionary process, and of having acted on their own initiative by occupying private property and illegally possessing firearms.

Cases involving particularly serious abuses

Amnesty International's information indicates that in July 1979 the new Government of Nicaragua rapidly took practical and legal steps to prevent and punish violent abuses perpetrated against alleged former government collaborators. Nevertheless, grave abuses occurred in some parts of Nicaragua during the first few weeks after the fall of the previous government -- for instance the deaths of an indefinite number of people captured by groups of local residents or local revolutionary units. And the whereabouts of a significant number of those who have not been seen since that time and whose families are unaware of their fate is not known. Although the Junta of National Reconstruction has publicly denounced the violent abuses that occurred immediately after its assumption of power, it has apparently not taken effective steps to throw light on individual cases of possible victims whose whereabouts is not known.

In a letter dated 29 October 1980 a United Nations Commission on Human Rights working group sent information to the Government of Nicaragua about 70 people who were reportedly detained and about whose legal situation nothing was known. (1) During the third session of the working group in December Dr Leonte Herdocia, Nicaragua's Ambassador and National Commissioner for Human Rights, answered the letter, attributing the violations of human rights that had occurred after the assumption of power by the new government to its initial inability to control the violent outbursts of popular revenge against members of the National Guard that occurred in the country -- a situation that prevailed in some areas until the end of 1979. He singled out the cities of Granada, Leon and Masaya as places where people, prompted by their rage, had wreaked vengeance on members of the Somoza regime in defiance of express orders by the central government to prevent such abuses. Although Dr Herdocia produced no information about individual cases, he indicated his readiness to make a particular effort to throw light on the situation of the people mentioned by the working group.

Amnesty International possesses documents about the cases of more than 90 people allegedly detained after 19 July 1979 whose situation has apparently never been explained. Most of them were reported to have been detained during the two weeks after that date. In some cases the families have been able to find out -- through third parties or even orally from personnel at the Fiscalía de Ejército (Office of the Army Prosecutor) or at the Ministry of the Interior -- that the detainee had died shortly after arrest. However, in such cases no formal confirmation of death or explanation of the circumstances in which it had occurred has been forthcoming.

---

(1) See Commission on Human Rights, 37th session, 2 February to 13 March 1981, "Report of the Working Group on enforced or involuntary disappearances", Economic and Social Council, UN Doc. No. E/CN.4/1435, pages 58-61.

In the few cases where specific places were identified as the initial places of detention they were temporary command posts in the provinces or surburbs of the capital. The only actual former penal establishment mentioned in information about detainees who had been killed or whose whereabouts were not known was La Pólvora jail in Granada, where it has been established that at least 18 detainees were taken and killed at the end of July 1979. (2) The revolutionary commander in charge of La Pólvora at that time was dismissed from his post and himself imprisoned in La Pólvora in August 1979. But Amnesty International does not know whether the proceedings in the Granada Criminal Court about the case of La Pólvora have progressed.

The reported cases of the unconfirmed detention and possible death of detainees for the most part date from the period immediately after the change of government, when the latter was not completely in control of the whole country. Examination of these cases tends to support the government's explanation that the abuses were in breach of clear directives by the Junta of National Reconstruction. In the most serious cases, for instance that of La Pólvora jail in Granada, government measures plainly succeeded in ending illegal actions against detainees. And the evidence indicates that deaths of those detained by revolutionary forces, and unconfirmed detentions, virtually ceased after September 1979. (3) It is of the utmost importance, however, that the fate of the victims of abuses during this period be revealed.

---

(2) Amnesty International has received information about these 18 people held in La Pólvora. The corpses of several detainees in La Pólvora in July 1979 have been found and exhumed on the outskirts of Granada.

(3) Amnesty International has not received convincing information that such cases occurred in 1980 or 1981.

IV. Conclusions

The terms of reference of this report cover only certain aspects of the human rights situation in Nicaragua after the downfall of the government of Anastasio Somoza Debayle on 19 July 1979. The torture, "disappearances" and summary executions of thousands of Nicaraguans at the hands of the Somoza government have been amply documented by Amnesty International in other reports.

A. Special Tribunals

The main purpose of the two Amnesty International missions to Nicaragua in 1980, whose observations form the basis of this report, was to examine the procedure followed by the Special Tribunals set up in December 1979 to try members of the armed forces, officials and civil employees of the previous government and others allegedly associated with them who had committed crimes specified in the Penal Code of Nicaragua.

There is no need to stress the serious objections to the establishment of the Special Tribunals alongside and independent of the rest of the legal system. For one thing they were dissolved in February 1981; for another the Supreme Court of Nicaragua had itself stated it would have been better to increase the number of ordinary courts than create emergency courts. This would have meant there would have been no departure from the principle that trials should be by courts established before the commission of the crime in question.

The Decree of 19 February 1981, which dissolved the Special Tribunals and transferred their jurisdiction to the ordinary courts, makes further discussion in this report of possible changes in the Special Tribunals pointless. However, a study of the structure and functioning of the Special Tribunals in particular cases is the prerequisite of an examination of the judgments in the cases of those still being detained.

It cannot be concluded from the legal texts and trial documents obtained during the missions and in the possession of Amnesty International that the actual legislation specifying the procedures whereby the cases were heard by the Special Tribunals did not provide the necessary guarantees for a proper dispensation of justice. However, some aspects of the legislation, such as restrictions on the right of appeal, might well have been reviewed and relaxed.

The law on the Special Tribunals could have allowed for a proper dispensation of justice, but there were irregularities as regards the application and interpretation of the law. In a number of trial dossiers the prosecution's statements did not contain charges based on specific deeds but on general actions. Consequently it was very difficult to press individual criminal charges against the accused.

Nor did the evidence produced by the prosecutor indicate that specific crimes had been committed, as it did not reveal the essential elements of the offence. Examination of a number of cases and interviews with a number of prosecutors suggest that the latter tended to emphasize the importance of achieving the conviction of the accused rather than ascertaining the truth.

The Amnesty International delegates found that in legal circles it was widely held that the Special Tribunals did not conduct serious investigations to establish the responsibility of former members of the National Guard and others accused of particular crimes, or that the means of doing so did not exist. This is illustrated by the practice of taking into consideration the area to which a defendant had been assigned. Defendants who had been assigned to the north, where peasants had been massacred under the previous regime, often received the maximum penalty of 30 years'.

Furthermore, the judges had apparently reversed the presumption of innocence, whereby the burden of proof lies with the prosecutor and the accused gets the benefit of the doubt and must be considered innocent until final sentence is passed. On the contrary, in the cases studied the defendants' guilt was presumed a priori and the onus was on them to prove their innocence. A number of judges said that the fact that the defendants had belonged to the National Guard or the OSN was the basis of the presumption of criminal responsibility attributed to them; consequently they needed to prove their innocence. The sentences passed tend to confirm this. Both the judges and the prosecutors interviewed agreed that although no law had declared the National Guard and the OSN criminal associations yet anyone who belonged to either was considered guilty of, at the very least, criminal association and incitement to commit crime, both of which carried a maximum three-year penalty.

Examination of trial proceedings reveals that the right to defence has been respected in the Special Tribunals. In every case studied the precepts of the law which established them were complied with. Defendants were allowed to appoint defence counsel, or, if necessary, one would be appointed for them. The rule officially establishing the period during which evidence could be presented, despite its statutory brevity, was generally interpreted liberally, permitting the defence in practice to present documentary evidence at any time right up to the sentence of first instance, and even until the moment of the court of appeal's ruling.

The wide powers the law gave the Special Tribunals to do justice "assessing according to their conscience the evidence presented at the trial, the arguments advanced by the prosecution and counsel for the defence and the statements of the defendants themselves", and which enabled them to make rulings "of conscience" would seem to Amnesty International to constitute the basis of most of the justifiable criticism made of the sentences passed by the Special Tribunals.

It should be borne in mind that these rulings "of conscience" were made in an atmosphere of popular indignation and were encouraged by the press, which day after day railed against the crimes committed year after year by the National Guard, especially those committed immediately before the downfall of the previous government in 1979. In such an atmosphere it was not easy to make a balanced judgment and determine accountability for crimes committed by former members of the National Guard or the OSN. On the contrary, there was a tendency to consider the entire membership of these organizations collectively responsible. This, in many cases, took precedence over examination of each individual case.

Thus the Special Tribunals' proceedings were irregular in a number of ways: (a) because crimes were considered proved even when no attempt had been made to produce concrete evidence (especially in the case of murder or atrocious murder); (b) because of the strained interpretation of what constitutes the crime (figura delictiva), especially crimes against international order; (c) because of the virtual reversal of the burden of proof (in the case of criminal association).

These fundamental irregularities in the Special Tribunal trials call for efforts to remedy the injustices done by establishing a procedure for review of sentences. Now the Special Tribunals have been dissolved, having completed the legal tasks assigned to them when they were created in December 1979, it is necessary to deal with these irregularities.

