

## **MONITORING THE HUMAN RIGHTS SITUATION IN NICARAGUA: INTENSIFICATION OF THE CRIMINALIZATION OF PROTESTS MONTHLY UPDATE N. 1 - SEPTEMBER**

**Introduction:** This is the first OHCHR monthly report on the human rights situation in Nicaragua following the release on 29 August of OHCHR report “Human Rights violations and abuses in the context of protests. 18 April-18 August 2018”<sup>1</sup>.

Since 1 September 2018, after its departure from Managua<sup>2</sup>, the Office of the United Nations High Commissioner for Human Rights (hereinafter OHCHR) has continued to monitor the human rights situation in Nicaragua remotely through its Regional Office for Central America based in Panama. Throughout September, a team dedicated exclusively to Nicaragua regularly monitored open sources, and received, solicited and analyzed information through different channels, including the Government. During the reporting period, OHCHR carried out 38 remote and 31 face-to-face interviews in Panama and Costa Rica, including with victims of human rights violations and representatives of civil society, academics and international and regional human rights organizations.

**Context:** OHCHR did not observe any improvement in the human rights situation. The reporting period was marked by increasing harassment, intimidation and criminalization of individuals who participated in protests and of human rights defenders. The National Dialogue remains stalled and the Government has publicly announced that it was conducting consultations at the community level for reconciliation purposes.

At the regional level, the Permanent Council of the Organization of American States adopted a resolution on 12 September condemning human rights violations and abuses in Nicaragua, and calling for the resumption of the National Dialogue and for an agreement on an electoral timetable. On 18 September, the Secretary-General of the Central American Integration System (SICA) announced the good offices of SICA to restore dialogue and promote reforms to enhance political participation.

At the international level, on 1 September, the United Nations Secretary-General issued a statement regretting the decision of the Government of Nicaragua to withdraw its invitation to OHCHR and encouraged it to maintain constructive engagement with the Office. On 5 September 2018, the Security Council held an open debate on the situation in Nicaragua. Six member States mentioned the termination of the OHCHR mission in their remarks and two other called on the Government to reconsider its



**“We call on the Council to strengthen its oversight on the country. In the meantime the Office will continue documenting human rights violations in Nicaragua from outside the country”**

*OPENING STATEMENT BY UN HIGH COMMISSIONER FOR HUMAN RIGHTS, MICHELLE BACHELET, 39TH SESSION HUMAN RIGHTS COUNCIL SEPTEMBER 10, 2018*

<sup>1</sup> See [https://www.ohchr.org/Documents/Countries/NI/HumanRightsViolationsNicaraguaApr\\_Aug2018\\_SP.pdf](https://www.ohchr.org/Documents/Countries/NI/HumanRightsViolationsNicaraguaApr_Aug2018_SP.pdf)

<sup>2</sup> On 30 August, OHCHR received a communication from the Ministry of Foreign Affairs of the State of Nicaragua terminating the invitation extended by the Government to visit the country. See OHCHR Nicaragua: Important Announcement, August 31, 2018, available at: <http://www.oacnudh.org/nicaragua-anuncio-importante/>

decision. On 10 September, during the Human Rights Council's 39th session, the High Commissioner for Human Rights referred to the ongoing human rights crisis in Nicaragua in her opening statement. On 11 September, 22 States took the floor to invoke the situation in Nicaragua and 37 released a joint statement expressing concern about human rights violations described in the OHCHR report. The Nicaragua representative welcomed the High Commissioner and expressed hope that it would be possible to work with OHCHR without any bias.



***“We urge the Government of Nicaragua to resume dialogue and cooperation with regional and international human rights mechanisms, including the Office of the High Commissioner”***

**JOINT INTERVENTION BY 37 COUNTRIES, 39TH SESSION OF HUMAN RIGHTS COUNCIL, SEPTEMBER 11, 2018**

The main patterns of human rights violations identified between 1 and 30 September 2018<sup>2</sup> include escalating attacks against and restrictions to the enjoyment of the right to freedom of peaceful assembly, as well as the increase of arbitrary detentions of people associated to the protests. In addition, people who expressed their dissent towards government policies and human rights defenders continued to face threats and other forms of harassment. Violations of due process and presumption of innocence within ongoing judicial proceedings and serious concerns about the treatment of people deprived of their liberty in the context of the protests are also described below.

