

MONITORING THE HUMAN RIGHTS SITUATION IN NICARAGUA MONTHLY BULLETIN N. 4 - DECEMBER 2018



Introduction December 2018 was marked by several actions by the authorities targeting non-governmental organizations and independent media and by the decision of the Government to suspend the presence and visits of Inter-American human rights mechanisms.

On 14 December, the OHCHR Regional Representative for Central America met the Minister of Foreign Affairs of Nicaragua in Managua to discuss possible cooperation and OHCHR access to the country to resume the on-site human rights monitoring and provide technical assistance to State institutions, civil society and other actors. The Minister offered to examine the proposal of cooperation and committed to keeping communication channels open with the Office. At the end of the reporting period, the Government was yet to respond to OHCHR's proposal to resume monitoring and technical cooperation missions in Nicaragua.

On 20 December, the United Nations High Commissioner for Human Rights held a meeting with the Executive Secretary of the Inter-American Commission on Human Rights, Paulo Abrao. Among other topics, they discussed on how both institutions could work in synergy and in a complementary manner and evaluated the situation in Nicaragua.

Context On 6 December 2018, the Inter-American Commission on Human Rights held a public hearing on Nicaragua in Washington, D.C.,¹ further to a request by 16 national and international non-governmental organizations. The Government of Nicaragua was not present at the hearing. The OHCHR Regional Representative for Central America attended the session and briefed the Commission, expressing deep concern about the repressive actions taken by the Government against human rights defenders, journalists and other dissenting voices.²

On 19 December, the Government of Nicaragua sent a communication to the Secretary General of the Organization of American States communicating the temporary suspension of the visits of the Inter-American Commission on Human Rights and of the presence in Nicaragua of its Special Follow-up Mechanism for Nicaragua (MESENI by its Spanish acronym).³ It also terminated the mission of the Inter-Disciplinary Group of

¹ See https://www.youtube.com/watch?v=VQjuBj_KWdY Last accessed on 5 January 2019.

² Ibidem.

³ In a letter dated 19 December 2018, the Minister of Foreign Affairs informed the Secretary-General of the Organization of American States about the decision of his Government to end the mission of the mechanisms of the Inter-American system. In that same letter, he blames OHCHR for spreading false information within the international community to activate sanctions against Nicaragua. He further accuses the Organization of American States and the United Nations of being part of a strategy aimed at stifling the Nicaraguan people. In that regard, the Minister of Foreign Affairs stated that the OHCHR report published on 29 August 2018 established the conditions for the inclusion of Nicaragua on the agenda of the Security Council on 5 September 2018.

Experts (GIEI by its Spanish acronym), preventing the latter from proceeding with the presentation of its report⁴ in Managua, scheduled for 20 December. These decisions ended any direct international monitoring of the human rights situation in Nicaragua.

On 21 December, GIEI presented publicly its report in Washington, DC.⁵ One of its main conclusions is that the State of Nicaragua committed crimes against humanity, including murder, arbitrary deprivation of liberty and persecution⁶.

On 27 December, the Vice President of the Inter-American Commission on Human Rights presented the GIEI report at a special session of the Permanent Council of the Organization of American States on the situation in Nicaragua.⁷ The representative of Nicaragua contested the session on the grounds it had not been agreed to with his Government. He criticized as biased the work of the Inter-American Commission, its two mechanisms for Nicaragua and the Working Group for Nicaragua established by the Permanent Council on 2 August 2018. The representative of Nicaragua also accused the Organization of American States and some of its Member States of interfering with Nicaragua's internal affairs. Thirteen States took the floor to denounce the human rights violations committed by the Government of Nicaragua, expressed support to the work of human rights bodies, referred to the possible application of the Inter-American Democratic Charter to Nicaragua, and called on the Government to resume a constructive dialogue with the Inter-American system.⁸

Since 11 December 2018, several States,⁹ international organizations¹⁰ and international non-governmental human rights organizations¹¹ have issued public statements condemning the decision of the Government of Nicaragua to cancel the legal registration of some non-governmental organizations and to suspend the presence of MESENI and GIEI in the country. The High Commissioner for Human Rights publicly raised her concern about these decisions on 21 December,

⁴ GIEI, which had the mandate of assisting and supporting the investigations into the violent events that took place in Nicaragua between 18 April and 30 May 2018, was supposed to present its final report on 20 December.