B. Serious abuses perpetrated in the course of establishing the new government

Immediately after the downfall of the Somoza government an unknown number of people detained by neighbours or local revolutionary forces were killed. According to Amnesty International's information this illegal violence practically ceased soon after the new government had become properly established and had taken steps to put an end to reprisals against those associated with the previous government. Nonetheless, the fate of a significant number of people reported to have been detained during this period of violence has still not been confirmed. Although in many cases the families have been told by private individuals, members of the militia or government officials that their relatives were dead, the government has not helped them by officially acknowledging the latters' fate through confirming their release or telling them where the corpses were so that suitable funerals could be arranged. Although no evidence has come to light suggesting that the government at any time supported or tolerated the secret detention or death of its opponents, yet it has tended to seem indifferent, even overtly hostile, towards appeals for assistance from the families of those presumed to have been detained but whose fate and whereabouts are still not known.

C. The Law for the Maintenance of Public Order and Security

Although people charged with crimes committed under the previous governemnt came within the jurisdiction of the Special Tribunals, another category of detainee was tried by ordinary courts for crimes specified in the Law for the Maintenance of Public Order and Security, Decree No. 4 of 20 July 1979.

This law not only prescribed penalties for broad categories of crime involving all forms of conspiracy or violent actions against the state, including possession of weapons of war; it also dealt with offences against public order and security and the spreading of certain ideas -- such offences being punishable by imprisonment.

People tried and sentenced for breaking this law have ranged from workers on the newspaper Pueblo (sentenced to two years' public works in early 1980 for having published material allegedly damaging to national security and pardoned shortly afterwards) to the National Coordinator of the Permanent Commission on Human Rights of Nicaragua (detained for about two weeks in February 1981 and acquitted of the charge of having defamed Nicaragua). In both cases Amnesty International would have considered the detainees prisoners of conscience had they remained in detention, sentenced for contravening the clauses of the above law which restricts freedom of expression.

At present all the detainees Amnesty International knows about, tried for offences specified by the Law for the Maintenance of Public Order and Security, have been accused of associating with organizations said to have incited or committed acts of violence against the government - for instance the so-called Fuerzas Armadas Democraticas. A significant number of these people have received heavy sentences.

Without ruling out the possibility of producing a more detailed study of individual cases of those tried for breaking the Law for the Maintenance of Public Order and Security, a number of points can be made about aspects of the law which evidently in some instances have been conducive to injustice.

The law originated in a decree of 20 July 1979 which was a special measure to establish peace and order in the extraordinary situation immediately after the collapse of the Somoza government. Thus the law could be justified as an exceptional law. Originally it was supposed to remain in force only so long as the Law of National Emergency persisted. The latter was a special measure repealed in April 1980 by a decree which also amended the Law for the Maintenance of Public Order and Security so as to incorporate it into the ordinary, permanent, penal legislation. However this law kept, and even assumed further, esceptional features. It provides, for one thing, general, ambiguous definitions of what constitutes a crime, particularly as regards freedom of expression. Secondly, it establishes an extra-

ordinary trial procedure, consisting of fixed, brief stages, both in first instance and for appeals, although it prescribes heavy penalties for crimes considered especially serious. In the third place it explicitly removes the court's obligation to apply established standards for assessment of evidence, and in practice it is not clear whether any other consistent standards have been applied in order to substantiate evidence. Fourthly, it abolishes ordinary standards concerning documentation of trials, requiring only that the charge and sentence be in writing, and, in the worst cases, allowing the preparation of trial dossiers that do not record the evidence on which supposedly verdicts are based.

D. Notification of arrest

One cause for concern in Nicaragua which the mission delegates were told about was the difficulty people have over finding out where their relatives are being detained soon after an arrest, and being informed about their transfer from one prison to another, without having to resort to habeas corpus. The Prison Service was said to be responsible for providing this information; it apparently performs this task adequately as regards prisoners interned in establishments under its direct control. These people are for the most part prisoners who have already appeared in court. There is, nonetheless, a certain ambiguity as to which authority can supply information about prisoners during their period in police custody before being handed over to Prison Service establishments or brought to court.

When asked, an official told one of the delegates that there was no government department responsible for informing detainees' relatives where they were being held, and that Dr Rafael Cordova Rivas, who at that time was a member of the Junta of National Reconstruction, had asked for an office to be established for this purpose.

V. Recommendations

Amnesty International recommends that on the basis of the observations in this report the following steps be taken:

(1) that there be a thorough review of the rulings of the Special Tribunals in order to alter those verdicts that need to be modified either because the judgment was unjust or else because the trial might not have been conducted in conformity with international standards for fair trial;

(2) that those cases transferred from the dissolved Special Tribunals be rapidly concluded and those individuals who cannot be held responsible for particular crimes be unconditionally released;

(3) that the consideration of all cases that might merit pardon continue;

(4) that a complete list of those people tried by the Special Tribunals and of their respective sentences and places of detention be published as soon as possible;

(5) that steps be taken to throw light on the situation of people known to have been detained by local revolutionary forces after 19 July 1979, whose fate remains unknown, and that their relatives be informed of the steps taken and of their results;

(6) that although habeas corpus may usually prove a viable method of ascertaining the whereabouts of someone presumed to be detained and of preventing arbitrary arrests, nevertheless the possibility be considered of establishing an office to provide relatives with information swiftly about detainees and their place of detention; that this be official administrative procedure even when they are in police custody;

(7) that the extraordinary procedure established by the courts for hearing cases of breaches of the Law for the Maintenance of Public Order and Security be abolished in order to guarantee that the standards set for ordinary trials within the Nicaraguan legal system always be met;

(8) that a systematic review be undertaken by the ordinary courts of the convictions by means of an extraordinary procedure for breaches of the Law for the Maintenance of Public Order and Security.

COMMENTS OF THE GOVERNMENT OF NICARAGUA ON THE AMNESTY INTERNATIONAL MEMORANDUM ABOUT CERTAIN ASPECTS OF THE HUMAN RIGHTS SITUATION IN NICARAGUA

NOVEMBER 1981

Sections of the Comments of the Government of Nicaragua that concern the 1978 report of the Inter-American Commission on Human Rights about the human rights situation in Nicaragua, the 1976 Amnesty International report, The Republic of Nicaragua, and the situation of juveniles have not been reproduced, as explained in the Preface.

The page numbers referred to in the Nicaraguan Government's comments correspond with the page numbers in the original memorandum submitted to the Nicaraguan Government in Spanish.

INTRODUCTION

GENERAL CONSIDERATIONS

The Government of National Reconstruction has received the Amnesty International Memorandum on "Certain Aspects of the Human Rights Situation in Nicaragua", which was drawn up on the basis of the "in situ" observations of Dr Roberto Alvarez and Senator Hipólito Solari Irigoyen during their visits to Managua from 15 to 24 January and 19 to 27 August respectively.

Both these delegates concentrated on the trials then being held by the Special Tribunals and benefited from the help and cooperation of all the Nicaraguan officials they needed to meet in order to carry out their honourable mission - a fact which the Amnesty International report acknowledges.

At the time when the two delegates were in Nicaragua there were a large number of former national guards and collaborators with the Somoza regime who were being detained as prisoners of war and who had been accused by the people of innumerable horrible crimes as soon as the bitter struggle for liberation had been won.

The Government of National Reconstruction holds the view that any discussion of matters related to human rights in Nicaragua must necessarily be preceded by at least a brief account of the historical context: the social, political and economic background of half a century of Somoza tyranny. This will facilitate keeping a proper sense of proportion and perspective about the facts that culminated in the situation investigated by Amnesty International in 1980 and its subsequent development. We shall also consider the barbaric conditions that prevailed under the Somoza dynasty, the revolutionary period, and the situation in the country immediately after the victory of 19 July 1979.

The Government of Nicaragua would like to stress the need to bear in mind the fact that the newly established authorities started to rule in a chaotic situation arising from a bitter war of liberation which caused large-scale human and material destruction. The Government of Nicaragua assumed power in a country whose corrupt public institutions were immediately abolished, thus necessitating the creation of a new governmental infrastructure.

In addition, the economic situation was desperate and was aggravated by the paralysis of all public services. A number of epidemics threatened to wreak havoc on the population, much of which was scattered all over the country and without the means of subsistence.

In its recently published official report, document OEA/Ser.L/V/II.53 document 25, Report on the Human Rights Situation in the Republic of Nicaragua, which was to be presented during the XI General Assembly of the OAS to be held in Santa Lucía from 2 to 11 December 1981, the Inter-American Commission on Human Rights [IACHR] offers a candid picture of the deplorable conditions in which the bulk of the Nicaraguan population was living before 19 July 1979:

> "half the population of Nicaragua lived in a state of absolute poverty. Absolute poverty, the product of poor distribution of wealth has been defined as 'a condition of life so limited by malnutrition, disease, illiteracy, low life expentancy, and high infant mortality as to be beneath any rational definition of human decency.'" (1)

There can be no doubt that during the last 50 years the Nicaraguan people have been victims of the most horrible, systematic and widespread crimes. This tallies with the findings of Amnesty International and the IACHR during their respective visits to Nicaragua in 1976 and 1978 which were subsequently published as reports, the latter, moreover, being read by the American chancellors at the XVII Consultation Meeting of Foreign Ministers of the OAS, who were deeply moved by the Dantesque picture painted by the report.

Under the Somoza regime the government of this unscrupulous family reached almost indescribable extremes. It should be borne in mind that even the aid sent by the international community to Nicaragua on the occasion of the 1972 earthquake was manipulated by the Somoza family and used to further its own ends, leaving the Nicaraguan people completely helpless.