**Attacks on peaceful assemblies:** During September, demonstrations continued to be held throughout the country, although its number has decreased. Despite the prominent presence of police officers (including anti-riot units), intimidation and acts of violence by pro-government armed elements against protesters continued to be reported. According to information received by OHCHR, compared with August, there was an increase in attacks with firearms against demonstrators, allegedly by pro-government elements. On 23 September, in Managua one adolescent was killed and at least five people injured in such an incident. During the reporting period, OHCHR received reports of at least four other protesters injured by gunfire. According to available information, in most of the demonstrations, pro-government armed elements (including the so-called clash groups) occupied space / sites initially foreseen for the holding protests, forcing participants to change their plan. On sporadic occasions, some people participating in protests also resorted to violence against the Police or pro-government individuals. On 2 September, in Managua, two police officers were injured.

On 28 September, the National Police issued a press release warning that *"organizations or individuals who convene illegal public gatherings or mobilizations"* would be held accountable and brought to justice for threats, criminal actions and attacks carried out by others in the course of such activities. Such statements are not in compliance with international human rights standards, as organizers should not be held responsible or liable for the unlawful conduct of others, or be held responsible for the maintenance of public order. They also may be against the right to freedom of peaceful assembly enshrined in article 21 of the International Covenant on Civil and Political Rights, as the State is to facilitate the exercise of the right and assemblies should not be subject to an authorization requirement. According to the Nicaraguan Constitution (art 53) the right of peaceful

assembly does not require prior authorization. Lastly, they have an intimidating effect on the public and contravene State's obligations to respect, protect and guarantee human rights.

**Threats against and harassment of people having participated in demonstrations:** OHCHR received information about different forms of intimidation and threats against people who have participated in demonstrations or expressed opinions dissenting from the Government's, in particular women human rights defenders, medical personnel, students and members of the Catholic Church. In this context, stigmatization campaigns in the social media, verbal attacks by State agents, harassment, damage to housing or other property, unjustified dismissals and expulsions from universities were reported

**“Whatever we do, it is considered a crime and triggers reprisals by the authorities”**

STATEMENT BY A STUDENT LEADER IN A REMOTE INTERVIEW

**Increased arrests and detentions of protesters and those perceived as opposed to the Government:** Information received and analyzed by OHCHR indicates an increase in the detention and criminalization of individuals who led or have been involved in protests, particularly in road blocks and barricades that protesters set up in different places of the country during the period between May and July.

In September, it was reported on the official website of the National Police<sup>3</sup> that 64 males (including five teenagers) and two female criminals had been captured for crimes committed in the framework of the protests. Among those detained are several students and social leaders who played a visible role in the protests since 18 April 2018. There have also been cases of arrests of former military members opposed to the Government and of relatives of people detained in to protests. In September, arrests mainly took place in Managua and Masaya.

OHCHR continued to observe the same patterns of illegal detentions previously reflected in its report of 29 August 2018. As before, detentions were reportedly carried out without arrest warrants, sometimes by hooded men dressed in civilian clothes, and families did not receive immediate official information of the place of detention. Moreover, people deprived of their liberty are usually presented before a judge to confirm the legality of their detention several days after the legal period of 48 hours.

On 21 September, OHCHR received allegations that mobs affiliated with the governing party intimidated and assaulted relatives of detainees who were trying to find out about the whereabouts of their relatives outside the El Chipote detention centre.

Also as described in the OHCHR report issued on 29 August, information gathered by OHCHR indicates that the habeas corpus filed by the lawyers of the detained persons challenging the legality of their imprisonment have not been effective. OHCHR collected information on a number of cases characterized by delays in the appointment of the executory judge, the appointment of executory judges who are not in the country, or lack of cooperation from the prison authorities to present the person deprived of liberty before the judge.

On 19 September, the Vice Minister of the Interior reported that in the "La Modelo" and "La Esperanza" prisons, "204 people, 184 men and 17 women" were detained, allegedly for crimes

<sup>3</sup> See <https://www.policia.gob.ni/?cat=2> last accessed 1 October, 2018



committed in relation to protests<sup>4</sup>. According to the Minister, seven of them would be serving sentences (six men and one woman) and charges would have been filed against 197. So far, however, OHCHR has not had access to judicial documents on such cases. This was the first time that official figures were released regarding the number of people detained and criminally prosecuted in relation to the protests. These figures, which did not include people detained in facilities other than "La Modelo" and "La Esperanza" prisons, differ from those published by non-governmental organizations indicating that about 300 individuals are being deprived of their liberty and criminally prosecuted for their involvement in the protests<sup>5</sup>.



Source: <https://www.policia.gob.ni>

**Continued violations of the rights to due process and to the presumption of innocence:** In September, OHCHR received information demonstrating the intensification of criminal prosecution of individuals who led or participated in protests since 18 April 2018. According to open sources, the Office of the Attorney-General has been systematically accusing leaders and individuals who have participated in protests of crimes such as terrorism, murder, and kidnapping<sup>6</sup>, among others.

