

MONITORING THE HUMAN RIGHTS SITUATION IN NICARAGUA MONTHLY UPDATE N. 2 - OCTOBER 2018

Introduction. Throughout October, OHCHR continued to remotely monitor the human rights situation in Nicaragua, analyzing information available in open sources, allegations of human rights violations from individuals and organizations, and other relevant information, and carrying out interviews with victims and witnesses in Panama and Costa Rica or by phone. In some cases, OHCHR transmitted allegations to the Government of Nicaragua, requesting information on the cases and recommending timely measures. At the time of finalizing this update, the Government had not provided any answer to OHCHR requests.

Throughout October, and in comparison with the previous month, OHCHR observed a further erosion of the space to express opinions divergent from the Government's official position on the political, social, and human rights crisis affecting Nicaragua. On 14 October, the police used violent repression against persons trying to protest peacefully, even before the demonstration could begin, and arrested at least 38 demonstrators. The detention and prosecution of people associated with the protests, including journalists and civil society representatives, continued. The most conservative figures provided by non-governmental sources indicated that about 150 persons were deprived of their liberty in October, most of them being prosecuted for charges allegedly related with the protests. On 19 October, the Inter-American Commission on Human Rights observed that more than 300 persons remained detained in relation to the protests that occurred since April¹. At the same time, there has been no information of any judicial processes against State authorities or other actors responsible for human rights violations or abuses against demonstrators in the past months.



Context. On 2 October, the Inter-American Commission on Human Rights held a hearing on the situation of human rights defenders and repression and violence during protests in Nicaragua, which was not attended by any representatives of the Nicaraguan State. On 19 October, the Organization of American State Permanent Council convened an extraordinary session to address the crisis in Nicaragua. At that session, the Working Group set up on 2 August, 2018² presented its second report, outlining its activities and underscoring that the Government of Nicaragua had not showed any willingness to create the conditions for a national dialogue or to adopt measures aimed at stopping violence and repression against demonstrators³. On 26 October, the Interdisciplinary

¹ Report of the Inter-American Commission on Human Rights presented before the Organization of American States Permanent Council on 19 October 2018. See <https://www.youtube.com/watch?v=Zul1P2fgmIE&index=6&t=0s&list=PLkh9EPFuEx2tZ4zuqBaAJkJAY1cDYIzk5> last accessed on 7 November 2018.

² Working Group made up of 15 countries, established through Resolution CP/RES #1109 of 18 August 2018, in order to pursue peaceful and sustainable solutions to the situation in Nicaragua. See http://www.oas.org/en/media_center/press_release.asp?sCodigo=S-043/18 last accessed on 6 November 2018.

³ See http://www.oas.org/en/council/GT/NIC/documentation/var_documents/Default.asp?q=&e=&evento= last accessed on 6 November 2018.

Group of Independent Experts⁴ held a press conference to report on the results of its first four months of work and stressed the lack of cooperation from the authorities. Invoking “*the evident lack of guarantees for independent and objective action of the penal system,*” the Group of Independent Experts recommended the establishment, as a matter of urgency, of a Special Prosecutor to investigate the acts of violence that took place in the context of the protests.

On 9 October, Amnesty International published its second report on possible serious human rights violations committed between 30 May and 18 September 2018.⁵ Among its recommendations, it called for ceasing persecution of those protesting against the Government and asked the international community to continue calling on the Government to comply with Nicaragua’s human rights obligations.

The following highlights some of the main human rights issues of concern in October 2018.

Violations of the right to freedom of expression, including freedom of the press. Undue restrictions of freedom of expression continued, as well as restrictions to the right to information.



**JOURNALISTS
COVERING THE
PROTESTS IN
MANAGUA**

On 1 October, the Government expelled from the country the Austrian-American journalist Carl David Goette-Luciak. According to the latter⁶, the police explicitly referred to the content of his media reports, his “false opinions”, and his participation in “illegal protests” to justify his detention. Some journalists and other media workers alleged having been beaten and arrested by police officers during a demonstration quelled by the National Police on 14 October (see below). OHCHR learnt from open sources about complaints from Leonardo Ortiz Avendaño, a journalist and owner of Radio Atenas, and from Álvaro Montalbán, a journalist and director of Radio Mi Voz, both detained by the police in the city of León. The former was arrested on 26 October and released after 24 hours, apparently with no explanation. The latter was detained on 31 October and reported having been subjected to ill-treatment while in custody for more than 30 hours.

On 26 October, the Nicaraguan Institute for Telecommunications and Mail (TELCOR by its Spanish acronym) determined that State Channel 6 should

⁴ The Interdisciplinary Group of Independent Experts was established on 2 July 2018 following the agreement signed on 30 May 2018 between the Secretariat of the Organization of American States, the Inter-American Commission on Human Rights and the Government of Nicaragua to support the investigation of acts of violence committed between 18 April and 30 May 2018. See http://www.oas.org/en/iachr/media_center/PReleases/2018/145.asp last accessed on 6 November 2018.

⁵ See <https://www.amnesty.org/download/Documents/AMR4392132018ENGLISH.PDF> , last accessed on 6 November 2018.