For 45 years the Somoza regime maintained itself in power with the assistance of its praetorian guard, the Guardia Nacional, which incorporated the navy, airforce, police, security and even the judiciary. Administrative corruption, overwhelming and indiscriminate repression and plundering are some of the inherent features of the dynasty which also penetrated other sections of society, which collaborated with it in an abominable fashion. Yet it should also be pointed out that the former national guard was formed in 1927, during the occupation of the country by the marines sent by the United States of America. The former national guard was the principal bulwark of the Somoza dynasty.

The Somoza dynasty thus managed to consolidate its whole political, economic and military apparatus, which in the main served the interests of the Somoza family and its entourage and was based on the wholesale exploitation of the Nicaraguan people. All sections of society were affected by the repressive policy aimed at the people. However, it was the workers, peasants, students, small and medium-scale farmers who suffered most directly.

---

(1) page 151, No. 7 Report on the Human Rights Situation in Nicaragua, 30 June 1981.

The Sandinista National Liberation Front /FSLN/, which for years had waged guerrilla warfare in the mountains and cities in extremely difficult conditions, organized the struggle of the Nicaraguan people against the Somoza military dictatorship in political, military and ideological ways appropriate to a vanguard organization relying on the support and backing of the Nicaraguan people and the recognition and admiration of the international community who could see the justice of this noble cause. Thus the necessary conditions were created for the struggle which enabled the Nicaraguan people to win their freedom.

During the final two years of the Somoza regime (1978 and 1979) the repression carried out by the Somoza dictatorship forced even those sections of the population that had renounced any participation in political and military power in exchange for the economic benefits provided by the system to withdraw their support from Somoza, leaving him isolated with his national guard.

The Nicaraguan people made an enormous contribution to the struggle spearheaded by the FSLN against the despotic regime which turned into a war between the Somozas and their National Guard on the one hand and the rest of the population on the other.

It should be pointed out that at the end of the war Nicaragua was bankrupt.

In addition to the 50,000 dead (2) and 100,000 injured the war destroyed or put out of action 60 per cent of industry and the banks were plundered by Somoza and his backers (Somoza even helping himself to the gold ingots), thus leaving the country completely insolvent. (3)

Eighty per cent of those who died were civilians, most of them victims of the indiscriminate bombing of cities by the National Guard. More than 150,000 people abandoned their homes in search of shelter; more than 40,000 children were orphaned. In Managua alone more than 400,000 people had to be given food and about 40 per cent of the Nicaraguan population was starving. This indicated that hardly a family was unaffected by the conflict.

The damage done to housing during the insurrection cost 38 million dollars and there was a shortage of 300,000 units. The total damage to the physical infrastructure (that is buildings not intended for habitation) was reckoned to be 80 million dollars. (4)

The losses suffered by the agricultural sector were estimated at 28 million dollars, 23 million of which were in cattle farming. During the insurrection there was much illegal exporting of cattle, particularly of breeding stock, and the enormous loss of cows (100,000) as a result of smuggling and the indiscriminate slaughter of cattle led to a reduction of 5 million litres of milk, which aggravated infant malnutrition.

---

(2) For Nicaragua, with a population of 2.5 million, 50,000 deaths represented two per cent of the total population.

(3) Estudio Económico de América Latina, Comisión Económica para América Latina.

(4) E/CEPAL/G.1091, September 1979.

Cotton exports (the principal foreign currency earner) were considerably affected and the area sown fell dramatically from the 175,000 hectares normally sown to 36,240 hectares. Loss to the industrial sector was estimated to amount to 150 million dollars, worth of raw materials, equipment and machinery, buildings and plant.

Loss to the commercial sector was estimated to amount to 220 million dollars.

The total material damage resulting from the insurrection was estimated by the United Nations to be 480 million dollars.

Nicaragua,as well as sustaining the human and physical damage caused by the war, had its future heavily mortgaged by a large foreign debt amounting to 1,500 million dollars contracted by the Somoza regime. Approximately 400 million dollars of this was incurred by the banking and private sector in the form of short-term bonds, consequently a considerable number of payments had to be made in 1979. These debts had to be honoured even though Nicaragua had no reserves because Somoza and his backers had moved practically all the currency out of Nicaragua after 1978.

From the social point of view the situation inherited by the new government also revealed a striking deficit, being the product of a regime which made no effort to raise the standard of living of the people. On the contrary, it led to an enormous concentration of wealth in the hands of a very few and increased the misery of the vast majority.(5)

The situation was also serious from the health point of view, for in large parts of the countryside there were neither hospitals nor health centres (centros asistenciales). In 1978 there were 6.8 doctors and 18.2 hospital beds per 10,000 inhabitants. Infant mortality was 13 per cent. Eighty-one per cent of the houses in the capital had no running water. The unemployment figure in Managua was 30 per cent and the under-employment figure 40 per cent.

As regards education, illiteracy had increased to the point where it applied to over 50 per cent of the population.(6)

On 19 July 1979 a new era dawned for the people of Nicaragua. The victory of the people effaced for ever a chapter of crimes,corruption and injustice. The chief objective during this phase was the restoration of human dignity, which is an inseparable part of the philosophy of the Revolution and of the Government.

---

(5) Comisión Internacional de Juristas, Derechos Humanos en Nicaragua Ayer y Hoy, 1980

(6) Ibid.

During the months following the popular victory the Government of National Reconstruction made superhuman efforts to restrain the people from taking the law into their own hands as a result of their indignation which had mounted during decades of oppression.

Although it would be very convenient for the Government to deny that abuses occurred in the early stages, it has agreed that there were isolated instances of abuse in which the people, carried away by the atrocities perpetrated by the dictatorship and the National Guard, sought to take the law into their own hands before the process of liberating the country began at the start of the final offensive. The IACHR pointed out quite objectively in its 1981 report on Nicaragua that during that period "a number of armed groups and individuals were operating in the name of the FSLN without acknowledging the central authority." (7) Some groups and individuals, taking advantage of the abnormal situation prevailing in the country, committed abuses and outrages.

Despite this, the Government of Nicaragua, fully conscious of its national objectives and international commitments, immediately embarked on the task of establishing the means whereby it could control the entire country.

The GOVERNMENT OF NATIONAL RECONSTRUCTION demonstrated that it was faithful to its obligations towards the people; one of the first steps it took was to create the CRUZADA NACIONAL DE ALFABETIZACION, the National Literacy Crusade, which, according to the IACHR, was the most important single event in the history of Nicaragua. This event was a great challenge to the Government and people since despite all the existing problems they were able to conduct a second liberation struggle, this time against illiteracy, which in five months, with the participation of the entire population, succeeded in reducing the number of illiterates from 50.35 per cent to 12.96 per cent.

In this connection it should be added that international organizations such as UNESCO singled out this social education project for its highest award, the international NADYHADA K. KREPSKAYA prize.

Aware of the need for a body to protect human rights, the Government created the COMISION NACIONAL DE PROMOCION Y PROTECCION DE LOS DERECHOS HUMANOS (National Commission for the Promotion and Protection of Human Rights) by Decree No. 483 of 3 June 1980. This decree established the Commission as an autonomous and impartial body within the framework of the Fundamental Statute and other laws.

The Government would like to stress that one of the first measures taken by the revolution in order to promote respect for human rights was to abolish the death penalty, since as Comandante Borge stated:

---

(7) Report of the IACHR of June 1981, page 38, paragraph 4.

"Historically, the Revolution has taken the decision not to execute anyone."

Similarly, in a statement he was to make to the IACHR during the latter's visit to Nicaragua on 10 October 1980 he declared:

"When they tried to lynch the prisoners who were in the care of the RED CROSS I personally went to see the families of our martyrs who were at that time about to take the law into their own hands; I had to make an extraordinary effort to dissuade them and I did not record what I said, yet I think that was one of the most eloquent of the few eloquent things I have said in my entire life. So I did really persuade them not to kill them. Señor Ismael Reyes was present - he is a member of the Red Cross - and it was he who called me when a mob was trying to break down the doors in order to lynch all the murderers who were there; we managed to dissuade them from doing so by telling them that we could not kill because we had made the Revolution in order to put an end to killing. It was this argument perhaps which did most to persuade them because I asked them: why did we make this Revolution if we go and do the same thing as they did? If we do, we shouldn't have carried out the Revolution. We said the same thing to the police, to colleagues in the army, to members of National Security: they should not commit any abuses; they should not show disrespect for anyone and they should not beat prisoners".

SOMOZA'S REPRESSION AND POPULAR INDIGNATION

The Government of Nicaragua reaffirms that the Somoza regime was supported and maintained in power for the 45 years of its existence by the Guardia Nacional, the praetorian guard, which numbered amongst it the most repressive and sinister forces: security, police and police courts, navy and airforce. There can be no doubt that this was one of the most corrupt armies in the world and one of the chief sources of the vicious practices which the Somoza regime indulged in in order to maintain itself in power.

Administrative corruption on a fantastic scale, increasing overwhelming and indiscriminate repression, embezzlement, the dispossession and wholesale exploitation of the Nicaraguan people, of whom the working class, peasants, workers, students, small-scale and medium-scale producers bore the brunt, were the main features of the Somoza regime.

It was against this background that in 1978 and 1979 the Nicaraguan people throw all its support behind the FSLN in the final and decisive struggle against the despotic regime, which turned into a war between the Somoza family and the National Guard on the one hand and the rest of the population on the other.

