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IMPLEMENTATION OF THE INTERNATIONAL COVENANT
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties to the Covenant
concerning rights covered by articles 6 to 9, in accordance
with the first stage of the programme established by the
Economic and Social Council in its resolution 1988 (LX)

Addendum

NICARAGUA

[19 March 1985]

1. The purpose of this report is to comply with the provisions of article 16 of the International Covenant on Economic, Social and Cultural Rights with regard to the measures adopted by Nicaragua to implement articles 6 to 9 of the Covenant.

Introduction:

At the time of the victory of the Sandinist People's Revolution in Nicaragua, an outmoded Labour Code was in force, which had been promulgated by the Somozan dictatorship in the mid-1940s in response to pressure by workers.

Although labour law is a special branch of law, established to provide justice to the working class, daily practice in pre-revolutionary Nicaragua, the situation of the workers, their working conditions and the decisions of the courts, inter alia, ran counter to the provisions contained even in this outmoded Code, thereby creating a flagrant injustice against the working class, to the benefit of the dictatorship and the business leaders closely allied with it.

The Labour Code remains in force today; however, it has undergone many changes during these five years of the Revolution, and a great many laws protecting the working class and working conditions have been enacted. Moreover, the

interpretation of the old provisions has changed, resulting in a break with the past and a new case-law which favours the worker.

As will be seen throughout this report, a new man, given dignity by his work, is being created in revolutionary Nicaragua.

I. ARTICLE 6. THE RIGHT TO WORK

A. Principal laws which safeguard the right to work

2. The right to work, guaranteed by the Statute on the Rights and Guarantees of Nicaraguans, is characterized by equal treatment of all persons without discrimination of any kind, as stipulated in article 3 of the Statute, which reads as follows:

"Article 3. All persons are equal before the law and have the right to equal protection. There shall be no discrimination on grounds of birth, race, colour, sex, language, religion, opinions, origin, economic position or any other social condition.

"It is the duty of the State to remove, by all the means at its disposal, any de facto obstacles which might impede equality of citizens and their participation in the political, economic and social life of the country."

3. The Statute on the Rights and Guarantees of Nicaraguans, in article 29, establishes the right to work from three points of view: firstly, as a right of the worker; secondly, as a social responsibility of the individual; and thirdly, as an obligation of the State.

"Article 29. Work is a right and a social responsibility of the individual. It is an obligation of the State to seek the full and productive employment of all Nicaraguans under conditions that guarantee the fundamental rights of the human person."

B. Administrative regulations implementing the Fundamental Statute

4. With the victory of the Revolution in 1979, the Ministry of Labour inherited a labour administration structure consisting of a placement office and an employment exchange; seven regional employment exchanges were immediately established.

5. Currently, the Ministry of Labour, through its Employment Office, is responsible for the co-ordination, implementation, monitoring and evaluation of employment policies, manpower resources and migrant labour; it also participates actively in the identification of vocational training needs and requirements, in accordance with the Organic Law on the Ministry of Labour.

6. The Employment Office is divided into the following departments: Labour Force Statistics and Analysis; Employment Policy and Job-Location; Vocational Training and Performance Evaluation; Occupational Training Abroad, and Labour Migration Office. The following is an explanation of the functions of these units:

(a) Department of Statistics and Analysis: Establishes methodologies for statistics and analysis, labour force surveys, research on manpower resources, study of manpower needed for Special Region II, tabulation scheme which serves as a basis for statistics on additional needs and skilled labour.

(b) Department of Training and Evaluation: Interprets needs and acts as intermediary between the training body and the user. It has prepared a survey of training, has gathered data on requirements for skilled labour to carry out ongoing projects, and has developed a training course in the building trades for instructors, masons and carpenters and an internal training scheme for manpower resources specialists. In the area of performance evaluation, work is being done on the establishment of an evaluation system, with 40 per cent of the conceptual and methodological part completed; its objective is to evaluate the performance of the worker and his specialized skills, as well as to promote and relocate workers. Steps have been taken in this department to set up a documentation centre for the Employment Office.

(c) Department of Employment Policy and Job-Location: Designs specific employment policies related to the distribution of manpower resources and directed towards specific social sectors of interest to the State, providing jobs for war veterans, disabled veterans and other disabled persons, youths about to enter the labour force, former prisoners, etc.; another branch of its work is to formulate instruments for managing the labour force, such as a centralized register of workers, and to locate manpower in accordance with the requirements of employers and the skills of the unemployed in the job-location programme, which has sections in all the regions.

(d) Department of Occupational Training Abroad: In existence for six months, its work is concentrated on selecting, preparing and sending young people abroad to be trained.

By November 1984, eight groups of workers, totalling 1,000, had been sent to Bulgaria, to be trained in the building trades.

(e) Labour Migration Office: Its objective is to study and analyse the labour force, both inside and outside the country.

As can be seen, the present organization of labour administration in Nicaragua is greatly superior to the placement office which was inherited from the Somozan era.

