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## **THE UN HUMAN RIGHTS COUNCIL MUST ENSURE CONTINUED AND ENHANCED MONITORING AND REPORTING ON THE HUMAN RIGHTS CRISIS IN NICARAGUA**

Amnesty International welcomed<sup>1</sup> the adoption of United Nations (UN) Human Rights Council (HRC) resolution 40/2 on the promotion and protection of human rights in Nicaragua, and the subsequent report by the Office of the High Commissioner for Human Rights (OHCHR), presented to the HRC during its 42<sup>nd</sup> session.<sup>2</sup> Action by the HRC followed Nicaragua's refusal to cooperate with regional human rights mechanisms, and a damning report by the Interdisciplinary Group of Independent Experts (GIEI)<sup>3</sup> that concluded that the authorities had perpetrated actions amounting to crimes against humanity, including murder, arbitrary deprivation of liberty and persecution.<sup>4</sup>

Despite UN and regional efforts to address the crisis, the situation on the ground remains dire. The government continues to refuse to cooperate with the regional and international human rights mechanisms to address the crisis and serious human rights violations including arbitrary detentions, unfair trials, justice denial, obstacles to freedom of expression, association and peaceful assembly continue unabated. Not only have there been no meaningful investigations into allegations of serious violations and abuses by police or pro-government armed groups in the context of the protests – violations documented extensively by GIEI, the Inter-American Commission on Human Rights (IACHR) and OHCHR as well as local and international NGOs – but families of victims have reported intimidation and surveillance.

In this context, it is essential that the HRC responds robustly to the findings of the report presented to it by the High Commissioner in September 2019, and that it ensures ongoing and further enhanced monitoring and reporting on the crisis as requested in that report.

This briefing document provides an overview of the situation, and why robust, continued engagement by the HRC is critical to addressing the crisis.

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<sup>1</sup> Amnesty International, Nicaragua: UN Human Rights Council takes important step to address human rights crisis, 21 March 2019, available at: <https://www.amnesty.org/en/latest/news/2019/03/nicaragua-importante-medida-del-consejo-de-derechos-humanos/>, and Amnesty International, Human Rights Council must respond to gravity of OHCHR report on Nicaragua, 10 September 2019, available at: <https://www.amnesty.org/en/documents/amr43/0996/2019/en/>.

<sup>2</sup> UNHRC, Report of the United Nations High Commissioner for Human Rights: Situation of human rights in Nicaragua (A/HRC/42/18), 3 September 2019, available at: [http://www.oacnudh.org/wp-content/uploads/2019/09/A\\_HRC\\_42\\_18\\_EN.pdf](http://www.oacnudh.org/wp-content/uploads/2019/09/A_HRC_42_18_EN.pdf)

<sup>3</sup> A mechanism established by the IACHR in agreement with the Nicaraguan Government to investigate violent acts committed between April and May 2018.

<sup>4</sup> GIEI-Nicaragua, Report on the violent events that took place between April 18<sup>th</sup> and May 30<sup>th</sup> 2018, December 2018, available at: [https://gieinicaragua.org/giei-content/uploads/2019/05/GIEI\\_REPORT\\_ENGLISH\\_simplepage.pdf](https://gieinicaragua.org/giei-content/uploads/2019/05/GIEI_REPORT_ENGLISH_simplepage.pdf).

## TWO YEARS OF HUMAN RIGHTS CRISIS IN NICARAGUA

### 2018

In two reports published in 2018,<sup>5</sup> Amnesty International documented how the Nicaraguan authorities used pro-government armed groups, making deliberate and generalized use of lethal force to deal with protesters in an indiscriminate, excessive, and disproportionate way. This included machine guns, AK-style rifles and sniper rifles. Amnesty International documented the generalized use of pro-government armed groups by the National Police and the commission of arbitrary detentions as a means of stifling protest.