⁵ Interdisciplinary Group of Independent Experts. Nicaragua. Report on the acts of violence that occurred between 18 April and 30 May 2018. See http://www.oas.org/documents/spa/press/GIEI_INFORME_DIGITAL.pdf. Last accessed on 5 January 2019.

⁶ GIEI advised that, in conformity with international law and practice, crimes against humanity allow courts of other States to apply universal jurisdiction to prosecute the perpetrators, and recalled that no amnesty laws can be adopted to benefit the latter.

⁷ See <https://www.youtube.com/watch?v=9d2Zlzw7GhU>. Last accessed on 5 January 2019.

⁸ Ibidem. Such declarations were made by the representatives of Antigua and Barbuda, Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, Panama, Paraguay, Peru, Uruguay, the United States of America. The representatives of Bolivia and Venezuela seconded the arguments put forward by the representative of Nicaragua.

⁹ This included Australia, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Lithuania, Luxembourg, Norway, the Netherlands, Panama, Poland, Spain, Sweden, the United Kingdom. Uruguay and the United States of America.

¹⁰ The European Union and MERCOSUR.

¹¹ Human Rights Watch, Amnesty International and the Center for Justice and International Law (CEJIL) were among a number of international non-governmental organizations which condemned these decisions.

expressing the view this would make the resolution of the crisis much more difficult, risking blocking the dialogue at both national and international levels.¹²

On 28 December, the Secretary-General of the Organization of American States requested the Permanent Council to convene another special session to discuss the application of the Inter-American Democratic Charter to Nicaragua.

On 20 December, the President of the United States signed into law the Nicaragua Human Rights and Anticorruption Act of 2018 (commonly referred to as “NICA Act”) that imposes sanctions against Nicaragua.¹³



**POLICE DOES NOT ALLOW
CENIDH MEMBERS ENTERING THE
PREMISES OF THEIR
ORGANIZATION. 13/12/2019**

Violations of the right to freedom of association In December, violations of the right to freedom of association were suffered by a number of civil society institutions, including human rights organizations and think tanks working on public policies, democracy and development. This included the cancellation of their legal registration - based on reports by the Ministry of Interior solely - night raids without search warrants, and seizure of assets and documents, as a common modus operandi.

Between 11 and 13 December, the National Assembly thus cancelled by decrees the legal registration of eight non-governmental organizations: the Institute for Strategic Studies and Public Policy and *Hagamos Democracia*, on 11 December; the Nicaraguan Centre for Human Rights (CENIDH, by its Spanish acronym),¹⁴ on 12 December; the Segovias Leadership Institute, the Institute for the Development of Democracy, the Foundation for the Conservation and Development of the South-East of Nicaragua¹⁵ (*Fundación del Río*), the Communication Research Centre (CINCO, by its Spanish acronym);¹⁶ and the Popol Na Foundation for the Promotion and

¹² Comment by UN High Commissioner for Human Rights Michelle Bachelet on expulsion of international human rights organizations in Nicaragua. See <https://www.ohchr.org/EN/NewsEvents/Pages/media.aspx?IsMediaPage=true> Last accessed on 5 January 2019.

¹³ The NICA Act directs the President to instruct the United States Executive Director of each international financial institution, including the World Bank and the Inter-American Development Bank, to use the influence of the United States of America to oppose any loan or financial or technical assistance to the Government of Nicaragua – except those aimed at addressing basic human needs or promoting democracy. The Act also instructs the United States Executive Director of other international financial institutions, including the International Monetary Fund, to work with key donor countries to develop a coherent policy approach to future engagements with and lending to the Government of Nicaragua, in a manner that will advance human rights. Nicaragua Human Rights and Anticorruption Act of 2018, Sec.4. See <https://www.congress.gov/bill/115th-congress/house-bill/1918/text> . Last accessed on 5 January 2019.

¹⁴ Decree A. N. No. 8509, adopted on 12 December 2018. Ibidem.

¹⁵ Decree 8512 adopted on 13 December 2018. Ibidem.

¹⁶ Decree 8513 adopted on 13 December 2018. Ibidem.

Municipal Development¹⁷, on 13 December. Five of these organizations were among those that had solicited the hearing on Nicaragua by the Inter-American Commission on Human Rights, which took place on 6 December.