7. The Employment Office is in charge of the National Employment Service, regulated by article 41 of the Regulations of the Organic Law on the Ministry of Labour, whose purpose is to collaborate in the tabulation of labour resources in the sectors and regions to meet the technical and economic needs of the country; it will make available to workers and employers a free system of communication and

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job-location to inform and help the workers to obtain jobs and the employers to select and recruit staff in accordance with the requirements of the jobs; it thus performs informational and vocational guidance functions.

8. Decree No. 398, G.D.O. No. 108 of 15 May 1980, established the National Workers' Training System, which bases its ongoing activities on the studies and guidelines of the Employment Office of the Ministry of Labour.

9. Vocational training for workers - SINAFORP programme. In five years, the work of the National Vocational Training System (SINAFORP) has offered 2,040 courses to a total of 30,810 workers.

These courses have been offered in the agricultural, livestock, industrial and construction sectors, as well as in the commerce and services sector. It should be noted that during the Somoza régime the National Training Institute (INA) offered only 213 courses, to 2,040 workers.

It should also be noted that SINAFORP has offered a total of 140 different specialized courses, in comparison to the 55 courses offered by INA in the period before the revolutionary victory.

C. Labour legislation protecting the right to work

10. Article 116, as amended by decree No. 717, G.D.O. No. 98 of 8 May 1981, grants the right to be reinstated to a worker who has been dismissed by an employer in violation of the provisions of the Labour Code and other labour laws prohibiting such action, whose rights have been infringed or who has been the victim of retaliatory action because he has exercised or attempted to exercise his labour or union rights. The relevant part of article 116 of the Labour Code reads as follows:

"Article 16

"When dismissal by an employer is proved to be in violation of the provisions prohibiting such action contained in the present Code and other labour laws, and/or constitutes an infringement of a worker's rights or retaliatory action against him because he has exercised or attempted to exercise his labour or union rights, the worker shall take action before a competent labour judge to petition that he be allowed to return to the position that he formerly held, in identical working conditions. If it is found that there are grounds for reinstating the worker, the employer shall be obliged to pay the wages that have not been received by the worker, in accordance with the provisions of article 15, paragraph 7, of the Labour Code, until the latter is reinstated.

"When it is found that there are grounds for reinstating the worker and the employer does not conform with the court order, the labour judge shall fine him an amount equivalent to six (6) months of the worker's wages. If the employer persists in his refusal, ten (10) days after the imposition of the

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fine the judge shall order his detention for up to six (6) months, which may be suspended at any time if the employer obeys the order to reinstate the worker or if the parties arrive at an agreement."

D. Collective contracts

11. Collective contracts are also used. The clauses that require payment of an indemnity based on years of service prevent any form of unjust dismissal of a worker. If that were to happen, the employer would be sanctioned by having to pay an indemnity amounting to one month's wages for every year of service.

Other clauses call for the establishment of a joint committee composed of representatives of employers and workers. Such joint bodies review, in addition to individual and collective disputes, all cases of dismissal. If there is just cause for dismissal, the work contract will be terminated; if not, the worker will keep his employment. If there is disagreement in the committee the worker himself shall be called on to assist the committee in making a decision. Subsequently, any of the following conclusions may be reached:

- (a) Justified dismissal;
- (b) Reinstatement under the terms of article 116 of the Labour Code;
- (c) Dismissal with indemnity for years of service.

E. Co-operatives

12. Co-operatives as a source of employment. The formation and consolidation of the Co-operative Movement in the country during the revolutionary period also represents a substantial achievement for workers. The Department of Co-operatives has encouraged the establishment of 400 co-operatives throughout the country for, inter alia, craftsmen, manufacturers and transport workers.

The activities of the Department have included the organization of a total of 89 courses and seminars for existing co-operatives.

Technical advice has been provided through such activities to 1,187 directors of co-operative establishments.

F. Refugee programme

13. The main objective of this programme is the integration of the refugee into the economic life of the country, without adversely affecting the employment of Nicaraguans. In accordance with Decree No. 1096, a law was introduced establishing the National Office for Refugees under INSSBI. To achieve this objective, the Office receives substantial support from the Ministry of Agricultural Development and Agrarian Reform, the National Union of Farmers and Stockbreeders, the Ministry of Industry, the National Development Bank and other institutions of the

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Revolutionary State. In addition, financial and technical assistance has been received from the Office of the United Nations High Commissioner for Refugees (UNHCR), Oxfam-Belgium, French People's Assistance Fund and other international organizations.

A few statistics reveal the progress achieved in caring for refugees: 1,222 refugees have been placed in Production Co-operatives, 813 in the three camps established for that purpose, and 2,465 have been helped with external assistance (food, shelter, health, education, etc.).