Amnesty International's research also found that state authorities have used torture as a means of punishment and to obtain information about how protests were organized and who led them. Likewise, numerous detentions in violation of international law were used as a tactic to break up protests. Between the start of the crisis and 25 July 2018, more than 1,900 people were detained and over 400 remained in detention without formal charges.<sup>6</sup>

Amnesty International believes that the crimes under international law and grave human rights violations committed in Nicaragua since the start of the protests were not only committed with the state's authorities' knowledge, but often under the direction and authority of the highest levels of government. In fact, the GIEI concluded in its 2019 report that the government of President Ortega has committed crimes against humanity.<sup>7</sup>

### 2019

Nicaragua's worst human rights crisis in decades is continuing. During 2019 there were continuing reports of torture and other cruel, inhuman or degrading treatment of prisoners detained in the context of the protests, arbitrary detentions and restrictions to the exercise of freedom of expression, peaceful assembly and association – just as we saw in 2018. The Nicaraguan authorities have continued to target journalists, human rights defenders and local NGOs, which has led to a further significant restriction of civic space.<sup>8</sup>

Between the beginning of the crisis and December 2019, **at least 328 people had been killed**, primarily by state security forces and pro-government armed groups. Some of these deaths appear to be extrajudicial executions – a crime under international law. In 2019, local organizations also reported **possibly targeted killings of campesinos** (peasant farmers) and noted an increase in the levels of violence in rural areas, which coincides with the presence of pro-government armed groups in these areas.<sup>9</sup> In May 2019, a policeman shot and killed a 57-year-old detainee, Eddy Montes, following a protest at La Modelo prison. At least 11 other

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<sup>5</sup> Amnesty International, Shoot to kill: Nicaragua's strategy to repress protest, 29 May 2018, , available at <https://www.amnesty.org/es/documents/amr43/8470/2018/en/>, and Amnesty International, Instilling terror: From lethal force to persecution in Nicaragua, 18 October 2018, available at <https://www.amnesty.org/en/documents/amr43/9213/2018/en/>

<sup>6</sup> CENIDH, Report No. 5. pp. 3 and 19.

<sup>7</sup> GIEI-Nicaragua, Report on the violent events that took place between April 18th and May 30th, 2018, December 2018.

<sup>8</sup> UNHRC, Situation of human rights in Nicaragua Report of the United Nations High Commissioner for Human Rights (A/HRC/42/18), 3 September 2019, para. 62.

<sup>9</sup> CENIDH, Human Rights in Nicaragua, Bimonthly report July-August 2019. p. 7 (Spanish only), and AMS-OSC, Report on human rights violations in Nicaragua focusing on rural areas, political prisoners and extrajudicial executions, between January and July 2019, August 2019 (Spanish only).

detainees and six police officers were injured during this protest. Although the authorities claimed that Eddy Montes had attempted to steal an officer's gun, the OHCHR reported receiving information indicating that he was shot from a distance of approximately four meters.<sup>10</sup>

As in 2018, Amnesty International continued to document the **arbitrary and unlawful detention** of protesters throughout 2019. Despite a commitment by the Government in March 2019 to release all those detained during the protests,<sup>11</sup> local groups estimate that at least 65 such detainees remain in prison.<sup>12</sup>

**Even for those released, concerns remain.** Local groups and experts recently stated before the IACHR that those released do not enjoy unconditional freedom or personal security as their cases have not been conclusively dismissed or permanently closed by judicial authorities. Rather, when their cases are archived, many former detainees retain the status of “accused”, which creates uncertainty with regards to their legal status and negatively impacts their daily life. Moreover, they stated that the amnesties issued by the courts (pursuant to the controversial Amnesty Law passed by the Nicaraguan National Assembly on 8 June 2019<sup>13</sup>) do not constitute a final dismissal of the case, and therefore do not render the charges against them *res judicata* (a matter already judged). Before the IACHR, the local groups and experts demanded that the authorities ensure that former detainees enjoy “definitive, secure freedom that is guaranteed”.<sup>14</sup> Furthermore, as noted in the OHCHR report, the “non-recurrence clause” in the Amnesty Law may pose a risk to the freedom of demonstrators who have been released. According to the law, people released “must refrain from perpetrating new acts that involve repeated behaviours that resulted in the crimes referred to herein”.<sup>15</sup>