On the defeat of the Somoza regime on 19 July 1979 popular resentment, that had mounted over decades of repression, erupted in vast and repeated spontaneous outbursts prompted by the desire to bring to popular justice those responsible for all the bloodshed, pain and death, including many of the National Guard, their paramilitary backers and civilian helpers who formed the whole corrupt and criminal system.

THE STATE OF EMERGENCY

Thirty-two days after the victory of the insurrection the Government of Nicaragua promulgated the STATUTE ON THE RIGHTS AND GUARANTEES OF NICARAGUANS, Article 8 of which, in conformity with Article 7 of the American Convention on Human Rights, guarantees the right to personal liberty.

The Government of Nicaragua has supported in the past and will continue to support the above legal measures. And as is customary in national life when extraordinary events occur that jeopardize the independence and security of the nation, emergency measures may be called for which, for a strictly limited period, suspend some of the guarantees recognized by national and international law.

This was clearly the situation in Nicaragua immediately after the bloody war of liberation as a result of the painful consequences stemming from the defeat of the tyranny of Anastasio Somoza Debayle. Taking this into account, the Government of Nicaragua declared the State of National Emergency envisaged in Article 27, chapter IV of the Pact of San José, Costa Rica.

The Government of Nicaragua considers that the restrictions placed on the rights to and related guarantees of personal freedom of members of the Somoza regime, on trial for crimes committed while they were in power, were a direct consequence of the state of emergency in the country and a guarantee of national reconstruction.

The state of emergency, prompted by a variety of factors already mentioned in various parts of this report, which are usual in the aftermath of a war, facilitated the use of rapid judicial procedures which could, to some extent, quell the wrath of the people who were clamouring for vengeance (as the IACHR acknowledges in its 1981 report on Nicaragua) -- wrath which was even vented upon the families of prisoners held to be guilty of the most horrible crimes. The government step of creating the SPECIAL TRIBUNALS went some way towards reducing the popular wrath as well as the danger of confrontation between the thousands of families of the heroes and martyrs who had fallen in the struggle, who were inclined to take the law into their own hands, and the newly constituted authorities.

It was practically impossible in such circumstances of marked public resentment and a continuous demand for swift justice for ordinary legislation to be able to cope with the Somoza criminals.

The decision to restrict personal freedom by means of the emergency laws helped to create a state of affairs which ultimately guaranteed that the personal integrity of the accused would be respected.

When order had been restored by means of the emergency legislation, which remained in force as long as the state of emergency lasted, the latter was repealed despite the possibility of destabilization. Two collective pardons were ordered which have still not proved acceptable to the bulk of the population. This gave cause for serious concern on the part of the Revolutionary Government insofar as it indicated wounds had not yet healed.

THE RIGHT TO JUSTICE AND A FAIR TRIAL

The Inter-American Commission on Human Rights in chapter IV of its 1981 report entitled The Human Rights Situation in Nicaragua reflects the chaotic situation prevalent in Nicaragua immediately after the victory of the Revolution when it states:

> "There is one fact that cannot be disregarded when considering the new organization of public institutions in Nicaragua, especially the judiciary, which, it was felt, had to be restructured and restaffed practically overnight. As has been said, during the first days of the new order Nicaragua underwent a period of misgovernment and anarchy, a logical consequence of the nature of the change which had taken place; at the outset the country lacked all the elements of public administration, police and the administration of justice.
>
> "Resolving the problem of a lack of services and civil servants was undoubtedly one of the most difficult and delicate tasks that the revolutionary Government had to confront.
>
> "One of the first acts of the Government of National Reconstruction was to recreate the judiciary in order to restore peace, lay the foundations for establishing a broad-based, democratic system of government, and undertake the great task of national reconstruction in the political, social and economic spheres, for which purpose the proper juridical system is necessary.
>
> "The Supreme Court, the Courts of Appeal and the Superior Labor Court, were dissolved by Article 4 of the Fundamental Statute, and the following day the names of the new members of the Supreme Court were released; in the days that followed, the Official Gazette carried the names of the magistrates appointed to the other Courts of Justice." (9)

The Government of Nicaragua echoes the above statements, the importance of which should not be underestimated if truth and historical fact are to be respected.

---

(9) pages 67 and 68 of the IACHR June 1981 report.

(Footnote 8 is missing because the section to which it relates is not reproduced here).

THE SPECIAL TRIBUNALS

Amnesty International refers to a Supreme Court of Justice ruling, dated 27 November 1979, which is interpreted as expressing the High Court's opposition to the creation of the Special Tribunals.

In its comments on the 1981 IACHR report and in connection with a similar interpretation, the Government of Nicaragua stresses the major importance of the recent Supreme Court of Justice 7 May 1981 ruling, which it is essential to quote here:

"In this connection it should be recalled that, in the ruling referred to, the Supreme Court analysed the socio-political and economic context in which efforts were made to meet the demands for justice. Since the Government was under an obligation to the people to respond to this demand, this Court proposed three alternatives, one of which was that those guilty of crimes committed under the dictatorship should be tried by the Common Courts. Yet it should be noted that this would depend on whether the Judiciary had been given the necessary human and material resources to cope with a task of this nature -- resources the judiciary did not have -- these being inadequate for it to be able to perform even its normal tasks.

"It was the Junta of the Government of National Reconstruction, being the highest administrative authority, absolute legislative power having been conferred on it by the Fundamental Statute of the Republic, that was ultimately to choose which of the alternatives proposed should be adopted (taking into account all the various factors). Consequently, it should be noted that all the legal comments and recommendations made in the said ruling intended to guarantee the rights of the accused and the principle of 'nullum crimen, nulla pena, sine lege', were given full consideration. This was duly recognized by the Commission on page 89, No. 17, "f" of the Report, where it is stated that:

'The Commission does not doubt the Government's sincere intention to proceed in this manner. The Commission is also aware of the efforts the Government has made to prosecute these individuals within the terms of the existing Penal Code.' "

THE OFFICE OF THE SPECIAL PROSECUTOR

It was the task of the Special Prosecutor's Office that had only just been set up to collect the evidence about crimes committed against the people, and to evaluate and classify it before the preferment of charges and requests for penalties in the Special Tribunals.

The Special Prosecutor's Office consisted of two departments which assisted the individual prosecutors. They were:

a) The Receptoría de Pruebas Móviles [Service for the Collection of Mobile Evidence], comprising 10 people, which continued the investigations carried out by the Directorate General of State Security, checking facts and contacting and interviewing witnesses in order to ascertain the truth and establish whether the somocista defendant had been involved in crimes and deeds against the Nicaraguan people.

b) The Archives of Historical Investigation [Archivo de Investigación Histórico] the purpose of which was on the one hand to investigate reports of repression under the Somoza regime in order to obtain a thorough knowledge of the repressive structures of the dictatorship and on the other to compile files and records on the specific charges against the prisoners who were the responsibility of the Special Prosecutor's Office.

The stages between receipt of the Final Report [Informe Conclusivo] and presentation of the indictment before the Special Tribunals were as follows:

1) the Special Prosecutor and his staff examined the Final Reports and the cases were each assigned to one of the nine available Special Prosecutors;

2) on receipt of the Final Report the Special Prosecutor sent a photograph of the accused and his personal details to the Services for the Collection of Mobile Evidence and Historical Records Department investagators;

3) the team of travelling investigators examined the case in the places to which they were assigned, contacted the witnesses and checked other evidence, after which the results of the investigation were sent to the Prosecutor;

4) the Historical Records Department submitted the general documents and substantive evidence in its possession to the Prosecutor;

5) on receipt of all the above the Prosecutor concerned made the evaluation of first instance and discussed it with the Special Prosecutor, with whom a decision was reached as to whether the accused should be released from custody owing to lack of substantive evidence or whether charges should be preferred on the basis of information corresponding to one or more crimes specified in the Nicaraguan Penal Code.

The offence of criminal association could readily be attributed to all members of both the former national guard and the Office of National Security (OSN) insofar as the former national guard was itself essentially an organization intended to commit crimes since it existed to serve the interests of the dynasty, had been created by the United States during the military occupation of Nicaragua by United States marines and because the INDISPENSABLE PRECONDITION for becoming a member of the National Guard and remaining in it was readiness to commit any crimes whatever against the civilian population of Nicaragua purely in the interests of the dictator.

The offence against international order, of which most of the former national guards were accused, is synonymous with genocide (Article 551 of the Penal Code), for it is clear that the IACHR 1978 report on Nicaragua attributes a large number of horrible crimes and exterminations to the Somoza regime that are tantamount to genocide. This was the view expressed by the IACHR on page 89, paragraph 15:

> "The Commission has no doubt at all that certain officers of the National Guard must be held responsible for crimes against the international order and for wanton murder [asesinato atroz]..."

THE PROCEEDINGS: FREEDOM OF EVIDENCE AND JUDGMENT ACCORDING TO CONSCIENCE

Amnesty International says that the principles of freedom of evidence [libertad de prueba] and judgment according to conscience [fallo de conciencia], that were the guiding principles of the trials which took place in the Special Tribunals, were improperly applied by the members of these tribunals insofar as most of the latter were unqualified.

The Government of Nicaragua would like to point out to Amnesty International that although undeniably some members of the Special Tribunals were not law graduates, the president of a Special Tribunal or his deputy, both in the court of first instance and in the court of appeal, was required to be:

a) a lawyer or law student in one of the two final years of study;

b) a person of acknowledged moral rectitude;

c) at least 21 years of age.