G. International conventions

14. Nicaragua has approved and ratified the following International Labour Organisation conventions relating to employment:

Convention No. 2

Concerning Unemployment

Convention No. 3

Concerning the Employment of Women before and after Childbirth

Convention No. 8

Concerning Unemployment Indemnity in Case of Loss or Foundering of the Ship

Convention No. 9

For Establishing Facilities for Finding Employment for Seamen

Convention No. 88

Concerning the Organisation of the Employment Service

Convention No. 105

Concerning the Abolition of Forced Labour

Convention No. 111

Concerning Discrimination in Respect of Employment and Occupation

Convention No. 138

Concerning Minimum Age for Admission to Employment

Convention No. 142

Concerning Vocational Guidance and Vocational Training in the Development of Human Resources

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II. ARTICLE 7. THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

A. Fundamental provisions establishing that right

1. The relevant article of the Statute on the Rights and Guarantees of Nicaraguans not only contains all the provisions of article 7 of the Covenant, but the final part of the article strengthens those provisions by granting workers the right to demand that their acquired rights and guarantees be maintained, even though the article either does not specifically mention those rights and guarantees, or mentions them cursorily, and even in the absence of regulations concerning them.

"Article 30

"Everyone has the right to the enjoyment of just and favourable conditions of work which ensure, in particular:

1. Remuneration which provides all workers, as a minimum, with:
 - (a) Equal wages or salary for equal work of equal efficiency, adequate to meet workers' social responsibilities, without discrimination as to sex;
 - (b) A decent living for the worker and his family.
2. Safe and healthy working conditions.
3. Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.
4. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay which are actually taken, as well as remuneration for public holidays.

"Nothing in this article shall be taken as authorizing employers to deny workers previously acquired rights or guarantees on the pretext that the present article either does not refer to them, or does not refer to them in detail or to the regulations concerning them."

B. Wages

2. Principles concerning wages contained in our legislation: As can be seen from the above article, the Statute envisages the universal principle of equal pay for equal work and also that of equal remuneration without distinction between the sexes.

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3. Another important principle embodied in our legislation is the worker's right to receive wages relating to periods when he was prevented from working on account of action taken by the employer (art. 15, para. 7, of the Labour Code).
4. The legislation provides for the principle of an index-linked minimum wage, in line with the conditions and needs of the various regions and sufficient to ensure the worker a minimum standard of living compatible with human dignity (art. 77 of the Labour Code).
5. The principle whereby the minimum wage may not be attached, except that, as provided in the Civil Code, persons entitled to receive maintenance payments from a worker can request that one third of his wage be withheld for that purpose (art. 78 of the Labour Code).
6. Any employer who pays lower rates than the established minimum wages must pay workers the difference between what should have been paid and what was actually paid, without prejudice to the corresponding penal action (art. 81, Labour Code).
7. Assignment of wages is prohibited to the extent that they are less than the minimum wage (art. 75, Labour Code).
8. Principle of the wage as a preferential debt: the Labour Code, in article 76, states that, in cases of bankruptcy, liquidation, dissolution or succession, whether the worker continues to perform services or not, the receiver, liquidator, trustee, executor or conservator is obliged to pay, in preference to all other debts, within a period of one month beginning from the date on which any of the above events occurs, the accrued wages recognized by the labour authorities.
9. Christmas bonus: all employers must pay their workers, after one year of continuous service, in addition to their regular pay, a Christmas bonus equivalent to one month's wage or the proportional amount corresponding to the fraction of the year worked.
10. Overtime: in this area, Nicaraguan labour legislation is very generous, remunerating hours worked overtime by 100 per cent more than a normal day's pay rates (art. 74, Labour Code).
11. Administrative regulations implementing the legislation: before the victory of 19 July 1979, there was an Office of Manpower and Job Promotion, whose only function was to keep a record of wages by occupation; wages were set by employers in an arbitrary and piecemeal fashion. Today the Ministry of Labour office which deals with wage policy is the Office of Work Organization and Wages, which is divided into three methodological departments - Appraisal, Standards and Wages - and five sectors.
12. This office, from its inception has focused its efforts on work organization and wages; by collective bargaining it has established wage rates and has organized wage levelling and adjustments to avoid disruptive influences on economic activity.

It should also be noted that the General Labour Office co-operates in the implementation of wage laws and agreements.

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13. Overall evaluation of the results obtained: effect on the wage structure. An evaluation of the effectiveness of the wage levelling policy put into effect in 1980, for the whole country overall, in the non-farming sector, yielded the following results:

Table 5

Wage bracket	1979		1983		Effect resulting from the change in structure
	% of wage earners	Cumulative %	% of wage earners	Cumulative %	
up to 1 179	41.3	41.3	-	-	41.3%
1 171 to 1 560	21.0	62.3	12.2	12.2	8.8%
1 561 to 1 976	11.8	74.1	15.4	27.6	3.6%
1 977 to 2 418	7.3	81.4	18.3	45.9	11.0%
2 419 to 4 680	13.9	95.3	36.2	82.1	22.3%
4 681 and over	4.7	100.0	17.9	100.0	13.2%

Source: Based on INSSBI figures.