According to the information collected by OHCHR, the Office of the Attorney-General requested preventive detention, without considering alternative measures to imprisonment, which was ratified by the corresponding judges. With regard to the criminal proceedings that have taken place to date, OHCHR received different allegations that show violations of due process.

Judicial authorities continued to infringe the principle of the publicity of hearings by denying the access to opposition media, defendants' relatives, human rights NGOs and international organizations, among others. Defense attorney did not have prompt access to the detainees and use of undercover witnesses has hindered the exercise of the defense. In some opportunities, defense attorneys were threatened by the judges during the hearings to be criminally prosecuted.

<sup>4</sup> See interview with Vice Minister of Interior Luis Cañas, Revista en vivo Canal 4, 19 September 2018, p. 6, available at <https://www.el19digital.com/app/webroot/tinymce/source/2018/00-Septiembre/Del17al23Sept/Miércoles19Sept/ENTREVISTA%20.pdf>

<sup>5</sup> Information provided by non-governmental organizations indicates that, by 18 August 2018, at least 300 individuals were being prosecuted for involvement in the protests. See para. 33, OHCHR report on "Human Rights Violations and Abuses in the Context of Protests in Nicaragua, April 18 - August 18 2018", available at: [http://www.oacnudh.org/wp-content/uploads/2018/08/Nicaragua-Report-FINAL\\_SP.pdf](http://www.oacnudh.org/wp-content/uploads/2018/08/Nicaragua-Report-FINAL_SP.pdf)

<sup>6</sup> In conformity with the Nicaraguan Criminal Code, terrorism is punished with imprisonment from 6 months to 2 years, murder from 6 to 14 years, kidnapping (with violence) from 2 to 5 years

In at least two cases, the Police arrested and then released after few days defense witnesses.

On the other hand, according to the information received by OHCHR, there have been no criminal proceedings opened against State authorities to date in relation to their alleged responsibility for human rights violations, including summary executions, arbitrary detentions, torture and ill treatment among others. The Office of the Attorney-General has not publicly reported on any type of action taken in this regard. OHCHR also observed that the National Police frequently displays before the media, individuals detained in the context of protests who are publicly accused of crimes such as terrorism, kidnapping, homicide and others.

The exhibition of detainees in the media took place before they were brought before the judicial authority or before the Office of the Attorney-General has filed any charge. For example, in September, at least 23 people were labelled before the media as terrorists or coup mongers<sup>7</sup>. This practice is contrary to international human rights standards because it violates the rights to the presumption of innocence and to be tried by a competent, independent and impartial tribunal.

### **Discriminatory and inhuman conditions of detention:**

All the people deprived of their liberty in relation to the protests continued to face serious human rights violations. OHCHR received allegations of inhuman treatment and reports of denial of access to medical care. According to open sources, a woman with cancer would have not received appropriate therapy in La Esperanza prison. From mid-April to September, OHCHR has not been aware of any visits to prison facilities by the national human rights institution - which serves as the national mechanism for the prevention of torture<sup>8</sup> - to verify such allegations, as well as prior allegations of torture. OHCHR has formally requested to Government of information in this regard but had not obtained any reply as at 17 October. The Rapporteur on the rights of people deprived of their liberty of the Inter-American Commission on Human Rights, who visited Nicaragua on 17-20 September publicly reported that he had not been granted access to detention centres.

Relatives of people deprived of their liberty in relation to the protests continued to report that visits to their loved ones are often cancelled or rescheduled on short notice. OHCHR was also informed that these people would be subject to more severe detention conditions than the rest of the inmates.

**Economic, Social and Cultural Rights:** According to estimates of the World Bank, Nicaragua is expected to suffer a contraction of 3.8 per cent in 2018 due to the social and political unrest the country has experienced



**“The recommendations included in OHCHR’s report along with those made by the IACHR provide a roadmap not only to overcome the ongoing crisis but also to address structural causes that have progressively weakened the realization of human rights, as well as national institutions and rule of law in Nicaragua”**

*STATEMENT BY OHCHR  
REPRESENTATIVE FOR CENTRAL  
AMERICA, MARLENE ALEJOS*

<sup>7</sup> See <https://www.policia.gob.ni/?cat=2> last consulted October 1, 2018.

