

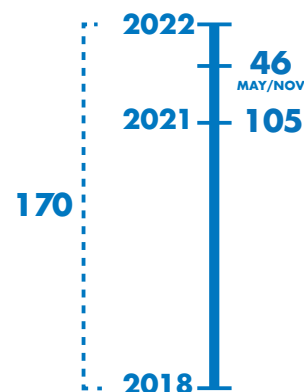
Flash Report N.1

Crisis in Nicaragua: **figures** **facts** **rights**

46 persons arbitrarily arrested for political reasons between May and November 2021 in the electoral context.¹

They were arrested for expressing their dissent with the Government, for expressing their political opinions, for claiming for other detainees, for demanding democracy and Rule of Law in Nicaragua.

- A detention is arbitrary, among other factors, when the deprivation of liberty results from the exercise of the right to political participation and the freedoms of thought, expression, assembly and association; when the violations of the right to a fair trial are of such gravity as to give the deprivation of liberty an arbitrary character; when the deprivation of liberty is discriminatory based on political opinion.² • An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notions of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.³



29 persons (at least) out of a total of 46 are being detained in conditions that could be considered inhuman, cruel and degrading at the Judicial Assistance Directorate (“Nuevo Chipote”).⁴

They have been held *incommunicado*, placed in prolonged solitary confinement, not provided with mattresses, blankets or adequate food. They have been prevented from being visited regularly by their relatives from receiving correspondence, reading material, including the Bible, and have been deprived of any contact with their underage children, even from receiving drawings made by them.

- These acts and deprivations fall within the prohibitions set out in the Mandela Rules,⁵ the Bangkok Rules⁶ and the human rights treaties to which Nicaragua is a State party, such as the International Covenant on Civil and Political Rights,⁷ the Convention against Torture,⁸ and the Convention on the Rights of the Child.⁹



34 persons prosecuted and convicted without due process. They were sentenced to disqualification from public office and imprisonment for 8 to 13 years.

The unannounced and non-public trials, which began on 1 February 2022,¹⁰ are generally being held inside the “Nuevo Chipote” police detention center. Lawyers have no access to the files or to their clients, except for minutes before the hearings, during which they are also limited from taking the floor.

The penalties imposed punish behaviors protected by international law in the context of the legitimate exercise of freedom of expression, and are disproportionate. One person was sentenced to 10 years in prison for having forwarded, among others, a tweet calling for “freedom for political prisoners in Nicaragua, who amount to more than 120”.¹¹ Another was sentenced to 8 years in prison for, among others, having said in an interview: “Nicaragua is living in a dictatorship, where it is evident that there is no respect for the rule of law and the systematic violation of human rights...”¹²



- The Human Rights Committee has reaffirmed that a fair trial includes the guarantee of a fair and public hearing. Publicity ensures the transparency of the proceedings and provides an important safeguard for the accused and society. Due process irregularities include, inter alia, denial of the right of the accused to communicate with his/her lawyers, inadequate time for the preparation of the case, denial of the right to cross-examine witnesses, for example, police officers responsible for the arrest and interrogation of the accused.¹³

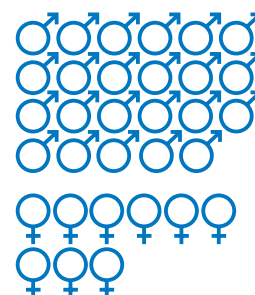
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32 persons sentenced for breaching the Law on the Defence of the Rights of the People to Independence, Sovereignty and Self-Determination for Peace (Law 1055).

Law 1055 was adopted in 2020 with a view to being applied in the 2021 electoral process. It defines as “traitors to the homeland” those who, for example, demand, exalt and applaud the imposition of sanctions against the Nicaraguan state and its citizens.