14. The above table shows that the 1979 wage structure has been substantially modified; the lowest wage bracket is no longer applicable, since the levelling policy has significantly reduced the number of workers in that bracket. Whereas in 1979 the largest group of workers was in the lowest bracket, by 1983 it was concentrated in the fifth bracket, with the number of workers in the non-farming sector receiving the prevailing minimum wage now being zero.

15. Changes occurring in the farming sector between 1979 and 1983 are described below.

In 1979, the minimum wage was \$C 645.00 per month, and a high percentage of workers received an even lower wage than this minimum because of non-compliance by the employer.

In 1980, the process of wage modification was initiated in the rural areas, with the aim of reducing the disparity between wages in the rural and urban areas, so that, for 1983, wages were as follows:

16. General farm work: permanent workers receiving monthly rates, \$C 1,100; workers in general, paid on a piece-work basis, \$C 1,238 monthly.

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17. Harvest work: workers in general, receiving monthly piece-work rates, \$C 1,860.00.

18. The above figures do not cover such farm workers as foremen and mandadores, who receive at least \$C 2,000.00 monthly.

19. Wage system for planning: now that the possibilities of wage levelling have been exhausted, a new system must now be implemented without delay, organizing wages in relation to the current situation in Nicaragua. This system must structure wages on the basis of the principle of equality for all, at the same time incorporating the development of vocational training, based on an accurate knowledge of the basic and technological requirements of each occupation; only through the organization and classification of wages on a country-wide basis will it be possible to compile basic labour and wage indicators in order to plan the economy, since this category of indicators cuts across the entire economic system both vertically and horizontally and it is on such indicators that production and consumption statistics depend.

Therefore, in the light of the experience gained from the wage policy of previous years, the objective and subjective conditions already exist in Nicaragua for the implementation of a new wage policy based on the principle of pay in accordance with the complexity of the task - a principle which, if applied consistently to all occupations, would substantially eliminate the disorganized basis of wages and would therefore have a determining influence on the basic aspects of our development, such as a sustained increase in production and productivity.

20. The new wage policy is designed on the basis of the Work Organization and Wages System, which is composed of the following elements:

1. National wage scale
2. Occupational ratings
3. Forms and systems of payment
4. Work standards
5. Incentives
6. National payroll

21. The implementation of this system has been achieved through wage agreements, drawn up by a commission made up of representatives of:

- (a) Sectoral branches or bodies of the occupations being evaluated;
- (b) Management of firms;

- (c) Trade union organizations, where applicable;
- (d) Ministry of Labour.

This commission may be expanded to include outstanding workers and experienced technicians. Before a commission is set up, every worker prepares a job description describing the functions he performs.

22. The implementation of the National Work Organization and Wages System will deal with this problem.

In this context, through the Office of Employment and Wages, the following wage agreements have been signed:

Construction sector: 6 wage agreements

Transport and communications sector: 13 wage agreements

Industrial sector: 69 wage agreements

Services sector: 63 wage agreements

Farming sector: 21 wage agreements

Thus, the Office of Employment and Wages has signed wage agreements covering workers in 172 branches of economic activity.

23. At the end of September 1984, the following elements of the Work Organization and Wages System were implemented throughout the country:

- (a) Occupational ratings
- (b) National wage scale

24. International Labour Organisation Conventions relating to wages, adopted and ratified by Nicaragua.

1. Convention No. 26

Concerning the Creation of Minimum Wage-Fixing Machinery.

2. Convention No. 95

Concerning the Protection of Wages.

3. Convention No. 100

Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

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4. Convention No. 110

Concerning Conditions of Employment of Plantation Workers.

C. Equal opportunity for promotion

25. As stated earlier, article 30, paragraph 3, of the Statute on the Rights and Guarantees of Nicaraguans accords the right to equal opportunity for everyone to be promoted to an appropriate higher level subject to no limitations other than those of seniority and competence. This is the exact wording of article 7 (c) of the above-mentioned Covenant.

26. The employment policy includes the wage system which, as has been pointed out, provides workers with an incentive promotion in that promotion is awarded to those who improve their skills.

27. The above-mentioned right has been developed during collective bargaining over conditions of work and wages. Account has been taken of the fact that a promotion means a change in assignment from a lower level to a higher level in the institution and that it requires greater ability and responsibility on the part of the person promoted.

28. Promotion is on the basis of merit; this is interpreted to mean not only the favourable entries in the worker's personnel file but also his practical abilities and skills. Where all other conditions are equal seniority shall be the deciding factor.

29. For the purposes of the above the following shall be considered merits: knowledge of the job; understanding of the tasks it involves; initiative, that is to say, the ability to originate or develop ideas and to see to it that activities are initiated; dedication to the job; quality of work, volume of work or acceptable productivity; discipline at work and behaviour; also, involvement of the worker in the revolutionary process.

Employers or their representatives and the trade union concerned shall participate in the decision; other factors to be taken into account for the purposes of promotion are: competence acquired, mainly in the institution itself, level of education, experience and ability to shoulder responsibility.

30. It should also be pointed out that in the above-mentioned collective agreements human resources managers (on the employer's side) and the trade union concerned and, if necessary, an expert participate in the promotion decision.