<sup>8</sup> Approved on January 16, 2012 by presidential agreement No. 04-2012, published in La Gaceta No. 10 of January 18, 2012

since April<sup>9</sup>. As at 30 September, data released by the Ministry of Finance<sup>10</sup> indicated that 119,567 jobs had been lost. The deterioration of economic and social situation is having serious consequences on employment, among other sectors, jeopardizing the enjoyment of the rights to work, social security, health and food, among others.

**Situation of persons fleeing Nicaragua:** The situation of people who left Nicaragua to seek protection in other countries, especially Costa Rica, is also a source of concern. According to official data, while the arrival of Nicaraguans had progressively decreased, by October 5, the Costa Rican authorities had registered a total of 15,584 asylum applications and had granted appointments to 11,383 people to formalize their application. Despite the efforts to enhance the capacity of Costa Rican competent asylum authorities, OHCHR was informed of cases for which appointments were scheduled for August 2019. This, together with other obstacles, such as the requirement of police records or passports with visas, contributes to making access to the labour market more difficult. This situation mainly exposes young people and women to the risk of labor and sexual exploitation.

**Recommendations:** OHCHR has continued to monitor the implementation of the recommendations contained in its report of 29 August 2018, as reflected in the Annex to this report “Status of recommendations by OHCHR”. To date, no significant progress has been observed nor has the Government adopted any measure among those recommended.

In this regard, OHCHR reiterates the importance of immediately halting the attacks, harassment and criminalization against demonstrators, human rights defenders and others, dismantling pro-government armed elements and release all the people arbitrarily detained. OHCHR stands ready to cooperate on these matters with Nicaraguan authorities and civil society.

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<sup>9</sup> See <http://www.worldbank.org/en/country/nicaragua/overview> last consulted October 15, 2018.

<sup>10</sup> See <https://www.el19digital.com/articulos/ver/titulo:82076-danos-y-perdidas-causadas-al-pueblo-de-nicaragua-por-el-terrorismo-golpista> last consulted October 3, 2018.

## ANNEX: STATUS OF RECOMMENDATIONS ISSUED BY OHCHR

On 29 August 2018, OHCHR published the report “Human rights violations and abuses in the context of protests in Nicaragua. 18 April-18 August 2018”. In its final section, the report contains 16 recommendations of the High Commissioner addressed to the Government, the National Human Rights Institution, the Human Rights Council and the broader international community.

This Annex provides information on the implementation status of the recommendations by referring to measures adopted (or their lack thereof) for each of them. It also provides a specific reference to any outstanding concerns or persistent issues that could negatively impact the full implementation of the recommendations.

RECOMMENDATIONS	MEASURES ADOPTED	PERSISTING ISSUES	IMPLEMENTATION
<p><b>To the Government of Nicaragua:</b></p> <p>1. Put an immediate end to harassment, intimidation, stigmatization, criminalization (including through the use of counter-terrorism legislation) and other types of reprisals in relation to participation in the protests, including against demonstrators, human rights defenders, political opponents, journalists and others.</p>		<ul style="list-style-type: none"> <li>- Reports on threats and harassment against leaders and protestors</li> <li>- Arrest warrants issued for terrorism financing</li> <li>- Increase of number of detentions</li> <li>- National Police statement about “illegal demonstrations”</li> </ul>	Not Implemented
<p>2. Immediately dismantle and disarm pro-Government armed elements and protect the population from attacks and other illegal and violent actions from such groups.</p>		<ul style="list-style-type: none"> <li>- Firearms attacks and intimidation against protestors</li> <li>- Allegations about pro Government armed elements’ presence in both rural and urban areas</li> </ul>	Not Implemented
<p>3. Ensure that independent, impartial, effective, thorough and transparent investigations be promptly conducted into all allegations of serious human rights violations and abuses that have occurred since 18 April, especially extrajudicial killings, torture, enforced disappearances and arbitrary or unlawful arrests and detentions; ensure that criminal investigations comprise all those who perpetrated, directly or indirectly, ordered, supported or tolerated such acts, including the chain of command of relevant authorities. These acts should not remain without sanction.</p>		<ul style="list-style-type: none"> <li>- No information received about criminal investigation against State agents and pro-Government armed elements alleged responsible for serious human rights violations or abuses</li> </ul>	Not Implemented