Amnesty International and local NGOs have also identified the **intimidation and harassment of government opponents and former detainees** as a defining characteristic of the current state repression.<sup>16</sup> This intimidation includes continuous police surveillance of people's homes; short-term detention; verbal threats from police officers; people's homes being daubed with threats or abuse; and attacks or damage to people's property or sources of income.<sup>17</sup> The IACHR has expressed concern over the increased harassment of those who have been released

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<sup>10</sup> UNHRC, Report of the United Nations High Commissioner for Human Rights: Situation of human rights in Nicaragua (A/HRC/42/18), 3 September 2019, para. 32.

<sup>11</sup> For more information, see: <https://www.alianzacivicanicaragua.com/acuerdo-para-la-facilitacion-del-proceso-de-liberacion-de-personas-privadas-de-libertad-de-conformidad-al-ordenamiento-juridico-del-pais-y-las-respectivas-obligaciones-internacionales-de-nicaragua-en/>. (Spanish only).

<sup>12</sup> IACHR, The IACHR condemns the persecution of the victims of repression in Nicaragua and calls on the State to avoid revictimization and to promote truth, justice, reparation and non-repetition measures, 19 November 2019.

<sup>13</sup> On 8 June 2019, the Nicaraguan National Assembly passed the Amnesty Law (Law 996) “to benefit those who were involved in acts of violence and crimes linked to the failed coup d’etat by sections of the opposition” [“que beneficiará a aquellos que se vieron involucrados en actos de violencia y crímenes vinculados a los actos relacionados al fallido Golpe de Estado perpetrado por sectores de oposición”].

<sup>14</sup> Hearing before the IACHR, Amnesty Law in Nicaragua, 11 November 2019.

<sup>15</sup> National Assembly of the Republic of Nicaragua, Amnesty Law (Law 996), Article 3 – Non-recurrence, 8 June 2019.

<sup>16</sup> CENIDH, ‘Human Rights in Nicaragua, Bimonthly Report’, July/August 2019, p.16, (Spanish only).

<sup>17</sup> References to these acts of harassment and harassment can be found in OHCHR, ‘Monitoring the human rights situation in Nicaragua, Bulletins Nos. 10 and 12’; CENIDH, ‘Human Rights in Nicaragua, Bimonthly Report’, July-August 2019; and IACHR, ‘Bulletin of the Special Monitoring Mechanism for Nicaragua, September 2019.

from prison and their families,<sup>18</sup> and in 2019 has granted precautionary measures in favour of former detainees in at least seven cases.<sup>19</sup>

Additionally, **measures to prevent protests continue to limit freedom of expression and the right to peaceful assembly.** In October 2018, the National Police stated that any public protests must have the prior authorization from police authorities.<sup>20</sup> In that context, local organizations have reported that peaceful demonstrations have been consistently and systematically denied authorization.<sup>21</sup> Amnesty International have noted an excessive and intimidatory police presence deployed during protests and religious celebrations and that any spontaneous or improvised protests have been repressed.<sup>22</sup>

Members of **civil society organizations continue to be threatened, intimidated and harassed on a daily basis**, as a result of being perceived opponents to the government.<sup>23</sup> Since December 2018, the Nicaraguan authorities have intensified the repression of civil society organizations and the media, withdrawing the legal status of nine organizations, raiding their premises and seizing their assets.<sup>24</sup> To date, the legal registration has not been restored. In October 2019, the Inter-American Court of Human Rights granted provisional measures to members of two local NGOs and called on the state to adopt the necessary measures to effectively protect the life and physical integrity of the members of both organizations.<sup>25</sup>

According to the United Nations High Commissioner for Refugees (UNHCR), **more than 88,000 Nicaraguans have been forced to leave the country as a result of the crisis.**<sup>26</sup> For example, Francisca Ramírez, a *campesino* leader and renowned Nicaraguan human rights defender, fled to Costa Rica over a year ago after receiving threats. OHCHR has reported that over 100 journalists and media workers have had to leave the country.<sup>27</sup> Among them is Lucía Pineda Ubau, a journalist with the media outlet *100% Noticias*, who fled for Costa Rica immediately following her release from prison in June 2019, after almost six months in arbitrary detention. Local NGOs and media outlets reported that some of those who had returned from exile had been subjected to harassment by the authorities and pro-government groups.<sup>28</sup>

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<sup>18</sup> IACHR, IACHR speaks out against ongoing repression in Nicaragua and expresses its concern at increased harassment of human rights defenders and people who have been released from prison, 6 September 2019.

