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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Situation of human rights in Nicaragua

Report of the United Nations High Commissioner for Human Rights*

Summary

Submitted pursuant to Human Rights Council resolution 40/2, the present report provides an overview of the human rights situation in Nicaragua from 19 August 2018 to 31 July 2019. It contains 14 recommendations to help address outstanding concerns.

* The present report was submitted after the deadline to reflect the most recent developments.



I. Introduction

1. In its resolution 40/2, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare a comprehensive written report on the human rights situation in Nicaragua and to present it to its forty-second session.

2. The Office of the United Nations High Commissioner for Human Rights (OHCHR) intensified its monitoring of the human rights situation in Nicaragua in early April 2018, at the onset of the sociopolitical and human rights crisis. On 26 June, OHCHR deployed a team of human rights officers to Managua, at the invitation of the Government. On 29 August, OHCHR published a report entitled “Human rights violations and abuses in the context of protests in Nicaragua: 18 April–18 August 2018”.¹ On 30 August, the Minister of Foreign Affairs of Nicaragua rescinded its invitation to OHCHR. The OHCHR Regional Office for Central America has since continued remotely monitoring the human rights situation in Nicaragua. On 14 December, the OHCHR Regional Representative in Central America met the Minister of Foreign Affairs in Managua to discuss possible cooperation and access to the country, in follow-up to a meeting between the High Commissioner and the Minister of Foreign Affairs held in Geneva on 17 September.

3. The present report focuses on the human rights situation in Nicaragua from 19 August 2018 to 31 July 2019. It is based on information collected by OHCHR in Nicaragua, as well as in Panama and Costa Rica, including through interviews with Nicaraguan refugees and migrants and remote interviews. During the period under review, OHCHR conducted 187 interviews with victims and witnesses of human rights violations and other sources, including lawyers, journalists and health professionals (96 men and 91 women). It interviewed 96 people remotely and 91 in person. OHCHR also held 128 meetings with various stakeholders, including government officials. Furthermore, OHCHR analysed documents from governmental and non-governmental sources, including videos, photographs and open source reports. It sent 37 communications to the Ministry of Foreign Affairs, requesting detailed information about allegations of human rights violations. The Government replied to six of them, including to a questionnaire sent by OHCHR with a view to the preparation of the present report. OHCHR is grateful to the Government for responding to its requests, but notes that most of the information provided lacked sufficient precision to allow proper analysis.

4. In line with its methodology on human rights monitoring, OHCHR cross-checked the information it collected with different sources and evaluated its credibility by applying due diligence. The information it analysed and verified provides reasonable grounds to believe that the events took place as described and that patterns outlined in the report constitute human rights violations. OHCHR assessed the information in the light of international human rights law applicable to Nicaragua and relevant domestic legislation, also taking into account standard-setting instruments complementary to international norms.

II. Context

5. In early April 2018, protests against the Government erupted throughout Nicaragua, turning into massive demonstrations, roadblocks and barricades that were violently dismantled by the police and pro-Government elements between mid-June to mid-July 2018. More than 300 people died in the context of the protests and their repression, while 2,000 were injured.² The crisis prompted over 80,000 people to flee Nicaragua.³ OHCHR

¹ Available at

www.ohchr.org/Documents/Countries/NI/HumanRightsViolationsNicaraguaApr_Aug2018_EN.pdf.

² Ibid.

³ According to the Regional Office of the United Nations High Commissioner for Refugees in Panama, as of July 2019, 52,330 asylum applications of Nicaraguans had been registered in Europe, Central

documented a large number of human rights violations committed between 18 April and 18 August 2018, including gross violations, such as disproportionate use of force by the police that resulted in some extrajudicial killings, and prevalent ill-treatment and instances of torture and sexual violence in detention centres.⁴ OHCHR was able to verify that pro-Government armed elements were involved in attacks against protesters and carried out detentions with the acquiescence of and, often, in a joint and coordinated manner with, State authorities, mainly law enforcement agents. OHCHR also reported abuses committed by individuals involved in the protests, including the killing and injuring of police officers and members of the Sandinista political party, as well as the destruction of public infrastructure.⁵

6. Despite the resumption of negotiations between the Government and the Civic Alliance for Justice and Democracy in February 2019⁶ and the release, by 11 June 2019, of 492 people (452 men and 40 women)⁷ who had been detained in the context of the 2018 protests, the repression of dissent by the Government and pro-Government elements persisted. The authorities consider that the repression of nationwide protests was a legitimate response to a failed coup d'état, denying any responsibility for human rights violations.