The moral characters of both the staff and members of the Special Tribunals ensured that the trials and proceedings mentioned above were as broad in scope and as flexible as possible -- as Amnesty International indicates in its account of the proceedings it studied and which it presented in its Memorandum under the heading "representative cases". The Law of the Special Tribunals had more scope than the entire common law.

This was admitted by the Supreme Court of Justice, which in its 7 May 1981 ruling states:

> "There can be no doubt now that if the cases against the somocista defendants had been tried by the ordinary magistrates, by the cumbersome proceedings of the current legislation in this field, we should hardly have begun."

The system of "Prueba Libre" [Freedom of Evidence], which was implemented by the Law of the Special Tribunals, proved beyond doubt to be the most suitable for this type of trial insofar as it provided the parties concerned with a wide range of evidence. It might also be pointed out that this system enabled the judge to become completely certain about the truth on the basis of the evidence recorded during the proceedings, or on the basis of additional evidence, or even notwithstanding the evidence recorded during the proceedings. And it would be unwise to underestimate the abilities of the members of the Special Tribunals who were certainly able to assess the value of the various pieces of evidence presented by the parties concerned. It should also be added that all the defendants admitted their links with the previous regime and did not deny the crimes committed by the dictatorship.

The Government of Nicaragua considers that the system of freedom of evidence fulfilled its task. It would be absurd if, for example, in the trial of a pilot of the former Nicaraguan Air Force [Fuerza Aérea Nicaragüense (FAN)], according to the formalistic view of legal evidence, the court had to prove that the aircraft had left a particular aerodrome at 07.00, that its registration number was such-and-such, that the co-pilot was so-and-so, that his flight plan was such-and-such, that he flew at this or that altitude, that at a particular altitude he released a bomb, that the bomb weighed 500 pounds, that it destroyed certain buildings, that in these buildings the following people ...a,b,x,y,z were killed and that a medical report would have to be produced as evidence of the crime and would have to contain a description of those injured and the precise cause of death of all the inhabitants of the building who had been killed. This pilot would go unpunished under the formalistic system of "legal evidence".

Once the appropriate pieces of evidence had been examined in detail, only the judges' consciences could have assessed the guilt or innocence of the accused.

APPEALS PROCEDURE IN THE SPECIAL TRIBUNALS

Amnesty International stated that the provision for appeals made by the Law of the Special Tribunals was for restricted right of appeal and that it was a kind of appeal to quash a judgment [recurso de casación] insofar as legal limits were fixed within which the appeal court could rule exclusively on matters of law. As regards this, the Government of Nicaragua considers that the criteria established should not be viewed in a rigidly formalistic way since, although it is a known fact that the law gave restrictive powers to the Special Courts of Appeal, in practice the period during which judgment had to be passed did not affect or prejudice the interests of the parties concerned in any way. Nor did it affect the spirit and substance of the work of the Courts of Second Instance or Review, since the members of these courts, before the final decision on a particular case, had a chance to study in detail all the various elements [incidencias] of the case, weigh up the extenuating or aggravating factors and evaluate all the relevant facts, any technical legal defects, the definitions of the crimes and the punishments prescribed for them. In other words they undertook a critical appraisal of the trial dossier, and on many occasions the Courts of Appeal actually extended the period in question. Going beyond the established legal limits, they amended, either entirely or partially and outside the established legal limits, the sentences passed by the "Tribunal A-QUO" (court from which appeal is made to the appeal court) in cases of notorious injustice, for instance that Baltodano Conrado, among others. He was sentenced by the Seventh Special Tribunal to 30 years' presidio for various crimes. The Third Court of Appeal completely changed the sentence to one year's prisión for criminal association and pronounced the accused innocent of the other charges (thereby acting outside the limits established by law and to the benefit of the defendant).

José Dolores Cordonero Muñoz was sentenced by the Seventh Tribunal to 13 years' cárcel. This sentence was changed by the Superior Court to three years' prisión.

Francisco López Acosta was sentenced to 11 years' cárcel by the Seventh Tribunal. This sentence was altered by the immediately superior court to three years' prisión. The Government of Nicaragua could list further cases which indicate that the Special Courts of Appeal functioned as an effective Superior Court, considering matters of both fact and law.

These Courts even declared some trials null and void on their own initiative, having found that they had omitted one of the stages of legal procedure or had made some procedural or technical error or an error of substance, subsequently referring them to the lower court for correction before passing sentence. They would also order that the case be heard in another court (the next one in numerical order) -- that is by a different court from the one that had originally heard the case, since the latter had already passed judgment. This resulted, de facto and

de jure, in a revision that led to a decision or sentence. Among such cases the following can be cited: Domingo Antonio Ortega, case No. 49; Pánfilo Bustillo Silvestre, case No. 67; José Rodríguez Rugama, case No. 77; José Roberto Arguello Calderón, case No. 86; Carlos Manuel Sevilla, case No. 98; Julio Inés Pérez, case No. 121; and José Tomás Lara, case No. 124.

The Government of Nicaragua considers that Article 20 of the Law of the Special Tribunals (empowering the Courts of Appeal to make rulings according to conscience on the definition of the crime, the penalty and other aspects of the case without its being able to pronounce judgment on the innocence or guilt of the accused) implies, because of how it is worded, that there are no circumstances in which the Court of Appeal might make a ruling on the guilt of the accused. However, since the power to define the crime has been conferred on the Court of Appeal it must perform this function. Should it decide that no crime has been committed it must alter the verdict accordingly, which would mean the guilty verdict was repealed in law.

SPECIAL TRIBUNALS' COMPETENCE

It is universally recognized that Special Tribunals can perfectly well be set up to try cases and make rulings provided that all the rights and guarantees of those concerned are observed and respected during such tribunals' proceedings.

Ordinary Nicaraguan legislation envisaged the creation of new courts of law as long ago as 1904 (sub-paragraph 20 of Article V of paragraph 11 of the Preliminary Chapter of the Civil Code and Articles 26, 255, 258 and 259 of the Code of Civil Procedure).

Although Article 8 of the Pact of San José establishes the right to be tried by a judge or court, which was previously established as one of the legal guarantees to which all were entitled, undeniably Nicaragua was the theatre of a war of liberation and, when that war was won, the courts of justice, and indeed the judiciary as a whole, were dissolved together with all the power structures of the Somoza regime.

Ths Sandinista Popular Revolution repealed the Political Constitution then in force (published in La Gaceta No. 89 of 24 April 1974) by Articles 3 and 4 of the Fundamental Statute. Articles 280 et seq. of that Constitution (on Judicial Power and its Organization and Attributes) specified the nature and structure of the Judiciary (higher and lower Courts), thereby creating the Courts of Justice immediately after the triumph of the Revolution. It is therefore no longer in order to refer to the previous courts, which in fact disappeared after the Revolution (Article 4 of the Fundamental Statute).

For the above-mentioned reasons neither the Statute on Rights and Guarantees of Nicaraguans nor internationally recognized human rights can be said to have been violated.

THE RIGHT TO BE HEARD AND TRIED WITHIN A REASONABLE PERIOD

On the question of the validity of the right to be heard and tried within a reasonable period by the Special Tribunals, it should be pointed out that the somocista defendants enjoyed these rights to the full and made their statements free of restraints, cajolery or coercion, as is required by all legislation considered to be progressive and democratic. Furthermore, the time it took to try all the somocista defendants, who had been detained immediately after the triumph of the Revolution, in the Special Tribunals was a surprise to those lawyers who were critical of the Revolution and who maintained that it would take nine years to complete the task of trying the somocista defendants. Similarly the right to defend oneself or to have State-appointed counsel was guaranteed.

THE RIGHT TO BE PRESUMED INNOCENT

In the national legislation of Nicaragua, Articles 117 et seq. of the Code of Civil Procedure and in Articles 251 et seq. of the Code of Criminal Procedure, in the system of ordinary justice the types of evidence used are as follows: accuseds' confessions; oral evidence; written evidence; evidence resulting from judges' personal examinations; experts' reports and legal presumptions. Thus the evidence accepted in the Special Tribunals is catered for in the General Law and the correct application of the Law was therefore not departed from in any way.

According to the types of evidence stipulated by Nicaragua's legislation, three crimes are usually dealt with in Special Tribunal trials, namely criminal association, crime against international order and atrocious murder.

It is certainly nationally recognized as well as internationally acknowledged that the people of Nicaragua suffered brutal repression culminating in genocide -- a fact which has been verified by the Inter-American Commission on Human Rights, Amnesty International, the national and international press and indeed the whole world.

As regards the culpability of the somocista defendants, it is not correct to say that the Special Tribunals presumed them guilty a priori. On the contrary, it was by means of the above types of evidence that the Special Tribunals managed to prove the guilt or innocence of the accused a posteriori, and there are no grounds for believing that internationally recognized human rights were violated in any way by using such a system of evidence.

In its already quoted 30 June 1981 report the Inter-American Commission on Human Rights, on page 89, letter "f", paragraph 16, states:

> "No one who is aware of the situation in Nicaragua during the last years of General Somoza's government can have any doubt about the horrendous crimes committed by the National Guard during that period. The Commission itself had the opportunity to verify this, as it reported in its Report on the Situation of Human Rights in Nicaragua."(10)

The presumption of innocence applied to everyone; accordingly precisely 1,000 detainees were released by the Special Prosecutor's Office after all their cases had been examined, and 229 detainees were pronounced innocent by the Special Tribunals.