<sup>19</sup> Cases included: Resolution 52/2019, Resolution 61/2019, Resolution 62/19, Resolution 46/19, Resolution 45/19, Resolution 5/19 and Resolution 37/19.

<sup>20</sup> See, National Police Press Statement No. 116-2018, 13 October 2018 (Spanish only).

<sup>21</sup> OHCHR, 'Monitoring the human rights situation in Nicaragua, Monthly Bulletin No. 12', August-September 2019, p.7.

<sup>22</sup> Amnesty International, Nicaragua: Still governing by repression a year after crisis began, 25 April 2019.

<sup>23</sup> For example, recently the IACHR grant precautionary measures in favor of 17 women human rights defenders. See: IACHR, resolution60/2019.

<sup>24</sup> IACHR, "IACHR denounces aggravation of the repression and the closure of democratic spaces in Nicaragua" (December 19, 2018).

<sup>25</sup> Inter-American Court Human Rights, Matter of the Nicaraguan Centre for Human Rights and the Permanent Commission of Human Rights (CENIDH-CPDH) regarding Nicaragua, Provisional Measures, Order of the Inter-American Court of Human Rights, 14 October 2019.

<sup>26</sup> UNHCR, Displacement in Central America, available at: <https://www.acnur.org/desplazamiento-en-centroamerica.html>

<sup>27</sup> UNHRC, Situation of human rights in Nicaragua Report of the United Nations High Commissioner for Human Rights (A/HRC/42/18), 3 September 2019.

<sup>28</sup> OHCHR, 'Monitoring the human rights situation in Nicaragua, Monthly Bulletin No. 12', August-September 2019, pp. 8 and 9.

## **THE NICARAGUAN AUTHORITIES REMAIN UNACCOUNTABLE AND HAVE NOT GUARANTEED ACCESS TO JUSTICE, TRUTH AND REPARATION**

Victims of human rights violations and crimes under international law committed in the context of the crisis have no access to justice, truth and reparation at national level. Local NGOs reported to Amnesty International that despite the serious allegations of violations and abuses committed by police or pro-government armed groups, currently there is no one under serious and impartial investigation or under arrest.

As noted in the GIEI report, the criminal justice system has not only failed to pursue accountability for the violations but has “played an additional role in the scheme of human rights violations observed in Nicaragua, through the criminalization of civilians who participated in the protests.”<sup>29</sup>

Not only has there been no justice for victims, but relatives of those who have been killed in the context of the crisis reported to the IACHR that they have been targeted with “intimidatory surveillance seeking to prevent them from engaging in public and private actions to commemorate their loved ones and demand justice”.<sup>30</sup>

Human rights groups and local organizations have expressed serious concerns over the Amnesty Law, which endangers victims’ right to an effective remedy. Both the OHCHR<sup>31</sup> and IACHR have voiced their concerns over this law, which the IACHR has noted “may result in grave, widely documented human rights violations going unpunished.”<sup>32</sup>

Meanwhile, there is no longer an A-status National Human Rights Institution (NHRI) in the country. The *Procuraduría para la Defensa de los Derechos Humanos* was downgraded to B status in March 2019,<sup>33</sup> due to concerns that it was “not prepared to adequately speak out in a manner that promotes respect for all human rights, including in response to credible allegations of serious human rights violations having been committed by government authorities.”<sup>34</sup>

## **NICARAGUAN AUTHORITIES CONTINUE TO REFUSE TO COOPERATE WITH REGIONAL OR INTERNATIONAL MONITORING MECHANISMS TO ADDRESS THE HUMAN RIGHTS CRISIS IN THE FACE OF SIGNIFICANT CONCERNS**

The authorities have continued to refuse to cooperate with the regional and UN human rights mechanisms to address the crisis.