D. Rest, leisure, limitation of working hours, and holidays with pay

31. Article 30, paragraph 4, of the Statute on the Rights and Guarantees of Nicaraguans grants all these rights for it calls for "rest, leisure, reasonable limitation of working hours and periodic holidays with pay (actually taken), as well as remuneration for public holidays".

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These basic rights have been worked out in Nicaragua through the labour legislation, ILO Conventions, internal labour regulations and individual and collective labour contracts.

1. Rest and limitation of working hours

The Labour Code proceeds from the general principle, spelled out in article 47, that save for the exceptions envisaged by law, the actual time worked not exceed 8 hours a day or 48 hours a week.

The Labour Code applies special treatment to women and minors. Children under 14 years of age may work up to a maximum of 6 hours a day (art. 48) and may not work at night or on days of rest (art. 122) and minors and working women may in no case work overtime.

The Code establishes exceptions to the maximum of eight hours of work per day; these are spelled out in article 49.

Persons holding positions of supervision or management or those employed in a confidential capacity; those who work intermittently or who are merely required to be present and persons whose functions are by their very nature not subject to working hours. Nevertheless, these persons shall not be required to remain on duty more than 12 hours a day and they shall be entitled to a rest period of at least 8 hours within that period.

Owners or employers who work alone without the assistance of employees or workers.

The maximum length of the working day is set at eight hours for daytime work, with one or more rest periods, the total duration of which shall not be less than one hour and a half.

The maximum length of the working day is set at seven and a half hours for night work covering parts of day and night, with a rest period of one hour.

A maximum of seven hours of work a day is set for night work and although the Labour Code does not mention a rest period, in practice a rest period equal to that mentioned in paragraph 36 is given and it is not considered as part of work time for the purposes of computing the duration of the working hours; however, if a worker is unable to leave the place of work during his meal or rest breaks because of an emergency or surprise so requires or wills it then the rest period will be considered as part of work time.

According to article 47 of the Labour Code, the length of the work week may be determined by the parties; article 57 refers to the weekly rest and states that for every six days of consecutive work a worker shall have one day of rest and that efforts must be made to ensure that the rest is enjoyed on a Sunday; however, if a work week of less than six days is established the work performed in two

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consecutive weeks shall be deemed consecutive and the worker shall enjoy a day of rest once he completes six days of work within the two weeks, provided that he is not absent from work.

39. The regulations governing number of hours worked daily and holidays are set forth in title II, chapter III, of the Labour Code.

2. Holidays

40. Holidays with pay are a fundamental right which, according to the labour legislation, cannot be renounced.

41. Title II, chapter IV, of the Labour Code regulates provisions relating to workers' holidays and states that every worker shall enjoy 15 days of holiday with pay for every six months of continuous service with the same employer, pointing out that persons who work for the State and its institutions shall have holiday with pay from the Saturday preceding Palm Sunday to Easter Monday inclusive; from 24 December to 1 January also inclusive and another 15 days each year.

42. Whenever a worker terminates his labour contract, whatever the reason, he shall be entitled to receive part of the wages to which he would be entitled for holidays in proportion to the period he has worked, provided that he has not worked for less than one month.

43. Days which a worker is absent from work for reason of sickness, special leave or other just cause shall not prevent the preceding and following days he has worked from being added together to complete the time needed to give him entitlement to holidays.

44. Our revolution has not only given rise to the practical implementation of the fundamental right to holidays with pay but has also led to the institution of a holiday scheme, a programme initiated with the confiscation of many country homes and summer houses formerly the property of the Somozans. The first holiday centre opened in March 1980 and, in April 1981, its coverage was extended; a second holiday centre was inaugurated in March 1983. Over a four-year period these centres have accommodated 5,940 families and 29,137 vacationers.

45. The services provided to vacationers include transportation, food, cultural and recreational activities, children's playground, beach huts and a communal recreational facility with billiard room and dining room.

46. A mixed enterprise, Industria de Desarrollo Vacacional S.A. (INDEVASA), has been established also for the above-mentioned purpose. It is administered by the Nicaraguan Institute for Social Security and Welfare for the express purpose of supplementing the financial resources required for the vacation scheme with the economic surplus generated by its operations.

47. This company has focused on developing cabins, seafood bars, restaurants and on other investments; in July 1983 through the cabins alone it catered to 7,622 vacationers (1,754 families).

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3. Remuneration for holidays

48. Holidays fall into two categories:

(a) Regular holidays, which are compulsory national holidays with pay.

Article 57 stipulates that the following days shall be holidays of this type: 1 January, Thursday and Friday of Holy Week, 1 May, 19 July, 14 and 15 September, and 25 December.

(b) Possible holidays which, generally speaking, are connected with some historical event or religious tradition. Such holidays are authorized by the national, departmental or municipal authority; the Ministry of Labour, in co-ordination with the relevant governmental authorities, issues the corresponding announcement. Such days are authorized as rest days with pay.