7. During the period under review, the National Assembly – which is dominated by the ruling party – adopted legislation proposed by the Government that is not in line with international human rights norms and standards (see sections IV and VIII below).⁸ The national human rights institution, namely, the Office of the Human Rights Advocate (Procuraduría para la Defensa de los Derechos Humanos), which also serves as the national mechanism for the prevention of torture, did not demonstrate any independence during this period. During the fortieth session of the Human Rights Council, the State delegation was represented by the Deputy Commissioner of the Office of the Human Rights Advocate, who repeated the Government's justification of its actions in response to the failed coup d'état and indicated that his institution had not found any evidence of torture of protesters deprived of liberty. In March 2019 the status of the Office was downgraded from "A" to "B" because its independence could not be established.⁹

8. On 19 December 2018, the Government suspended the visits of the Inter-American Commission on Human Rights and the presence of the Special Monitoring Mechanism for Nicaragua. It also considered that the mission of the Interdisciplinary Group of Experts had been accomplished, just before the presentation of the latter's public report.¹⁰ These decisions ended any on-site international human rights monitoring in Nicaragua. In its

America and North America. According to the General Directorate of Migration and Foreign Nationals of Costa Rica, 30,258 additional people were waiting to file a request for asylum in Costa Rica.

⁴ OHCHR, "Human rights violations".

⁵ According to official data, 22 police officers and 48 alleged members of the Sandinista party were killed.

⁶ A national dialogue between the Civic Alliance and the Government began on 16 May 2018 with the mediation of the National Episcopal Conference. Negotiations stopped in June 2018, following a fire, caused by arson, at a residence in the Carlo Marx neighbourhood in which six members of a family perished.

⁷ Between 27 February and 11 June 2019, the Ministry of the Interior issued eight press releases stating the number of people released. See www.migob.gob.ni/noticias/.

⁸ This included the decrees that cancelled the legal registration of nine civil society organizations; the Law for a Culture of Dialogue, Reconciliation, Security, Work and Peace; the Law on Comprehensive Care for Victims; and the Amnesty Law.

⁹ Global Alliance of National Human Rights Institutions, "Report and recommendations of the session of the Sub-Committee on Accreditation", March 2019. Available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20March%202019%20-%20EN%20.pdf>.

¹⁰ Established through an agreement between the General Secretariat of the Organization of American States, the Inter-American Commission on Human Rights and the Government of Nicaragua, the Interdisciplinary Group of Experts started its work in Nicaragua on 2 July 2018.

report the Group stated that the authorities had perpetrated actions amounting to crimes against humanity, including murder, arbitrary deprivation of liberty and persecution.¹¹

9. On 27 February 2019, negotiations between the Government and the Civic Alliance resumed, with representatives of the Organization of American States and the Holy See as international observers. Despite discrepancies between the parties, an agreement was reached on 27 March on the release of persons deprived of their liberty in the context of the 2018 protests, and another on 29 March on strengthening citizens' rights and safeguards. On 20 May, the Civic Alliance left the negotiating table, considering that implementation of the two agreements was limited.¹² By 11 June, according to official figures, the Government had released 492 people (452 men and 40 women) who had been detained in the context of the 2018 protests. At the time of writing, negotiations remained stalled despite attempts to resume them.

III. Right of peaceful assembly

10. Restrictions on the right of peaceful assembly continued through an array of measures preventing protests. As of September 2018, the National Police began banning public demonstrations by any group critical of the Government, based on a restrictive application of Law 872 on the National Police,¹³ which empowers the police to issue authorizations to hold public events that could affect the free circulation of people and vehicles or other daily activities. When rejecting requests, the National Police repeatedly stated that applicants lacked formal requirements (e.g., legal personality) or had been involved in "serious breaches of public order".¹⁴ However, authorities are to presume peaceful intentions on behalf of those requesting authorization, especially if they have not been tried for any crime.