- The American Convention on Human Rights recognises everyone’s freedom to seek, receive and impart information and ideas of all kinds.
- In 2021, the High Commissioner stated that Law 1055 imposes restrictions incompatible with international human rights standards that may affect the exercise of the rights to political participation and freedom of expression, and must, therefore, be amended.¹⁴



7 persons (at least) sentenced for breaching the Special Law on Cybercrime (Law 1042)

This law sanctions those who spread “false” or “distorted information” through information technology. One man sentenced to 11 years’ imprisonment stated: “Being in prison is sad. To be in prison and not know why. I am a peasant farmer, if you ask me about the plough I will tell you, in the political question I am innocent, technology eats me up, I cannot even record a telephone number. I have only passed the fifth grade, I can barely read and write, and my only aims are work and agriculture.”¹⁵

- Law 1042 provides for the use of criminal law to punish acts that could be considered as part of the exercise of freedom of expression.¹⁶
- International law does not permit for the criminalisation of the expression of erroneous opinions.¹⁷ Freedom of expression also protects so-called “erroneous” information.¹⁸
- General prohibitions on dissemination of information based on vague and ambiguous ideas, including “fake news” or “non-objective information”, are incompatible with international standards for restrictions on freedom of expression.¹⁹
- In 2021, the High Commissioner for Human Rights recommended the State of Nicaragua to amend Law 1042 in line with international human rights norms and standards.²⁰



1 person deceased in 2022 while in the custody of the Nicaraguan State²¹.

Hugo Torres Jiménez, 73 years old, arrested on 13 June 2021, died on 12 February 2022. He was diagnosed with a serious illness while suffering from the harsh conditions of detention. He died after being hospitalised in mid-December in a police medical centre.

- Whenever an individual is deprived of liberty in normal health and subsequently displays health problems, the State must provide a satisfactory and credible explanation for this situation and disprove the allegations of its responsibility.²²
- Lack of pertinent emergency and specialised medical care, excessive deterioration of the health of the person deprived of liberty, excessive security conditions to which the person is subjected despite his or her obvious serious health condition and with no grounds or evidence to the contrary are, among others, factors that are taken into account in assessing whether a person has been subjected to inhuman or degrading treatment.²³



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NOTES

- ¹ This figure corresponds to the records documented by OHCHR. According to civil society, the 46 persons are among the 105 detainees in 2021 in the context of the political and human rights crisis in Nicaragua. In addition, according to civil society, around 170 persons remain in detention since the beginning of the crisis in 2018.
- ² Categories established by the Working Group on Arbitrary Detention. <https://www.ohchr.org/EN/Issues/Detention/Pages/AboutArbitraryDetention.aspx>
- ³ Human Rights Committee, General Comment N. 35, para. 12, at: <https://www.refworld.org/docid/553e0f984.html>
- ⁴ According to OHCHR records, nine persons are in house arrest.
- ⁵ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), at: <https://www.ohchr.org/en/professionalinterest/pages/treatmentofprisoners.aspx>
- ⁶ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/BangkokRules.aspx>
- ⁷ International Covenant on Civil and Political Rights, at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- ⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>
- ⁹ Convention on the Rights of the Child, at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- ¹⁰ Two trials were held on 13 and 27 January.
- ¹¹ Court ruling
- ¹² Court ruling
- ¹³ Human Rights Committee, General Comment N. 32, para. 23, 25, 28, at: <https://www.refworld.org/docid/478b2b2f2.html>
- ¹⁴ Ibidem, para. 29, 71(d).
- ¹⁵ <https://www.infobae.com/america/america-latina/2022/02/16/nicaragua-insolito-condenaron-por-ciberdelitos-a-11-anos-de-carcel-a-un-campesino-que- apenas-lee-y-nunca-uso-pc-ni-smartphone/>
- ¹⁶ OL NIC 3/2020, 13 November 2020. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on the situation of human rights defenders, Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25691>
- ¹⁷ Human Rights Committee, General Comment N. 34, para. 49 at: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>
- ¹⁸ Background and Interpretation of the OAS Declaration of Principles on Freedom of Expression, para 35, at: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=132&IID=2>
- ¹⁹ Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda (2017). United Nations Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe Representative on Freedom of the Media, Organization of American States Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information, at: <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=1056&IID=1>
- ²⁰ A/HRC/46/21, para. 71(d), at: <https://undocs.org/en/A/HRC/46/21>
- ²¹ In 2019, Eddy Montes died as a result of a gunshot wound fired by a guard at La Modelo prison.
- ²² I/A Court H.R., Case of Mendoza et al. v. Argentina, judgment of 14 May 2013, para. 203, at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_260_ing.pdf
- ²³ I/A Court H.R., Case of Vera Vera et al. v. Ecuador, judgment of 19 May 2011, para. 77, at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_226_ing.pdf