### ***Regional level***

In 2018, the IACHR formally established two mechanisms to monitor and

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<sup>29</sup> GIEI-Nicaragua, “Report on the violent events that took place between April 18th and May 30<sup>th</sup> 2018,” December 2018, p.5.

<sup>30</sup> IACHR, press release, 19 November 2019.

<sup>31</sup> UNHRC, Situation of human rights in Nicaragua Report of the United Nations High Commissioner for Human Rights (A/HRC/42/18), 3 September 2019.

<sup>32</sup> IACHR, press release, 12 June 2019.

<sup>33</sup> GANHRI, Chart of the status of national institutions, November 2019.

<sup>34</sup> GANHRI Subcommittee on Accreditation Report-May 2018 p. 28, available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20May%202018-Eng.pdf>.

investigate the human rights situation in agreement with the Nicaraguan government: The Special Monitoring Mechanism for Nicaragua (MESENI) and the GIEI. In December 2018, Nicaragua expelled both the MESENI and GIEI from Nicaragua, a day before GIEI's report was due to be released. Following their expulsion from the country GIEI released their report concluding that the authorities had perpetrated actions amounting to crimes against humanity, including murder, arbitrary deprivation of liberty and persecution.<sup>35</sup>

Following a resolution adopted by the General Assembly of the Organization of American States (OAS) in June 2019,<sup>36</sup> the Permanent Council appointed, in August 2019, a Commission to address the political and social crisis in Nicaragua.<sup>37</sup> In September 2019, the government denied the Commission on Nicaragua access to the country.<sup>38</sup> Despite the refusal of the government of Nicaragua to meet the Commission, the Commission was able to submit a report as mandated. After receiving numerous testimonies that reported ongoing harassment and intimidation suffered by those perceived as government opponents, arbitrary detentions, inhuman treatment and restrictions to the exercise of political rights and freedom of expression; the Commission concluded that "Nicaragua is experiencing a critical human rights situation that urgently demands the attention of the Inter-American community and the world at large".<sup>39</sup>

### ***International level***

In August 2018, the OHCHR team on the ground was expelled from Nicaragua the day after they published a report on the patterns of human rights violations and abuses committed in the country.<sup>40</sup> In 2019, the OHCHR continued to be barred from monitoring the human rights situation from the ground.<sup>41</sup> The OHCHR Regional Office for Central America has therefore had to continue their monitoring of the human rights situation remotely.

The OHCHR report to the HRC in September 2019 noted the authorities' continued denial of responsibility for the serious violations and abuses that have been documented, reporting that they "have instead blamed social and opposition leaders, human rights defenders and demonstrators for what they call the "coup-related violence" and the negative impact on the country's economy."<sup>42</sup> The government's continued refusal to engage in dialogue and cooperation to address the human rights crisis was clearly evidenced by stating that the report, conclusions and recommendations of the OHCHR were intended to continue a smear campaign against the legitimately constituted government and to facilitate political sanctions

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<sup>35</sup> GIEI-Nicaragua, "Report on the violent events that took place between April 18th and May 30th 2018," December 2018.

<sup>36</sup> OAS GA, The Situation in Nicaragua AG/RES.2943 (XLIX-O/19), June 28, 2019, pp. 169-173.

<sup>37</sup> OAS Permanent Council, Resolution on the Appointment of a Commission on Nicaragua (CP/RES. 1135/19), August 28, 2019, available at: [http://scm.oas.org/doc\\_public/english/hist\\_19/cp41406e03.doc](http://scm.oas.org/doc_public/english/hist_19/cp41406e03.doc)

<sup>38</sup> Amnesty International, 'Nicaragua: OAS member states must continue to work tenaciously against repression', 1 October 2019.

<sup>39</sup> OAS High Level Commission on Nicaragua, Report of the OAS High-Level Commission on Nicaragua, November 19, 2019.