11. At times, the National Police resorted to excessive force against those attempting to demonstrate, conducted arbitrary arrests of persons protesting peacefully (in some cases for waving Nicaraguan flags in the streets or for singing the national anthem) and used threats to discourage protests.

12. OHCHR considers such acts as incompatible with applicable international norms and standards, as they were disproportionate for policing peaceful gatherings of 100 people or fewer. The right of peaceful assembly should not be subjected to prior authorization and can only be restricted, in accordance with the principle of proportionality, to maintain and protect national security, public safety, public order, public health or morals, or the rights and freedoms of others.

13. In its intervention during the universal periodic review of Nicaragua in May 2019, the Government asserted that the right of peaceful assembly was "fully ensured" and that, since September 2018, the National Police had issued four press releases and five resolutions rejecting requests by civil society organizations critical of the Government to organize protests.

14. During the reporting period, OHCHR continued to document cases of pro-Government armed elements using firearms against protesters. In one incident in Managua, on 23 September 2018, a 16-year-old boy was killed and at least four men and a woman were injured. On 30 March 2019, also in Managua, an alleged member of the ruling party attacked demonstrators with a firearm around the Metrocentro shopping centre, injuring

¹¹ *Nicaragua: Report on the Violent Events that Took Place between April 18th and May 30th 2018*, available at https://gieinicaragua.org/giei-content/uploads/2019/05/GIEI_REPORT_ENGLISH_simplepage.pdf.

¹² Civic Alliance, press release, 20 May 2019, available at www.alianzacivicanicaragua.com/nos-retiramos-de-la-mesa-hasta-la-liberacion-de-presos-politicos-y-llamamos-a-paro-nacional/.

¹³ Law 872 on the organization, functions, career and special social security regime of the National Police, 26 June 2014, art. 7 (1) (p).

¹⁴ Communication from the Ministry of Foreign Affairs in response to the OHCHR questionnaire, 5 July 2019.

three men. On 30 March 2019, the National Police issued a press release indicating that, when the individual was assaulted, shots were fired which wounded three people.¹⁵ However, this statement differed from the videos of the incident, which showed an individual shooting at demonstrators before being neutralized; other images showed people beating the aggressor. During demonstrations that were generally carried out in a peaceful manner, a small number of protesters threw stones or fired homemade mortars at the police. OHCHR registered injuries by protesters to two police officers¹⁶ and a man in September 2018 and did not receive any reports about the use of firearms by protesters.

15. Some of the attacks perpetrated by pro-Government armed elements or mobs were conducted with the acquiescence of police officers. For example, on 15 June 2019, pro-Government elements intimidated, beat and threw stones at persons attending a Catholic religious service to commemorate the first anniversary of the death of a 15-year-old boy killed in the context of 2018 demonstrations. Deployed outside the cathedral, the police did not prevent the attack.

16. A massive deployment of police officers was often observed in urban areas, including in and around shopping malls, courthouses and Catholic churches. Such unusual, massive deployment had a deterrent effect on those wishing to protest. Crackdowns on demonstrations by the police, together with attacks by pro-Government armed elements, had a chilling effect, prompting the cancellation of many protests or to the decision to break them up into several smaller gatherings.¹⁷

IV. Rights to the freedoms of expression and association

Freedom of expression

17. Media workers, journalists, human rights defenders, peasants, lesbian, gay, bisexual, transgender and intersex persons, students and members of the Catholic clergy continued to be subjected to attacks, criminalization, seizure of their assets, intimidation, threats, harassment and smear campaigns by authorities and/or pro-Government elements. Relevant authorities did not take measures to prevent, investigate, prosecute and sanction such acts. In some cases, State authorities publicly blamed human rights defenders for having been instrumental in the “coup attempt”.¹⁸ This situation had a deterrent effect on the exercise of their rights to freedom of expression and association.

18. Media workers and journalists who have expressed criticism of the Government, and the media outlets for which they work,¹⁹ were subjected to bans on publications or broadcasting, raids, cyberattacks and confiscation of printed materials, films or audio recordings, among others. On 21 December 2018, after the police searched the headquarters of the television station *100% Noticias*, Miguel Mora, owner and director of the outlet – who had been previously threatened with death by police officers – and Lucía Pineda, the news director, were arrested and charged with incitement to hatred and terrorism-related crimes, without sufficient evidence. Both were released on 11 June 2019, after being detained for over five months under difficult conditions, including solitary confinement, and without due process of law. On 15 May 2019, during the universal periodic review of

¹⁵ National Police, Public Relations Division, press release 10-2019, 30 March 2019.