⁶ See <https://www.youtube.com/watch?v=VkkFjv4C4aY> , last accessed on 6 November 2018.

broadcast over the same channel occupied for years by the independent TV broadcaster “100% Noticias” in the cable and digital TV platform. This means that the latter media outlet has to be relocated to another channel in order to continue broadcasting, which will affect its audience and have financial implications. The editorial line of “100% Noticias” has been critical of the Government throughout the crisis. During the first few days of the protests, between 19 and 25 April, TELCOR had suspended the channel.

OHCHR recalls that the United Nations Human Rights Committee has established that free communication of information and ideas regarding public affairs and political issues is a prerequisite for a democratic society, which entails the existence of a free press and free media able to debate

“While they are preventing all the possibilities to protest in the streets, which violates the constitutional rights to assembly and express ourselves freely, we will continue to use any available space to demonstrate as citizens of this country”

such issues and to inform public opinion without censorship or restraint.⁷ The Human Rights Committee has also established that the penalization of media outlets solely for being critical of the Government can never be considered to be a necessary restriction of freedom of expression.⁸

Harassment of dissenting voices. Human rights defenders, persons with social and political leadership roles, and members of the Catholic clergy committed to the promotion of dialogue between the Government and groups involved in the protests continued to be the targets of threats, harassment, smear campaigns, and, in some cases, arbitrary detention. On 14 October, the prominent human rights defender and feminist leader, Haydée Castillo, was arbitrarily detained as she was about to board a plane to travel abroad for a gathering of human rights defenders. After being interrogated several times by the authorities, she was released after more than 24 hours without being charged with any offence. On 26 October, migration authorities prevented three members of the Centre for Justice and

STATEMENT BY A WOMAN ACTIVIST,

International Law (CEJIL), an international non-governmental organization, from entering Nicaragua. They had been invited to an activity organized by the Inter-American Commission on Human Rights.

Repression of peaceful protest. In October, as far as OHCHR was aware, only one demonstration occurred, likely as a result of the police repression of protests. Moreover, the National Police issued two press statements, which were likely to inhibit peaceful protests. On 28 September, the first press statement warned 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 activities⁹. On 13 October, the National Police issued another press release,¹⁰ reiterating that it would not allow any unauthorized demonstration or mobilization in public places. It also announced that any provocative or violent actions would be punished. On 9 October, OHCHR sent a letter to the Ministry of Foreign Affairs

⁷ United Nations Human Rights Committee, General comment No. 34 on on freedom of opinion and expression (Article 19 of the International Covenant on Civil and Political Rights), CCPR/C/GC/34, 12 September 2011, para. 20.

⁸ Ibidem, para. 42.

⁹ OHCHR Nicaragua Monthly Update for September 2018, published on 26 October 2018, see http://www.oacnudh.org/wp-content/uploads/2018/10/Nicaragua-Monthly-Update-September-2018_Annex.pdf, last accessed on 10 November 2018.

¹⁰ See <https://www.policia.gob.ni/?p=23782> last accessed on 6 November 2018
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expressing concern about the first press release¹¹, highlighting that in conformity with international standards, organizers of peaceful protests should not be held responsible or liable for the unlawful conduct of others, and that assemblies should not be subject to an authorization requirement¹².

OHCHR is informed about one demonstration that occurred during the month, on 14 October. As approximately 100 people peacefully gathered in Managua, near the Camino de Oriente shopping mall, to stage a demonstration convened by the Blue and White National Unity (UNAB for its Spanish acronym)¹³, the police resorted to unjustified use of force by violently grabbing and throwing to the floor peaceful and unarmed protestors who did not pose any threat¹⁴. At least 38 persons according to the police, and over 50 according to other sources, were arrested and detained, including elderly persons and human rights defenders. Some were released that same day, including two elderly persons who required medical assistance. Most were taken to the El Chipote detention centre and released the following day, without any charges.

“The Government has been progressively narrowing the space for protest, until its closure: before, there were violent attacks, then arrests, and now police decrees that prohibit demonstrations without authorization”

Article 21 of the International Covenant on Civil and Political Rights recognizes the right to peaceful assembly¹⁵ without conditioning its exercise to prior permit or authorization. Article 53 of the Nicaraguan Constitution also recognizes this right, specifying that *no prior permit* is required for its exercise. Article 54 *“recognizes the right to hold rallies, demonstrations, and public mobilizations in accordance with the law.”*

STATEMENT BY A WOMAN
LEADER INTERVIEWED BY
PHONE BY OHCHR

On the other hand, Article 7 (1) (p) of Law 872 of the National Police¹⁶ establishes as one of the functions of the police to grant permits and authorizations for holding public events so that the daily activities of the population would not be affected – particularly in terms of street and road use, and other aspects of traffic regulations.

The Special Rapporteur on the rights to freedoms of peaceful assembly and association has stated that *“the exercise of fundamental freedoms should not be subject to previous authorization by the*

¹¹ See <https://www.policia.gob.ni/?p=23327> last accessed on 6 November 2018.