49. ILO agreements ratified by Nicaragua:

Convention No. 1

Limiting the Hours of Work in Industrial Undertakings

Convention No. 6

Concerning the Night Work of Young Persons Employed in Industry

Convention No. 14

Concerning the Application of the Weekly Rest in Industrial Undertakings

Convention No. 20

Concerning Night Work in Bakeries

Convention No. 30

Concerning the Regulation of Hours of Work in Commerce and Offices

Convention No. 89

Concerning Night Work of Women

Convention No. 146

Concerning Annual Leave with Pay for Seafarers

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E. Safe and healthy working conditions

National legislation

50. Article 30 paragraph 2, of the Statute on the Rights and Guarantees of Nicaraguans guarantees safety and hygiene in the workplace, and subsequent legislation, to which reference is made later, establishes regulations for this guarantee.

51. Articles 19, 20 and 21 of the Labour Code lay down general regulations for the supervision of safety in the workplace and for medical assistance. Provisions concerning occupational hazards and the reporting of occupational accidents are set forth in articles 82 to 118 and in articles 297 to 301 respectively.

52. In more specific terms the Labour Code comprises the following legal instruments:

1. Regulations concerning building safety.
2. Regulations concerning the safe handling and use of insecticides.
3. Regulations on safety measures in the loading and unloading of ships.
4. Regulations regarding the employment of white lead and other pigments in painting work.

The following special regulations are also applicable:

(a) Minors: Regulations prohibiting night work, work on days of rest, overtime, industrial work representing a threat to health and physical development, work aboard ship and in inland navigation (arts. 122, 123, 125, 151 of the Labour Code).

(b) Women: Provisions prohibiting underground work in mines, work disproportionate to strength, and heavy work of a type likely to affect the health of pregnant workers (arts. 126 and 127 of the Labour Code).

(c) Seamen: Provisions concerning protection in the case of sickness during the voyage (art. 162).

(d) Agricultural workers: Regulations concerning the provision of balanced and healthful meals and occupational accidents and diseases.

(e) Mine workers: All the articles of the chapter regulating such work contain standards for occupational safety (arts. 179 and 818).

(f) Workers involved in loading operations: Regulations regarding weight limits for lifting. Title II, chapter XI, of the Labour Code establishes safeguards for the use of machinery.

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Health and occupational safety in the Revolution

53. The Revolution has also given workers a further substantial advantage through the establishment of health and occupational safety conditions consistent with their human dignity. In that connection the efforts made by the Ministry of Labour in close collaboration with the trade union organizations has led to a marked decline in occupational accidents and to improved working conditions for workers in priority sectors according to the country's actual economic conditions and potential. A further achievement is the fact that, for the first time, provision has been made for the monitoring of occupational accidents and for inspections; the preventive measures stipulated by the Ministry of Labour have also been followed up. Inspections at the workplace and inspection practices are the result of programmes established by the competent department and the reports received.

54. The Directorate of Health and Occupational Safety has carried out 2,299 inspections in work centres, factories, training establishments and enterprises covering virtually all branches of economic activity. The Directorate has also carried out 1,368 reinspections in order to verify that the measures which it has recommended have been implemented.

The work of the Ministry of Labour in this field has benefited 258,873 workers throughout the country.

Nicaragua has ratified the following Conventions of the International Labour Organisation regarding health and occupational safety:

Convention No. 13

Concerning the Use of White Lead in Painting

Convention No. 18

Concerning Workmen's Compensation for Occupational Diseases

Convention No. 110

Concerning Conditions of Employment of Plantation Workers

Convention No. 115

Concerning the Protection of Workers against Ionising Radiations

Convention No. 119

Concerning the Guarding of Machinery

Convention No. 136

Concerning Protection against Hazards of Poisoning Arising from Benzene

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Convention No. 137

Concerning the Social Repercussions of New Methods of Cargo Handling

Convention No. 139

Concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents

III. ARTICLE 8. TRADE UNION RIGHTS

A. National legislation

Basic laws

1. Article 8 of our Fundamental Statute grants unrestricted trade union freedoms, the only limitations being those provided for in the Statute on the Rights and Guarantees of Nicaraguans. The Fundamental Statute affords broad constitutional recognition and protection of trade union freedoms and the right to found trade unions and similar federations in article 31, which reads as follows:

"Article 31

"With a view to promoting and protecting the economic and social interests of Nicaraguans, this article guarantees:

"1. The right to found and promote grass-roots, communal, neighbourhood and rural organizations; and guilds or professional associations.

"2. The right to found and join trade unions, subject only to the statutes of the organization concerned.

"3. The right of trade unions to form federations or confederations and the right of these to found international union organizations or to affiliate themselves with them.

"4. The right to found and promote labour and production co-operatives."

B. Labour legislation

2. The whole range of the fundamental right of trade union freedom is confirmed in our Labour Code, Title IV, chapter I, of which governs the right of trade union association, the constitution of trade unions and the regulation of trade union associations (G.D.O. No. 93 of 10 May 1951, as amended by decree No. 1260, G.D.O. No. 132 of June 1983).