¹⁶ National Police, Public Relations Division, press release 115-2018, 28 September 2018.

¹⁷ A civil society organization reported a drastic decrease in the number of demonstrations, from 56 in September 2018 alone to 43 during the period from October 2018 to February 2019. Fundación Nicaragüense para el Desarrollo Económico y Social (FUNIDES), *Nicaragua en Crisis Política y Socioeconómica : Informe de Coyuntura*, May 2019, p. 12.

¹⁸ Oral intervention of the State of Nicaragua during the thirty-third universal periodic review session, available at <http://webtv.un.org/meetings-events/security-council/watchbr%20/watch/nicaragua-upr-adoption-33rd-session-of-universal-periodic-review-/6038140075001/?term=&sort=popular>.

¹⁹ Including, inter alia, *100% Noticias*, *Confidencial*, *La Prensa*, *Esta Noche*, *El Nuevo Diario*, *Radio Mi Voz*, *Radio Darío* and *Radio La Costeñísima*.

Nicaragua, the Government stated that no journalist had been imprisoned for exercising the right to freedom of expression.

19. According to non-governmental sources, as of 8 July 2019, about 100 journalists (70 men and 30 women) had fled Nicaragua. The World Press Freedom Index reported that Nicaragua had lost 24 rankings in 2019 compared with 2018.²⁰ Between 19 August 2018 and 30 June 2019, a civil society organization registered 237 acts of repression by the police and pro-Government elements against media workers and journalists (173 targeting men and 64 directed at women), including threats, insults, physical attacks, detentions, searches of premises, seizure of material and closure of media outlets.²¹ In June 2019, Canada and the United States of America imposed sanctions against the Director General of the Institute for Telecommunications and Mail for silencing news media.²²

Freedom of association and targeted repression of dissenting voices

20. The Government has taken de facto and de jure measures affecting the right to freedom of association. In November and December 2018, the National Assembly cancelled the legal registration of nine prominent civil society organizations,²³ stating that they had conducted activities contrary to the purposes for which they were created and had supported “terrorist actions” during the 2018 protests. The closure of these organizations was preceded or followed by night searches by police without judicial warrants, seizure of assets, harassment and beating of staff. The director of one of these organizations was arrested and deported to Costa Rica.²⁴ OHCHR was informed that the authorities had authorized pro-Government elements to occupy the facilities of one organization subjected to seizure of assets. The Government informed OHCHR that six of the nine organizations had challenged the decision of the National Assembly before the Supreme Court of Justice. The proceedings were still under way at the time of writing.

21. Civil society groups created after the sociopolitical crisis began were also targeted by attacks and intimidation,²⁵ including the Blue and White National Unity,²⁶ the Civic Alliance, the Committee for the Release of Political Prisoners, the 19 April Student Movement and Union of Political Prisoners of Nicaragua. Women human rights defenders were also targeted. An organization indicated to OHCHR that, from 19 August 2018 to June 2019, 299 women human rights defenders suffered attacks such as intimidation, psychological harassment, smear campaigns, unlawful detention and torture and ill-treatment, including sexual violence. According to the organization, 67 women human rights defenders had been forced into exile by July 2019. By April 2019, at least 15 men and eight women, including members of prominent organizations (including the Nicaraguan Centre for Human Rights and the Permanent Commission for Human Rights) who have been regularly sharing information with OHCHR, suffered harassment, attacks on their life and personal integrity and constant surveillance of their homes. These acts could be considered as reprisals. In addition, the Nicaraguan Medical Unit estimated that more than 200 doctors and health workers, out of a total of 405 cases registered since the outset of the

²⁰ See <https://rsf.org/en/nicaragua>.

²¹ In addition, 113 acts of repression against media outlets were reported. Violeta B. Chamorro Foundation, “Un año de crisis socio-política: tiempo de hostilidad y represión contra la prensa independiente”, April 2019.

²² See www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/nicaragua.aspx?lang=eng and <https://home.treasury.gov/news/press-releases/sm715>.