---

(10) OEA/RE.L/V/II.45 doc. rev. 1 (17 November 1978).

THE RIGHT TO DEFENCE AND DEFENCE COUNSEL

The Government of Nicaragua was anxious to safeguard the above right of the somocista defendants. Nevertheless, as a result of the refusal of the vast majority of the lawyers to fulfil their functions as defence counsel, it was found necessary to use students in the final years of their courses, who always got helped by the lawyers' offices of the Faculties of Law in the Nicaraguan universities.

It should be mentioned that Nicaraguan legislation authorizes student lawyers [pasantes] to act as defence counsel in criminal cases. Furthermore, faced with the refusal of the lawyers to act as official defence counsel, the Supreme Court of Justice was obliged to fine and even initiate proceedings against those who categorically refused.

This was one of the factors that greatly hindered the work of the Special Tribunals.

IACHR acknowledges this, stating that:

> "...defending a case had proved really difficult because it meant sponsoring'Somcist detainees',and that there was a general prejudice about the dishonor of taking on their defense because of all the crimes many of them had committed." (11)

The Government of Nicaragua reaffirms that the trial of the people in question was the logical consequence of their criminal conduct, a fact fully understood by the Inter-American Commission on Human Rights, which states:

> "After the military defeat of Somoza and the National Guard, the natural corollary was to place the responsibility with those who had committed such serious crimes. This the Government of National Reconstruction decided to do, bringing those responsible to trial and sentencing them. At the same time, it stated that its own human rights conduct would conform to its international commitments." (12)

---

(11) Report of IACHR of 30 June 1981, pp. 93 and 94.

(12) OEA/SER/L/V/II/53 doc.9 REV 1 (30 June 1981), p. 92.

FINAL ANALYSIS

At the moment of victory of the Sandinista Popular Revolution over the bloody tyranny, thousands of former somocista guards fled to neighbouring countries; others formed bands which continued to fight until they were subdued; a lesser number was captured, almost all of them guilty of horrific genocide of the population in general, of violating the most basic human rights and of destroying property both in the country and in the towns -- as stated earlier on.

The Government of Nicaragua would emphasize that the limitations placed on the rights and guarantees to personal liberty of Somoza's followers investigated and tried for the crimes committed under the regime which was defeated in 1979 were an immediate consequence of the state of emergency, which resulted from the previously-mentioned many combined factors. These limitations were necessary in order to guarantee the process of National Reconstruction.

In the present situation of popular resentment and constant large-scale protests and demands for swift justice, the somocista prisoners could not be dealt with by ordinary laws. The alternative of prompt trials, that could help to reduce the indignation of the people clamouring for revenge was used with extremely humane results.

The Government's creation of the Special Tribunals, that functioned from 5 December 1979 to 20 February 1981, reduced popular agitation and the danger of confrontation between the authorities and the families of the heroes and martyrs who had fallen in the struggle and who were inclined to take the law into their own hands.

The Special Tribunal trials involved the use of certain summary procedures, but in practice the periods of time allowed were always longer than those specified by the law -- as is revealed by the cases listed in the Amnesty International 1981 report, the shortest having been 23 days for dealing with a case.

Out of the total of 6,310 somocista defendants who were under the jurisdiction of the Special Tribunals after 19 July 1979, 4,331 were sentenced to imprisonment. The rest were pardoned on account of their age or ill-health or else pronounced innocent and therefore released.

The Government of Nicaragua's concern about the promotion and protection of human rights is an intrinsic part of its policy, especially as the struggle of the heroic people of Nicaragua under the leadership of the SANDINISTA NATIONAL LIBERATION FRONT has always been a movement with a philosophy of revolutionary humanism whose objective has been to eliminate all vestiges of injustice and inequality.

The policy of respect for human life followed by the Government of Nicaragua has been acknowledged by many international institutions and Governments, especially by the illustrious Government of Mexico, which is presided over by His Excellency President José López Portillo who, on 6 May 1981, on the occasion of the State Banquet held in honour of the Coordinator of the Junta of the Government of National Reconstruction, Comandante de la Revolución Daniel Ortega Saavedra, declared:

> "From a humanitarian point of view, it is impossible to reproach this Revolution which, in many ways, is heroic and exemplary. It is a revolution in which thousands upon thousands of men, women, young people and children were selflessly sacrificed, perishing in the dungeons of the dictatorship or on the battlefield. It is a victorious Revolution which turned anger into mercy and which, scorning vengeance, moderating justice and risking its own safety, spared the lives of those who had murdered its people."

> "It is unusual for a Revolution not to experience a phase of terror and still more unusual for it not to punish the crimes of its erstwhile oppressors with death. All honour to the Sandinista National Liberation Front and to the present Government of Nicaragua for having renounced this cruel form of justice and for having accepted the risk of sparing the lives of such individuals as the somocista guards, who even go to the lengths of committing crimes against the people in the border areas of Nicaragua and training abroad with a view to invading the country."

THE VALIDITY OF HABEAS CORPUS

The Special Tribunals functioned until 20 February 1981, when the remedy of habeas corpus was extended to cover everyone.

The Supreme Court of Justice of Nicaragua in its above-mentioned latest ruling states:

> "on this day the law which suspended the guarantee of habeas corpus and other guarantees with respect to the somocista detainees, and which was embodied in Article 51 of the Statute on Rights and Guarantees of Nicaraguans, has been repealed; they henceforth enjoy the right of habeas corpus and the right to complain to the Supreme Court of Justice in case of non-implementation of this remedy".

THE LAW FOR THE MAINTENANCE OF PUBLIC ORDER AND SECURITY

On 20 July 1979, the day after the revolutionary victory of the Nicaraguan people, during the state of emergency that the country was just beginning to experience, the Law for the Maintenance of Public Order and Security was promulgated, specifying new crimes and punishments. The Special Emergency Tribunals formed by this law in order to try these new crimes were, in the event, never set up; the procedure they were to follow in their investigations was a special one and competence to use it given to the Common Courts.

As we understand it, Amnesty International's basic objections to the laws in question are about limiting the application of the "ordinary standards concerning documentation of trials, requiring only that the charge and sentence be in writing and, in the worst cases,the preparation of trial dossiers that do not record the evidence" presented [sic]; and about the fact that the periods allowed for investigation are curtailed and brief in both first and second instance.

The Government of Nicaragua reaffirms its statement to the IACHR on this matter, since the method used indicates that the established legal periods have not deprived defendants of their right to defence. However, since it is likely that a judge's task would be hindered should several trials be conducted simultaneously, the Government of Nicaragua considers that the law does, indeed, require revision as regards extending the allotted periods of time.

Furthermore, although the above law established that the procedure should be oral, the legal provision specifying this immediately became obsolete, since the few cases under investigation were dealt with in writing -- that is the charges, evidence, intermediate decisions [autos intermedios], sentences and the associated appeals were.

The draft law specifying that proceedings be in writing and extending the periods allowed for the investigation of conduct covered by the Law for the Maintenance of Public Order and Security is currently being considered by the Council of State, which is the co-legislative body of the Government of Reconstruction. The draft is expected to be approved this month. [*]

With regard to recommendation No. 8 (on page 59 of the Amnesty International Memorandum), the Government of Nicaragua has issued the Law of Pardon [Ley de Gracia] and accompanying regulations, which are reproduced in the present document and are meant to deal with the situation of those sentenced in accordance with the Law for the Maintenance of Public Order and Security and its amendments.

---

[*] It has been approved and Amnesty International now has a copy of it.

ALLEGED ABUSES DURING THE ESTABLISHMENT OF THE NEW GOVERNMENT

In paragraph B of page 54 of its Memorandum, Amnesty International states that "Immediately after the downfall of the Somoza government an unknown number of people detained by neighbours or local revolutionary forces were killed. According to Amnesty International's information this illegal violence practically ceased soon after the new government had become properly established and had taken steps to put an end to reprisals against those associated with the previous government".

The Government of Nicaragua deplores the fact that, while recognizing "no evidence has come to light to suggest that the government at any time supported or tolerated the secret detention or death of its opponents", Amnesty International then goes on to assert that the Government "....has tended to seem indifferent even overtly hostile towards appeals for assistance from the families of those presumed to have been detained but whose fate and whereabouts are still not known".

The Government of National Reconstruction abolished the death penalty by Article 5 of the Statute of Rights and Guarantees of Nicaraguans promulgated immediately after the victory of the Revolution which states: "THE RIGHT TO LIFE IS INVIOLABLE AND INHERENT IN THE HUMAN BEING. THERE IS NO DEATH PENALTY IN NICARAGUA."

An understanding of the full significance of the abolition of the death penalty must take account of the deep foundations of the general insurrection of the Nicaraguan people struggling to overthrow the genocidal Somoza dictatorship. The FSLN aimed not only to eradicate the entire structure of the Somoza tyranny but also, as a matter of priority, to establish a regime in Nicaragua that would fully respect basic human rights.

The FSLN had foreseen long before the victory of the Revolution that uncontrollable popular reactions might occur on the part of thousands of Nicaraguan citizens who had lost their children, brothers and sisters, parents and relations at the hands of the National Guard.