RECOMMENDATIONS	MEASURES ADOPTED	PERSISTING ISSUES	IMPLEMENTATION
4. Halt all unlawful arrests and release all persons who have been arbitrarily detained; ensure that the due process rights of all persons being prosecuted are respected and that any criminal charges brought against them are in line with the principles of legality, proportionality and individual liability.		<ul style="list-style-type: none"> <li>- Most of the deprivation of liberty carried out without arrest warrants</li> <li>- Detainees brought before a judge well beyond the legal 48 hours limit</li> <li>- Ineffective Habeas Corpus</li> </ul>	Not Implemented
5. Ensure that accurate and up-to-date information on individuals deprived of their liberty and on the location of detention is publicly available; that people are promptly informed of the reasons for their arrest, have access to a lawyer of their choice, are brought promptly before a judge and are guaranteed their right to a fair trial.		<ul style="list-style-type: none"> <li>- The Government only disclosed figures of detainees in two prison facilities without further details</li> <li>- Allegations of violations of due process guarantees</li> </ul>	Not Implemented
6. Ensure the right to freedoms of peaceful assembly is fully respected through the proper management of public gatherings, in line with applicable international human rights norms and standards.		<ul style="list-style-type: none"> <li>- Reports of firearms attacks and intimidations against protestors</li> <li>- National Police statement about “illegal demonstrations”</li> </ul>	Not Implemented
7. Take urgent measures to guarantee the independence and impartiality of the judiciary, refraining from any undue interference, pressure or influence.		<ul style="list-style-type: none"> <li>- Allegations about violations of the right to due process</li> </ul>	Not Implemented
8. Resume the National Dialogue in a meaningful and inclusive way to reach agreements based on human rights and democratic principles.		<ul style="list-style-type: none"> <li>- The National Dialogue remains stalled and the Government has publicly announced that it was conducting consultations at the community level for reconciliation purposes</li> </ul>	Not Implemented
9. End and penalize public stigmatizing of those critical of the Government’s policies and actions.		<ul style="list-style-type: none"> <li>- Stigmatization persists: those who dissent are publicly labeled as coup mongers and terrorists</li> </ul>	Not Implemented
10. Grant OHCHR direct and unfettered access to the whole country, including to places of detention, in accordance with the High Commissioner’s mandate and standard practices of engagement and technical cooperation with authorities and civil society.	<ul style="list-style-type: none"> <li>- The Government considered that the invitation extended to OHCHR had concluded on 30 August. OHCHR’s team left the country on 1 September</li> </ul>		Not Implemented





RECOMMENDATIONS	MEASURES ADOPTED	PERSISTING ISSUES	IMPLEMENTATION
11. Ensure effective cooperation with the Inter-America Commission on Human Rights' Special Monitoring Mechanism for Nicaragua and the Interdisciplinary Group of Independent Experts.		- Access to detention centers, judicial hearings and criminal investigations files continues to be denied	Not Implemented
12. Allow access to the country to the Special Procedures of the Human Rights Council that have requested to conduct an official visit, in line with Nicaragua's standing invitation extended in 2006.			Not Implemented
<b>To the National Human Rights Institution:</b>  13. Implement its mandate, including as national preventive mechanism for the prevention of torture, in full compliance with the Paris Principles reinforcing the rule of law and human rights, including by monitoring the human rights situation, publicly reporting on its findings, and making recommendations to authorities.		- No information shared on visits to places of detention	Not Implemented
14. Cooperate fully with the Global Alliance for National Human Rights Institutions; seek technical assistance from OHCHR, with a view to strengthening its operating practices and institutional framework to promote and protect human rights independently from the Government.			Not Implemented
<b>To the Human Rights Council and the broader international community</b>  15. Monitor the developments in Nicaragua, consider taking measures to prevent a further deterioration of the human rights situation and encourage the General Assembly to do the same. Such measures could include the creation of an International Commission of Inquiry or a hybrid (national – international) Truth Commission to ensure access to truth, justice and reparation for victims.	- Joint statement issued by 37 States before the Human Rights Council expressing concern about human rights violations and urging to reactivate the National Dialogue		Implementation Ongoing



RECOMMENDATIONS	MEASURES ADOPTED	PERSISTING ISSUES	IMPLEMENTATION
<p>16. Call on Nicaragua to abide by its international human rights obligations and to fulfil its voluntary commitments and pledges, including in the context of the Universal Periodic Review mechanism of the Human Rights Council, and to fully cooperate with human rights bodies and mechanisms.</p> <p>OHCHR stands ready to provide additional information in a regular manner to the Human Rights Council as appropriate.</p>	<ul style="list-style-type: none"><li>- Joint statement issued by 37 States before the Human Rights Council expressing concern about human rights violations and urging to reactivate the national dialogue</li><li>- Discussion in UN Security Council: most State members mentioned the need for resumed dialogue</li><li>- Resolution of the Permanent Council of the Organization of American States adopted on 12 September condemning human rights/abuses and reiterating its determination to monitor the situation in the light of a peaceful solution to the ongoing crisis</li></ul>		<p>Implementation Ongoing</p>