¹² OHCHR Nicaragua Monthly Update for September 2018, published on 26 October 2018 see http://www.oacnudh.org/wp-content/uploads/2018/10/Nicaragua-Monthly-Update-September-2018_Annex.pdf, last accessed on 10 November 2018.

¹³ On 4 October 2018, more than 40 civil society organizations that had participated in the protests launched a new opposition movement denominated Blue and White National Unity (UNAB by its Spanish acronym).

¹⁴ See <https://www.youtube.com/watch?v=2uo1CnEjG24> last accessed on 7 November 2018.

¹⁵ Article 21 of the International Covenant on Civil and Political Rights provides that: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.

¹⁶ Law 872 on National Police organization, functions, career and social security special regulation, 26 June 2014

authorities”¹⁷. He has further underlined that “[s]hould the organizers fail to notify the authorities [of a demonstration], the assembly should not be dissolved automatically (...) and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment”.

¹⁸ Furthermore, the right to freedom of peaceful assembly can be restricted only according to the principle of proportionality, which means that any restriction prescribed by law will only be valid if it is shown to be a pressing need in a democratic society, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others¹⁹.



“In this moment, a team is monitoring from Panama and during the meeting with the minister of Foreign Affairs, who attended the Human Rights Council at the beginning of September, we mentioned that, if Nicaragua provides adequate conditions for the team to return, we are willing to return.”

STATEMENT BY THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, MICHELLE BACHELET INTERVIEW ON UN NEWS 26 OCTOBER 2018.,

OHCHR considers that the press releases issued by the police on 28 September and 13 October as well as the police operation that hindered the demonstration on 14 October were incompatible with international standards on the right to freedom of peaceful assembly. They indeed contradicted the very essence of that right, and were manifestly disproportionate vis-à-vis a peaceful gathering of approximately 100 people.

Violations of the rights of women deprived of liberty. In October, OHCHR received allegations of human rights violations against women detained because of their participation in protests.

On 26 October, at least 15 women detained at “La Esperanza” prison, in the municipality of Tipitata, reported having been attacked at night by dozens of guardians (men and women), which allegedly resulted in bruises and contusions. Despite reiterated requests, neither the Inter-American Commission on Human Rights nor civil society organizations were allowed to access the women and assess their conditions.

According to open source information, two 19 year-old women suffered miscarriages while deprived of their freedom, one at the “El Chipote” detention centre and the other at “La Esperanza” prison. According to information made available to OHCHR, they had no access to adequate medical care. The United Nations Committee on Economic, Social, and Cultural Rights has emphasized that, given the additional vulnerability of prisoners due to incarceration, States are required to take particular steps to ensure their access to reproductive health care²⁰. OHCHR also received information regarding the serious health condition of a woman jailed at La Esperanza detention centre, Brenda Muñoz, who allegedly has had no access to adequate health care.

¹⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. A/HRC/20/27, 21 May 2012, para. 28.

¹⁸ Ibidem, para. 29.

¹⁹ Ibidem, para. 15.

²⁰ Committee on Economic, Social and Cultural Rights. General, General Comment No. 22 (2016) on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 2 May 2016, para. 31.



International human rights law and Nicaraguan legislation prohibit ill-treatment. OHCHR reminds Nicaragua that, according to Inter-American and international standards, States are obliged to guarantee the rights to life, integrity, and health of persons under their custody. Furthermore, in the framework of its obligation as State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nicaragua is obliged to undertake a prompt and impartial investigation into any allegations of such treatment.

While it has submitted several requests, OHCHR has yet to receive information as to whether the Office of the Prosecutor for the Defence of Human Rights has carried out verification visits to detention centres. In a report issued on 12 October, the Government stated that between January 2017 and June 2018, the Office of the Prosecutor for the Defence of Human Rights had received 17 complaints related to prison conditions (including six during the first semester of 2018), and had concluded that human rights violations had been committed in two cases.²¹

The fact that no independent body has been allowed to visit detention centres and verify allegations of human rights violations and health conditions of inmates raises concern about the situation.

Recommendations: The Government is yet to take steps to implement the recommendations presented in the report OHCHR issued on 29 August 2018²². OHCHR reiterates its call on the Nicaraguan authorities to immediately put an end to the repression against people voicing dissenting opinions, and to acknowledge and ensure prompt, independent, impartial and thorough investigations of the numerous and serious human rights violations that have taken place since 18 April 2018, including extrajudicial killings, enforced disappearances, torture and sexual violence. OHCHR reiterates its readiness to assist State authorities and civil society to ensure the rights to truth, justice, and reparation in favour of victims of human rights violations' victims and to prevent new violations.

²¹ See <https://www.el19digital.com/app/webroot/tinyMCE/source/2018/00-October/Del08a14Oct/VIERNES12OCTU/DDHH.pdf> last accessed on 6 November 2018.

²² Report by the Office of the United Nations High Commissioner for Human Rights, "Human Rights violations and abuses in the context of protests, 18 April-18 August 2018", See https://www.ohchr.org/Documents/Countries/NI/HumanRightsViolationsNicaraguaApr_Aug2018_EN.pdf , last accessed on 8 November 2018.