Because of the undoubted risk that the people might take the law into their own hands, the leadership of the FSLN issued a slogan calling upon its members to be "IMPLACABLE IN BATTLE AND GENEROUS IN VICTORY", thus implying that the Nicaraguan people should leave everything in the hands of the constituted legal authorities.

In its official Report the IACHR expresses the view "that the new regime did not have, and does not now have, a policy of violating the right to life of political enemies, including among the latter the former guardsmen of the Government of the genocide [*] Somoza, whom a large sector of the population of Nicaragua held responsible for serious human rights violations during the former regime; proof of the foregoing is the abolition of the death penalty and the high number of former guardsmen who were prisoners and brought to trial for crimes that constituted violations of human rights.

[*] Sic. The commission's report actually says "General Somoza".

"It is important to point out that almost all the cases concerning violations of the right to life concern events which took place during the month of July 1979, within days of the change of Government, when there was still fighting in certain parts of the country and when there were still armed groups apparently acting under the command of the Sandinista National Liberation Front who in fact did not acknowledge any central authority".

The IACHR also recognizes this situation, expressing the view that:

> "... during the first days of the new order Nicaragua underwent a period of misgovernment and anarchy, a logical consequence of the nature of the change which had taken place; at the outset the country lacked all the elements of public administration, police, and the administration of justice." (13)

It was in this context that the deeds which have become known as "the case of the prisoners of La Pólvora prison in Granada" and other charges of alleged illegal executions took place.

As regards this, the Government of National Reconstruction would like to state that cases such as the above-mentioned are being investigated by the judge of the Granada District Criminal Court and that the Supreme Court of Justice is supervising the progress of this investigation, in which the Executive cannot intervene because of the independence of the Powers of State, although it has full confidence that the Judiciary will act honourably.

The Government of Nicaragua reaffirms that respect for the right to life has been, is, and will continue to be a constant preoccupation of the Government, as will be the task of undertaking investigations and prescribing punishments in the event of any violations of this right.

The policy of respect for life which has been pursued by the Government of Nicaragua has been recognized by many international bodies and Governments, as indicated above.

---

(13) Pages 40, 69 previously cited OAS/Ser.L.V/II 53.30 of June 1981.

RESPONSE TO THE AMNESTY INTERNATIONAL RECOMMENDATIONS

1. The Government of Nicaragua, taking into consideration recommendations 1 and 3 on page 58 of Amnesty International's Memorandum, referring to the fact that the rulings of the Special Tribunals should be systematically reviewed "in order to alter those verdicts that deserve modification", is pleased to state that in regard to this and to an equivalent obligation contracted with the IACHR based on its similar recommendation, [it] the Government of Nicaragua recently promulgated the Law of Pardon [Ley de Gracia]. This is a document of fundamental importance and permits a re-examination or re-evaluation of the legal position of those sentenced by the Special Tribunals, taking into account various factors: conduct while in prison; contribution to production; ability to integrate into social life without endangering the community; etc. Such factors, when positive, will lead to a pardon or to commutation or reduction of sentence.

The above-mentioned law will, of course, enable the correction of errors that may have been committed when passing judgment. The related regulations, which have not yet been published, will be forwarded at a later date.

The Ley de Gracia was published in La Gaceta No. 248 of 2 November 1981.[*]

---

[*] The complete text of the law was included by the Government of Nicaragua in this response. The text of the three principal articles are as follows:

"Article 1. The Council of State of the Republic of Nicaragua, exercising the Right of Pardon [Derecho de Gracia], will have the exclusive power, during ordinary session, to issue pardons for a penal action or a sentence with respect to specific people or particular and specific crimes, as well as commutations or reductions of sentences in the same cases. When the Council of State is in recess, the Junta of the Government of National Reconstruction will also have this power.

Article 2. Applications for pardons, commutations or reductions of sentence shall be submitted to the National Commission for the Promotion and Protection of Human Rights in accordance with the requirements set out in the regulations attached to this Law. The Commission will transmit such requests, together with its opinion [dictamen], to the Junta of the Government of National Reconstruction so that the latter, having examined the case, can submit them if they deserve it for decision by the Council of State.

Article 3. On the basis of the Decrees of Pardon [Decretos de Gracia], once they have been published in La Gaceta, the Official Journal, the Judicial authorities will proceed in conformity with the law."

2. With reference to recommendation No. 2 (page 58 of the Memorandum), the Government of Nicaragua, through the Ministry of Justice, has proceeded to release unconditionally those people who cannot be charged with concrete and specific crimes, and to release those considered by the Office of the Attorney General of the Republic to be less responsible for deeds related to their collaboration with the Somoza dictatorship.

3. With respect to recommendation No. 3 of the Memorandum, which concerns the question of continuing to examine all situations where a reprieve is possible, the Government of Nicaragua refers to its reply to recommendation No. 1.

4. As regards Amnesty International's recommendation that a complete list of people prosecuted by the Special Tribunals be issued, plus their places of detention, the Government of Nicaragua has no objection whatsoever and will proceed to do this immediately.

5. In relation to recommendation No. 5, the Government of Nicaragua has clearly stated, with no attempt at justification or concealment, what is the situation of those reported to have been detained in the first few days after the victory by groups operating outside the control of the central government. In making these comments and observations the Government of Nicaragua has recognized that abuses have occurred and are known about by the relations of those concerned. An investigation has been initiated in Granada into the events which took place at La Pólvora. Its conclusions will be made public when the judiciary has completed its investigations into the existence of armed bands of former National Guards, of those who may have taken the law into their own hands, or of any others who may be found responsible.

6. As regards recommendation No. 6, the Government of Nicaragua is considering creating an office that could promptly supply the families of detainees with information about them, even while they are in police custody. The Government launched this scheme by ORDER No. 054-81, issued on 7 October by the Head of the Directorate General of the Sandinista Police, Comandante Guerrillero Walter Ferretti Fonseca, creating a system for providing information about detainees to interested parties concerning their legal position and the detention centres where they are being held.

7. With respect to recommendation No. 7,the Government of Nicaragua, as previously mentioned, has drawn up a draft law currently being examined by the Council of State. It confirms written trial procedure, and extension of time permitted for each stage of trial proceedings where breaches of the Law for the Maintenance of Public Order and Security are concerned.

8. With respect to recommendation No. 8, the Government of Nicaragua reiterates that the sentences passed for violations of the Law for the Maintenance of Public Order and Security are not unrelated to the causes and reasons that prompted the promulgation of the Law of Pardon [Ley de Gracia]. Consequently, the situation of those prisoners involved in activities punished by the above-mentioned Law should be re-examined and reappraised.

AMNESTY INTERNATIONAL RESPONSE TO THE

COMMENTARY OF THE GOVERNMENT OF NICARAGUA

APRIL 1982

Amnesty International has examined with interest the documents prepared by the Government of Nicaragua commenting on its Memorandum on aspects of the human rights situation in Nicaragua, and has taken into account observations on the Memorandum in the final report to which this letter will be appended. It wishes to express formally its appreciation of the serious consideration given to observations and recommendations of the Memorandum, and again for the Government of Nicaragua's cooperation with the missions whose findings formed the basis of the Memorandum.

Furthermore the organization appreciates the detailed description of the legal structure created after the fall of the previous government and understands the reasons given for the 1979 declaration of a state of emergency and for the setting up of temporary Special Tribunals to try the prisoners detained after 19 July 1979 for crimes committed while they were under the protection of the former government.

The conclusions of the Amnesty International Memorandum were mainly about three matters: the trial procedures under the Special Tribunals; abuses committed during the period of national upheaval and consolidation of a new government after 19 July 1979; the application of the Law for the Maintenance of Public Order and Security.

The major part of both the Memorandum and the Commentary of the Government of Nicaragua concerns the nature and proceedings of the Special Tribunals. The information and opinions about the origin, organization and legal philosophy of the Special Tribunals presented in the Commentary is very useful for evaluating the general nature of the Special Tribunals; however, Amnesty International is basically concerned about the functioning of these tribunals when dealing with individual cases and considers these cases should be retrospectively reviewed. Amnesty International found that certain elements of the trial procedure facilitated injustices against which the ordinary system of justice had stronger safeguards.

Insofar as the Memorandum constituted a critique of the legal principles of freedom of evidence and verdict of conscience applied by the Special Tribunals, the organization would point out that its concern about this was prompted by the possible effect on the Special Tribunals of the popular clamour for vengeance against the defendants following the deaths of tens of thousands during the conflict.

One of the Memorandum's main conclusions is that the Special Tribunals' proceedings included a series of irregularities which jeopardized the fair trial of a significant number of those appearing before them. The Memorandum did not conclude that there were prisoners of conscience among those convicted by the Special Tribunals; however, it maintains that the pattern of irregularities had contributed to miscarriages of justice which had led to some prisoners being wrongly convicted of serious crimes - including genocide and atrocious murder. Although the Memorandum recognizes that some miscarriages of justice were remedied by appeals within the Special Tribunals themselves, and others through subsequent executive pardon, nevertheless Amnesty International recommended

a systematic review of the cases of prisoners at present serving sentences passed by the Special Tribunals in order to deal with any miscarriages of justice that might have gone unremedied after the possibility of further appeal was eliminated by the dissolution of the Special Tribunals.