<sup>40</sup> OHCHR, Press briefing note on Libya, Nicaragua, Malawi and Guatemala, 4 September 2018, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23497&LangID=E>.

<sup>41</sup> UNHRC, Situation of human rights in Nicaragua Report of the United Nations High Commissioner for Human Rights (A/HRC/42/18), 3 September 2019, para. 2.

<sup>42</sup> UNHRC, Situation of human rights in Nicaragua Report of the United Nations High Commissioner for Human Rights (A/HRC/42/18), 3 September 2019, para. 60.

and measures against the Nicaraguan people.<sup>43</sup>

Nicaragua has not allowed access to the Special Procedures since a visit by the Special Rapporteur on the right to food in 2009. Six Special Procedure mandates have requested access since 2016, including the Working Group on arbitrary detention and the Special Rapporteur on the rights to freedom of peaceful assembly, but have been unable to carry out visits.<sup>44</sup> Nicaragua has also failed to respond to the vast majority of communications sent by the Special Procedures.<sup>45</sup> Moreover, the government rejected 124 of the 259 recommendations made to them during their Universal Periodic Review (UPR) in 2019, including at least 100 recommendations related to the human rights crisis.<sup>46</sup>

### **THE HUMAN RIGHTS COUNCIL MUST ENSURE CONTINUED AND ENHANCED MONITORING AND REPORTING ON THE HUMAN RIGHTS CRISIS IN NICARAGUA**

In light of the lack of options at national and regional levels for an effective remedy, the continued refusal of the authorities to cooperate with regional and international human rights mechanisms, and the continued gravity of the situation on the ground, it is vital that the HRC keeps the human rights crisis in Nicaragua firmly on its agenda.

While Amnesty International considers a more robust investigative mechanism may be warranted, at minimum the HRC should renew the monitoring and reporting mandate established by resolution 40/2, and further “enhance its monitoring, documentation, analysis, and public reporting” capacity, as recommended in the OHCHR report, “notably as a contribution to ensuring accountability, and to support the rule of law and security sector reforms.”<sup>47</sup>

A resolution would also provide an important opportunity to follow up key recommendations to the government to resolve the human rights crisis, including by urging them to:

- Dismantle and disarm pro-government armed groups and ensure that the police forces act in accordance with the principles of legitimate, proportionate and necessary use of force in the context of protests and refrain from carrying out acts that may constitute torture or other ill-treatment;
- Put an end to the strategy of repression, including arbitrary detention of people involved in anti-government protests;
- Immediately release all people detained for peacefully exercising their basic rights and drop all charges against them;
- Guarantee the rights to freedom of expression and of assembly, and refrain from stigmatization and criminalization of protesters;
- Take immediate action to end the attacks on civil society organizations and the

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<sup>43</sup> UNHRC, Note verbale dated 2 September 2019 from the Permanent Mission of Nicaragua to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights (A/HRC/42/G/2), 17 September 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/275/03/PDF/G1927503.pdf?OpenElement>

<sup>44</sup> OHCHR, View Country visits of Special Procedures of the Human Rights Council since 1998, available at: <https://spinternet.ohchr.org/ViewCountryvisits.aspx?visitType=pending&lang=en>

<sup>45</sup> More information at: OHCHR, Communication report and search, <https://spcommreports.ohchr.org/TmSearch/Results?page=2>

<sup>46</sup> HRC, Report of the Working Group on the Universal Periodic Review- Nicaragua. (A/HRC/42/16/Add.1), Addendum\*, 13 September 2019.

<sup>47</sup> UNHRC, Report of the United Nations High Commissioner for Human Rights: Situation of human rights in Nicaragua (UN Doc. A/HRC/42/18), 3 September 2019, para. 67n.

- media;
- Facilitate, as a matter of priority, the visits requested by the UN Special Rapporteur on the freedom of assembly, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances;
  - Fully cooperate with international and regional human mechanisms, including by fully implementing the recommendations of, and allowing full and unfettered access to, OHCHR and IACHR.