The reports of the Ministry of Interior and the statement of purposes supporting the legislative decrees invoked breaches by the concerned organizations of article 13 of General Law 147 on Non-Profit Organizations¹⁸, related, *inter alia*, to the non-presentation of financial statements and the non-renewal of the board of directors¹⁹. The statements of purposes that preceded the decrees stated that the organizations had breached article 24 of Law 147, that applies to organizations taking part in unlawful acts, violating public order, or carrying out activities that do not correspond to the purposes which they were created for. The statements of purpose also claimed that the organizations concerned backing “terrorist actions” during demonstrations. However, the decrees were issued without any objective evidence or judicial decision.

In the case of four organizations, the cancellation of their legal registration was followed by night raids by the police without search warrants, and involved seizure of equipment and material. On 13 December, police officers occupied the streets around the premises of CENIDH, preventing access to the organization. During the night of 13 to 14 December, the police raided the premises of CENIDH and seized computers and documents.²⁰ During that same night, police officers broke into the offices of the *Fundación Popol Na*, seized computers, documents and four vehicles, and harassed mothers of political prisoners sheltered by the organization. Also on 13 December at night, while the National Assembly was approving the decree to cancel the legal registration of the Segovias Leadership Institute, police officers and civilians raided, without search warrant, the facilities of the organization in the locality of Mozonte. During that operation, they seized the computers and beat, tied up and arrested a private security guard. According to information received by OHCHR, the *Fundación del Río*, in the municipality of San Carlos, was subjected to a similar treatment on 13 December at night.

On 14 December, the Ministry of Interior issued a press statement announcing the assets of the eight sanctioned organizations would be transferred to the State of Nicaragua to create a fund for assisting and providing reparation to the victims of terrorism.²¹ This decision does not comply with article 25 of Law 147 and the above-mentioned decrees, which foresees that the assets of an organization would be transferred to the State only if the organizations’ bylaws do not provide otherwise.²²

¹⁷ Decree 8514 adopted on 13 December 2018. Ibidem.

¹⁸ OHCHR considers that the content of Law 147 is too general. It does not guarantee due process to organizations charged with breaching its provisions and provides for disproportionate sanctions, including cancellation of the legal registration of an organization.

¹⁹ According to Law 147, the sanctions provided for a breach of article 13 are fines and temporary intervention.

²⁰ According to the Criminal Procedure Code, searches shall be performed between 6:00 a.m. and 6:00 p.m. and must be authorized through a written warrant issued by a judge.

²¹ *Ministerio de Gobernación Cancela Personería Jurídicas de ONGs que Incumplieron los Requerimientos Legales para su Funcionamiento*. Press release of 14 December 2018. See <https://www.migob.gob.ni/nota-de-prensa-10-2/> Last accessed on 5 January 2019.

²² It does not comply either with article 17.2 of the Universal Declaration of Human Rights that states that no one shall be arbitrarily deprived of his property.

On 15 December, the United Nations High Commissioner for Human Rights publicly urged the Government of Nicaragua to immediately cease the persecution of human rights defenders, civil society organizations, journalists and independent media that are critical of the Government. She regretted the increase in acts of harassment against journalists over the previous weeks, the raids on the media and the cancellation of registration licenses of non-governmental organizations.²³

Violations of the right to freedom of expression Violations of the right to freedom of expression increased in December 2018 with severe measures against journalists and media outlets that have taken critical stances towards the Government.

According to open sources, in the afternoon of 4 December, in the city of Leon, the radio station Darío was surrounded by approximately 40 police officers and four police patrols blocking the movement of pedestrians. At approximately 7h00 p.m., police officers violently broke into the radio station, arrested four workers, and damaged the place, seizing all transmission equipment. The staff of the radio station were allegedly threatened verbally and their I.D. cards and cell phones were confiscated by the police. This was the second major incident Radio Darío experienced in eight months.²⁴



SEARCH OF THE CONFIDENCIAL AND ESTA SEMANA MEDIA OUTLETS' PREMISES. 13/12/2019

On 13 December, the premises of the online media outlet *Confidencial* and of the TV programme *Esta Semana* - both directed by journalist Carlos Fernando Chamorro - were raided by the police. Under the pretext of searching the facilities of the civil society organization CINCO (located elsewhere), the police seized documents, cameras and other equipment, including for communication and editing. On 17 December, Mr. Chamorro filed a writ of *amparo* which, at the time of writing this bulletin, was still pending decision by a judge.