3. Our legislation covers the following aspects of trade union freedom (arts. 16(6) and 191 of the Labour Code and art. 14 of the regulations on trade union associations):

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- (a) Right of association. This provides that no one shall be compelled to a trade union or be prevented from doing so;
- (b) The right not to participate in trade union activities;
- (c) The right to leave a trade union;
- (d) The right of membership for all workers, and even for employers with operative and administrative functions. There are no limitations on this right in the Labour Code or the regulations on trade union associations;

Freedom of association also covers workers under the following two groupings:

- (a) Associations of workers and employers organized into trade unions, federations and confederations;
- (b) Guilds and professional associations, such as the National Association of Magan Teachers (ANDEN), which are governed by the labour legislation.

These bodies establish their juridical personality by registering their regulations or Statutes with the Department of Trade Union Associations (art. 190 of the Labour Code). Once juridical personality has been certified by the Department under article 196 of the Labour Code, the body concerned becomes subject to the legislation on trade union rights and obligations.

In spite of the foregoing, COSEP (High Council on Private Enterprise), which is organized into chambers of commerce and industry and whose membership consists of the majority of employers in the private sector, has never complied with any of the requirements of our Labour Code or the regulations on trade union associations concerning obtaining juridical personality and thus being subject to the juridical labour laws and obligations. However, in practice they have enjoyed the rights of juridical personality and have been dealt with as employers' representatives for purposes of forming conciliation panels, participation in ILO activities and so on.

1. Status of recognized trade union representative

This protection refers mainly to job security but also includes the free exercise of trade union functions by the executives and delegates of professional associations.

Articles 192 and 193 of the Labour Code provides for granting the status of recognized trade union representative to the following persons:

- (a) Trade union promoters and organizers, not more than three in number, names shall be notified to the inspector of labour concerned. Recognition effect within 30 days of such notification.
- (b) The five first members of the executive body of existing trade unions. This right is also included in collective labour contracts and has been extended to

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additional persons. No worker holding any of the offices referred to above may be dismissed without just cause and unless just cause has been demonstrated to the inspector of labour. In case of infringement, employees must be reinstated and the employer must pay any wages lost in the period between dismissal and effective reinstatement.

2. Formation of trade unions

10. A trade union must have 25 members in the case of workers and five in the case of employers. In the case of company unions, an absolute majority of the company or work centre is required.

3. Registration of new unions

11. Exercise of the right of free trade union organization is one of the outstanding facts of the revolutionary period; a total of 1,322 new trade unions, covering 112,870 workers, have registered with the Department of Trade Union Associations.

These trade unions have been set up in both town and country, in nearly every field of economic activity.

The qualitative change may be realized if we recall that in almost half a century of dictatorship only 131 trade unions were allowed to register.

C. Right of trade unions to form federations and confederations

1. National legislation

10. The Fundamental Statute provides the basis of this right in article 31 (3), which has been reproduced at the beginning of the section of this report on article 8.

11. The right of workers to form federations and confederations is also guaranteed in the Labour Code, in a broader form, as may be seen from the following articles:

"Article 207. Two or more trade unions may form a federation and two or more federations may form a confederation. In both cases the provisions on trade unions shall apply.

"Article 208. The federations and confederations shall determine in their Statutes the form in which their members shall be represented on the Executive Board and at General Assemblies.

"The Statutes of the federations and confederations shall be registered with the Department of Trade Union Associations and the provisions of article 195 on registration of trade unions shall be observed.

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"Article 209. Any trade union may withdraw from its federation or confederation at any time, notwithstanding any agreement to the contrary."

In the past five years eight federations have been registered.

2. International agreements

12. The right to form and join trade unions is also provided in international instruments signed by Nicaragua, including: the Universal Declaration of Human Rights (art. 23), the International Covenant on Civil and Political Rights (art. 22), the International Covenant on Economic, Social and Cultural Rights (art. 8), the American Declaration of the Rights and Duties of Man (art. 22) and the American Convention on Human Rights (art. 16). With the exception of the latter, these instruments are guaranteed in article 6 of the Fundamental Statute of the Rights and Guarantees of Nicaraguans.

13. Nicaragua has also adopted and ratified ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise and ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.

14. The right to strike is provided for under article 32 of the Statute on the Rights and Guarantees of Nicaraguans. Furthermore, this right, which is enshrined in the International Covenant on Civil and Political Rights, is one of the rights guaranteed by our Fundamental Statute.