²³ Law 147 on non-profit organizations does not offer due process guarantees to organizations sanctioned with the cancellation of their legal status.

²⁴ The person has dual Nicaraguan and Costa Rican nationality.

²⁵ For instance, the police raided a property that belonged to the son of one of the negotiators of the Civic Alliance and publicly announced that they had seized firearms, allegedly used during 2018 protests. Civic Alliance, press release, 28 May 2019, available at www.alianzacivicanicaragua.com/asedio-e-intimidacion-no-nos-detendran/.

²⁶ A united front opposed to the Government, representing different civil society sectors, established in October 2018.

crisis, were arbitrarily dismissed between 19 August 2018 and 31 July 2019 in reprisal for having assisted people injured in the context of the protests. Similarly, more than 100 students were expelled from the National Autonomous University of Nicaragua after accusations of having allegedly damaged university properties.

V. Right to liberty

22. During the reporting period, OHCHR continued to receive reports of arrests and detentions, many of them arbitrary and unlawful. The total number of persons arrested since April 2018 is unclear. The Government indicated that, since April 2018, 923 people (776 men and 147 women) had been arrested, including 446 who were held in custody for public order disturbances and released within 48 hours.²⁷ Non-governmental sources reported more than 2,200 arrests between August 2018 and July 2019, indicating that the majority of people were released within 48 hours.

23. Since September 2018, OHCHR has been receiving information indicating that the police had arrested people who participated in the 2018 protests by breaking into their homes at night and conducting searches without warrants. The Government informed OHCHR that, in these cases, judges had validated police actions a posteriori.²⁸ In some cases, the police used excessive force during the arrest. In one instance, an individual was severely beaten on his right leg and spent over 50 days in the hospital before being transferred to a detention centre. Hundreds of people were arrested while attempting to protest peacefully (see sect. III above) although, according to the Government, the National Police have not arrested anyone for having participated in demonstrations.²⁹

24. In many cases documented by OHCHR, the police did not communicate the reasons for the arrest or the place where the persons deprived of their liberty would be detained. Families and lawyers therefore had to visit police stations, detention centres and courthouses seeking their relatives' whereabouts but failing to obtain clear, or at times any, information. According to international norms and standards, denying information on the whereabouts of a detainee constitutes an enforced disappearance.

25. Many detainees were brought before a judge after the 48-hour limit established by law. While not denying that this was the case, the Government pointed out that it did not prevent judicial authorities from pursuing proceedings.³⁰ In some cases documented by OHCHR, detainees were held in custody for weeks or months without being brought before a judge, charged, and/or being granted access to a lawyer. In many cases, police authorities issued detention warrants directly, as allowed by Nicaraguan law.

26. Habeas corpus remedies were often ineffective, especially because the officers entrusted with conducting the relevant proceedings refused or were afraid to perform their duties when the cases involved anti-Government protesters. In several cases, when these officers ordered prison authorities to present the detainees, the orders were ignored.

27. Patterns of arbitrary arrest have changed over time. Since March 2019, most of the individuals arrested to prevent them from staging protests remained in custody in police stations and other detention centres, usually for less than 48 hours, and were released without charges or being brought before a judge. In May 2019, the police started to hold people outside of police stations, including in patrol vehicles, for a few hours. Local human rights organizations indicated that individuals most recently arrested and who participated in the 2018 protests were charged with common crimes. The Government has claimed that such arrests were not linked to the protests and that the detainees were invoking political motives to be exonerated.

²⁷ Communication from the Ministry of Foreign Affairs in response to the OHCHR questionnaire, pp. 22–23.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

28. According to press releases issued by the Ministry of the Interior, between 27 February and 11 June 2019 the Government released 492 people (452 men and 40 women) who had been detained in the context of the 2018 protests.³¹ Of these, 106 people (100 men and 6 women) were released under the Amnesty Law, adopted on 8 June 2019, and 386 (352 men and 34 women) were initially placed under house arrest and then granted amnesty following the entry into force of the Law.