Amnesty International made four recommendations about the cases tried by the Special Tribunals. Apropos these recommendations, the organization welcomes the Government of Nicaragua's decision to release unconditionally prisoners whose cases were still pending when the Special Tribunals were dissolved; to continue the previous practice of examining the cases of prisoners sentenced by the Special Tribunals with a view to pardoning them; and to publish a list of people prosecuted by the Special Tribunals, listing their sentences and places of detention.

The Government of Nicaragua's response to the first recommendation in the Memorandum - that the verdicts in Special Tribunal cases be reviewed and modified where appropriate - refers to a similar recommendation made by the Inter-American Commission on Human Rights. The government responds to the recommendation by referring to the promulgation on 2 November 1981 of a Law of Pardon providing for the "re-examination or re-evaluation of the legal position of those sentenced by the Special Tribunals". While the law is described in the Commentary as enabling, through pardon, commutation or reduction of sentences, the correction of errors "that may have been committed when passing judgment", the factors noted in the description of the new law that would be taken into account in determining such measures - "conduct while in prison, contribution to production, ability to integrate into social life without endangering the community" - seem unrelated to the facts in the cases heard by the Special Tribunals and the nature of the proceedings in individual cases. Since the text of the law itself, as reproduced in the Commentary, does not limit the terms whereby the law may be applied for the benefit of the prisoners - whether related to points of law or other factors - Amnesty International would hope that those applying it will take into account fully both the facts of the individual cases as heard by the Special Tribunals and the proceedings in these tribunals.

The Law of Pardon, furthermore, would appear to provide only a partial remedy for miscarriages of justice since it does not alter the previous situation in which the judiciary was excluded from jurisdiction in any review of the Special Tribunals' cases, provides for a re-evaluation of cases only after individual petition and gives the responsibility for final decisions to political authorities. Petitions for review of cases are to be heard by the National Commission for the Protection and Promotion of Human Rights, but this body's powers under the Law of Pardon are strictly limited to recommending pardons, commutations or reductions of sentence - something it already sometimes did before the promulgation of the Law of Pardon. It is to be hoped and expected that the examination of individual cases by the technically qualified personnel of the National Commission will be objective, and treated as a matter of urgency. The commission has limited authority and its powers of review in no way approximate those of a court. Even supposing the National Commission did certify that a

miscarriage of justice had occurred in a given case, the final decision as to whether or not the injustice should be remedied would rest with the national executive or Council of State. Amnesty International noted that Minister of the Interior Comandante Tomás Borge said on 22 December 1981 that "for the time being there will be no pardons". He attributed what appears to be a suspension of the applicability of the Law of Pardon to the anti-government violence then occurring in Nicaragua. The effect of this is to make prisoners hostage to the acts of others. Amnesty International will observe with interest the application of the Law of Pardon in relation to injustices that may have occurred in Special Tribunal cases. It urges the Government of Nicaragua to give the appropriate national institutions the necessary facilities and the authority to apply the law effectively in order to remedy these injustices.

As regards serious abuses reported immediately after the fall of the previous government on 19 July 1979 and during some subsequent months, the Memorandum concludes that the government rapidly took steps to halt revenge killings of National Guards captured by local groups. Nonetheless, the situation of many of those embroiled in the violence of this period is still unclear, and Amnesty International reiterates its concern that every effort be made to reveal the fate of those presumed to have been killed during the first few months after 19 July 1979, regardless of who was responsible for their deaths. Therefore it welcomes the assurance that a judicial investigation into the killings at Granada in July 1979 is in progress and that its results will be made public; and the organization would urge that the Government of Nicaragua fully support judicial investigations into similar cases that are still unresolved, and back the efforts in this connection of relatives of people whose fate is unknown.

The Law for the Maintenance of Public Security and Order and its application was another matter dealt with in the Amnesty International Memorandum. This Law is of particular concern insofar as its definitions of crimes related to national security and public order are broad and appear ambiguous, particularly as regards freedom of expression; and its application has led to the arrest and conviction of prisoners of conscience on charges based on their expression of opinions. Since the drafting of the Memorandum these prisoners have included leaders of the private business sector and of the Communist Party who were detained in October 1981 and who have been the object of Amnesty International appeals for their unconditional release. Amnesty International realises that the three business leaders detained in October 1981 are now in provisional liberty; however, political and trade union leaders Eli Altamirano, Allan Zambrana, Roberto Moreno and Yamilet Bonilla are still in detention and are prisoners of conscience.

The Memorandum concluded that the Law for the Maintenance of Public Order and Security in many ways resembled a law of exception, in its definition of crimes, in the heavy penalties it prescribed and in the procedure laid down for courts applying the law. Procedure was both to be summary and to use rules of evidence different from those applicable in ordinary penal proceedings in Nicaraguan law. At present this law

appears to be applicable, rather than Nicaragua's ordinary penal law, in every case involving political dissent or opposition, whether violent or non-violent.

Amnesty International welcomes the recently made changes in court procedure to be used in cases involving the Law for the Maintenance of Public Order and Security but considers that the procedural standards for such cases, despite the reform, to some extent still deviate from those applicable in ordinary criminal proceedings under the Nicaraguan legal system.

Although the Government of Nicaragua has indicated in its Commentary that convictions under the Law for the Maintenance of Public Order and Security may be reviewed through the procedure established in the Law of Pardon, Amnesty International would reiterate its recommendation that there be a systematic review of these cases, particularly of those where trials were conducted in accordance with the summary procedures prescribed before the recent reform of the law. Amnesty International would urge, furthermore, that those detained under the Law for the Maintenance of Public Order and Security for the non-violent exercise of the right to freedom of expression be released, and that the law be amended so as not to prescribe imprisonment for exercising the right to freedom of expression.

In future application of the Law for the Maintenance of Public Order and Security Amnesty International hopes the Government of Nicaragua will ensure that all prisoners charged with political offences get a fair trial with full right of defence and appeal.

Thanking you for your consideration, I remain,

Respectfully and sincerely,

Thomas Hammarberg
Secretary General

Amnesty International Publications

A selection of recent reports:

The Death Penalty, 209 pages, 1979, £2.00.
Pakistan: Human rights violations and the decline of the rule of law, 57 pages, 1982, £2.00.
Yugoslavia: Prisoners of Conscience, 50 pages, 1982, £2.00.
Iraq: Evidence of Torture, 44 pages, 1981, £2.00.
Republic of Korea: Violations of Human Rights, 43 pages, 1981, £2.00.
Guatemala: A Government Program of Political Murder, 32 pages, 1981, £2.00.
Report of an Amnesty International Mission to Spain, 68 pages, 1980, £3.00.
Prisoners of Conscience in the USSR: Their Treatment and Conditions, 200 pages, 1980, £5.00.
Testimony on Secret Detention Camps in Argentina, 60 pages, 1980, £1.00.
Human Rights Violations in Zaire, 22 pages, 1980, £1.00.
Report of an Amnesty International Mission to the Federation of Malaysia, 67 pages, 1979, £0.50.
Report of an Amnesty International Mission to Singapore, 60 pages, 1978, £2.00.
Report of an Amnesty International Mission to Northern Ireland, 72 pages, 1978, £1.00.
Political Imprisonment in the People's Republic of China, 171 pages, 1978, £2.00.
Political Imprisonment in South Africa, 108 pages, 1978, £1.00.
Report of an Amnesty International Mission to the Kingdom of Morocco, 76 pages, 1982, £2.00.

In addition to these reports, Amnesty International publishes a monthly newsletter, an annual report and a series of Amnesty International briefing papers.

The Amnesty International Newsletter. This monthly bulletin provides a regular account of the organization's work for human rights throughout the world. Articles include summaries of the latest published reports and findings of Amnesty International missions; new information on arrests and releases; and reports of torture and executions. The newsletter provides basic information for activists. It includes the "Campaign for Prisoners of the Month" and one or more appeals on behalf of likely victims of torture.

It is available in English, French and Spanish from London, Colombo, Paris and San José. National section newsletters in various languages are available from Amnesty International national section offices.

The Amnesty International Report. This annual report provides a full survey of Amnesty International's work in response to violations of human rights that have come to the organization's attention from more than 100 countries. The book is devoted almost entirely to a country-by-country survey.

Annual subscriptions. **Amnesty International Newsletter** £5.00 (US $12.50). **Amnesty International Newsletter** and **Amnesty International Report** £10.00 (US $25.00).

Amnesty International Briefing Papers. This is a series of occasional human rights reference booklets on individual countries, averaging between 12 and 16 pages each.

Briefing Papers Numbers 1-17:

Singapore*	**Malawi***	**Taiwan (Republic of China)***
Paraguay*†	**Guatemala*†**	**Czechoslovakia*†**
Iran*	**Turkey***	**German Democratic Republic***
Namibia*	**Peru*†**	**Guinea*†**
Morocco*	**People's Democratic Republic of Yemen**	**Syria+**
Rhodesia/Zimbabwe		**Romania*†**

*also available in French † also available in Spanish +also available in Arabic

Single copies 40 pence (US $1.00), plus 20 pence (50 cents) for postage and handling.

Amnesty International Publications are available in English and in most cases have been translated into other major world languages by the International Secretariat or by the national sections of Amnesty International.

Copies of Amnesty International publications can be obtained from the offices of the national sections of Amnesty International. Office addresses and further information may be obtained from the International Secretariat, 10 Southampton Street, London WC2E 7HF, England.

aip

Amnesty International Publications