15. The Labour Code devotes three chapters of section IV and the sole chapter of section V to the right to strike. These labour provisions govern the procedure for striking in the following manner: first, the workers, through their representatives, submit to the local Departmental Labour Inspector a list of grievances, which must be in accordance with the requirements set forth in article 303 of the Labour Code; once the list has been received a strike arbitrator is appointed, who in turn selects by lot a representative for the employers and a representative for the workers of the area; the representatives of the parties to the dispute are selected by the parties themselves. All these persons comprise what is called the conciliation panel, which considers the list of grievances and calls upon the parties to negotiate before it for a period of five days, after which one of the following situations may come about:

- (i) A settlement is reached and the dispute thus comes to an end;
- (ii) There is no settlement. In this case the conciliation panel calls upon the workers of the work centre to decide by a vote whether or not to accept the proposal of the employers. If they accept it, the dispute is resolved. If they do not, another vote is taken so that the workers may decide whether:
 - (a) To continue negotiations for a period of five days or more, or
 - (b) To declare a strike.

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3. Legal rights of trade unionists in the case of a strike

16. Workers who participate in a strike or are employed in an enterprise where a legal strike has been declared may not be dismissed without the prior authorization of the conciliation panel (art. 324 of the Labour Code).

4. International legal instruments ratified by Nicaragua which guarantee the right to strike

17. (a) The International Covenant on Economic, Social and Cultural Rights (art. 8 (d)).

(b) The 1984 International American Charter of Social Guarantees (art. 27).

IV. ARTICLE 9. RIGHT TO SOCIAL SECURITY

1. The triumph of the Sandinist People's Revolution on 19 July 1979 marked the end of a divisive period and in order to surmount the difficulties inherited from that period it was necessary to make far-reaching changes in the orientation and management of the social security system. Restrictive and selective policies had to be replaced by democratic policies designed to establish a new social security system that would benefit the majority of Nicaraguan workers and their families. The triumph of the Revolution required that State institutions should make a decisive contribution to the welfare of our people. As might be expected, the steps taken at the beginning of the revolutionary period met with various problems which had to be overcome because the social security system was in serious disarray and was incapable of carrying out creative policies to promote the common good. The criteria laid down in the Statute on the Rights and Guarantees of Nicaraguans and the Programme of the Government of National Reconstruction defined the strategic framework for the new revolutionary social security programme, focusing, as an essential goal, on the need to broaden social security coverage nation-wide, which represents a step forward.

2. A second objective of the policies implemented was to broaden the scope of the benefits provided, covering all segments of the population, whether economically strong or weak, that is to say, to develop an integrated social security programme which would also benefit the socially disadvantaged groups which did not have access to the socio-economic services provided by the country. In this regard, it is important to note the merger of the Ministry of Social Welfare and the Nicaraguan Institute of Social Security to form the new Nicaraguan Institute of Social Security and Welfare, which made it possible to carry out integrated policies concerned with various sectors but formulated in a single decision-making centre. This made it possible to provide protection to the working population and at the same time place emphasis on the needs of the socially disadvantaged. It will be recalled that the benefits under the social security programme are provided to workers who have contributed for a certain period of time and, therefore, have qualified for assistance. On the other hand, abandoned minors, orphans, the elderly, drug addicts, prostitutes, destitute persons, etc., who are covered under social welfare programmes, require assistance, but there is no source of financing

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for that purpose. Nevertheless, these groups deserve and are fully entitled to be protected by the Sandinist State.

3. It should also be pointed out that the administration of the Nicaraguan Institute of Social Security and Welfare decided to increase the cash benefits under the social security programme because of the practice, inherited from the Somozan period, of paying very small pensions which did not ensure a socially acceptable minimum standard of living. Furthermore, the granting of new types of pensions financed by the State, which favoured certain social groups, such as circus performers, members of people's militias, retired Government civil servants, etc. was approved. In other words, pensions were awarded to workers in various social groups who, because of their outstanding merits or long service, deserved to be protected. It can be seen from the foregoing information that during the four years in which the Institute has been functioning, the socio-economic assistance provided by it has steadily increased both horizontally and vertically, providing the necessary support to the neediest social groups. This result came about through the application of a new social security policy which reflects an objective truth, the principle of solidarity which must prevail among different social groups. The solidarity payments which contributing workers make in order to finance the health services provided at the national level is a further example of this. This practice constitutes a positive mechanism for income redistribution.

4. The Nicaraguan Institute of Social Security and Welfare has been administered along these lines for four years in a continuous process of horizontal and vertical growth which has culminated in the merger of two institutions designed to meet the social needs of Nicaraguan people and led to an integrated approach to social security for the exclusive benefit of workers and their families and the groups which were kept in an underprivileged position for decades by the Somozan dictatorship.

5. The results achieved reflect the magnitude and the effectiveness of the efforts made during this period and provide eloquent proof of the ability of a people which is orienting its institutions for the benefit of the majority.

6. All these achievements have been consolidated and firmly established in the new Social Security Act and a considerable body of supplementary revolutionary legislation, which constitutes one of the greatest accomplishments in the field of social security in the third world.

7. The new Social Security Act, which was considered and discussed by the State Council in 1981 and adopted in March 1982, lays down the objectives and functions deriving from the concept of social security, which has been recognized and proclaimed by the Sandinist People's Revolution as a right inherent in the human person.

The main advantages of the new Social Security Act compared to the law in effect prior to 1979 are given in detail in the comparative table.