During the night of 21 December, the police raided the headquarters of *100% Noticias* and arrested its owner and director, journalist Miguel Mora, the news director, Lucia Pineda Ubau, and journalist Verónica Chávez (Miguel Mora's spouse). The three journalists were taken to El Chipote. While Verónica Chávez was released around four hours later, Miguel Mora was, according to his lawyers, beaten by police officers. He and Lucia Pineda Ubau have been charged by the Public Prosecutor's Office with incitement to hatred and terrorism-related crimes. They remain under detention pending their initial hearing scheduled for 25 January, 2019. The judge in charge of the case adopted

²³ Bachelet, urges Government of Nicaragua to stop harassment of civil society and media. Geneva, 15 December, 2018. See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24024&LangID=E> Last accessed on 5 January 2019.

²⁴ On 20 April 2018, the premises of the radio station were set on fire, allegedly by supporters of the Government. Fourteen people were at the premises at that time and could be saved.

precautionary measures, including the temporary closure of the media outlet and the freezing of its assets and bank accounts.²⁵

Violations of the right of peaceful assembly The requirement of prior authorization from the police to conduct any public march or protest remained in force, as per the statements issued by the National Police in September and October 2018.

Moreover, the Police has systematically denied authorization regarding any requests from organizations perceived as opposed to the Government. For instance, on 9 December, the Chief of the Public Security Direction of the National Police rejected the request of CENIDH to hold a march to commemorate Human Rights Day arguing that in the absence of a board of directors, staff members of CENIDH were not legally authorized to present a request. The National Police further stated that it would not authorize any organization investigated for their participation in the failed coup attempt to hold public gatherings.²⁶

Violations of due process of law affecting peasants' leaders

On 17 December, the peasant leaders Medardo Mairena and Pedro Mena were found guilty, among other crimes, of terrorism and the murder of four police officers and one civilian. According to the information received by OHCHR, the preliminary hearing of Mr. Mairena was conducted without a defence counsel and the ocular inspection was made through some videos, not where the alleged crimes took place. Furthermore, the images presented at the trial only showed Mr. Mairena participating in a march, not committing any criminal act. According to some sources, the witnesses presented by the Public Prosecutor's Office were allegedly instructed to make declarations against the defendant. OHCHR also received information according to which, a police officer who reportedly tortured Mr. Mairena, acting as an undercover agent, declared against him at the hearing.



**MEDARDO MAIRENA, LEADER OF
THE ANTI-CANAL PEASANT
MOVEMENT**

While the judge has not yet decided about the length of sentences to be served by Mr. Mairena and Mr. Mena, the Public Prosecutor's Office requested 73 years of prison for the former and 63 for the latter, although the Constitution provides for a maximum term of imprisonment of 30 years.

Conclusions and Recommendations

The measures adopted in December 2018 by the State of Nicaragua to further restrict the rights to freedom of association, freedom of expression and peaceful assembly are of utmost concern. They demonstrate zero tolerance for criticism, dissent and pluralism. These developments are of all the more preoccupying in the absence of any independent international human rights bodies working in Nicaragua.

²⁵ 100% Noticias and its staff have been the targets of continuous harassment by the authorities since April 2018, as described in the previous bulletins.

²⁶ Resolution 30-2018 of 9 December 2018. See <https://www.policia.gob.ni/wp-content/uploads/2018/12/Resoluci%C3%B3n-No.-30-2018-Denegaci%C3%B3n-CENIDH.pdf> Last accessed on 5 January 2019.

As noted by the High Commissioner, it is crucial for the Government to reverse this trend and resume the dialogue "within the country, with neighboring States and with the international community at large."²⁷

OHCHR calls on the Government to respond to its proposal to resume human rights monitoring in Nicaragua and to provide technical assistance; it also calls on the Government to resume cooperation with the Inter-American human rights system mechanisms.

²⁷ Comment by UN High Commissioner for Human Rights Michelle Bachelet on expulsion of international human rights organizations in Nicaragua. See <https://www.ohchr.org/EN/NewsEvents/Pages/media.aspx?IsMediaPage=true> Last accessed on 5 January 2019.