29. The International Committee of the Red Cross (ICRC) helped to reconcile different lists of persons detained in the context of the protests provided by the Government and civil society organizations. It also participated, as an observer, in the release of 256 people.³² On 18 June 2019, the Government announced that it had released all the people deprived of their liberty in the context of the protests. Civil society organizations refuted this claim and indicated that, as of 28 July 2019, 118 men and 2 women remained deprived of their liberty, including two individuals who had been released previously under the Amnesty Law.³³

VI. Rights to freedom from torture and to humane conditions of detention

30. OHCHR has reasonable grounds to believe that, after August 2018, a considerable number of women and men deprived of their liberty in the context of the protests and then facing criminal charges were subjected to torture and/or ill-treatment, both physical and psychological, including beatings, unlawful body searches, death threats and threats against their family. OHCHR also documented cases of sexual and gender-based violence against women, including inappropriate touching and rape threats.

31. Police and prison staff allegedly perpetrated torture and ill-treatment while arresting individuals perceived as political opponents, or during their detention at police stations and at the detention centre in Managua known as El Chipote. OHCHR documented the cases of several persons detained in El Chipote who were taken out of their cells at night, including several times a night, to be interrogated and, in numerous cases, beaten and threatened. In November 2018, seven special procedure mandate holders issued a press release expressing concern about allegations of torture and ill-treatment of detainees.³⁴

32. Since December 2018, OHCHR has documented seven occasions on which groups of women and men arrested in the context of the protests and detained at La Modelo prison and in the prison for women known as La Esperanza, both located in Tipitapa, were beaten by prison staff and police officers and subjected to prohibited forms of punishment. This included collective punishments in the form of beatings with batons, use of pepper spray on men's genitals and arbitrary confiscation of women's personal belongings. On 16 May 2019, amid protests inside La Modelo, a police officer shot an inmate, causing his death, while at least 11 other male detainees and 6 police officers were injured. According to the Government, the detainee was trying to take away a correctional officer's weapon when he was shot; however, OHCHR collected corroborating accounts indicating that the victim was shot from a distance of approximately 4 metres.

33. Although Law 473 on the penitentiary regime and execution of the sentence does not explicitly authorize and regulate intrusive searches, the majority of the men and women deprived of liberty in the context of the protests interviewed by OHCHR indicated they were subjected to unjustified and degrading visual inspection of their body cavities during routine strip searches. They would undergo such searches almost every time they left their cells, in front of same-sex detainees and staff who sometimes verbally mocked them.

³¹ During that period, the Ministry of the Interior issued eight press releases, available at www.migob.gob.ni/noticias/.

³² ICRC, press statements, 21 and 30 May and 10 and 11 June 2019, available at www.icrc.org/es/where-we-work/americas/nicaragua.

³³ Civic Alliance, press release, 29 July 2019, available at www.alianzacivicanicaragua.com/informe-y-listas-de-personas-presas-politicas-y-desaparecidas-al-28-de-julio-de-2019/.

³⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23919&LangID=E.

34. As acknowledged by the Government, transgender women deprived of liberty were detained in the same cells as male detainees, as penitentiary legislation does not recognize transgender people in accordance with their gender identity.³⁵ They were therefore subjected to visual inspection of their body cavities during routine strip searches in front of male detainees.

35. The Government states that there have been no investigations of allegations of torture and ill-treatment committed by correctional officers because the national penitentiary system “has not received [any] complaint of ill-treatment”.³⁶ Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, however, obliges competent authorities to undertake prompt and impartial investigations wherever there is “reasonable ground to believe that an act of torture has been committed”, even in the absence of a complaint. The Government clarified that the Office of the Attorney-General had investigated four complaints of alleged ill-treatment committed by police officers of persons detained in the context of the protests, including one concerning a 14-year-old boy who allegedly had a forearm forcibly tattooed. This case was dismissed as not credible, while there has been no progress in the others, reportedly because “the complainants have not responded to the prosecutor’s summoning”.³⁷ No other investigations against police officers were initiated in the absence of a complaint.

36. Some men and women detained in the context of the protests were subjected to solitary confinement, in some cases for months, in maximum-security cells of La Modelo and La Esperanza. Any imposition of solitary confinement beyond 15 consecutive days is prohibited under the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)³⁸ and may amount to torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances. According to corroborated sources, the conditions in solitary confinement were precarious, with cells infested with bugs, no access to sunlight or natural light and poor ventilation despite high temperatures during the day.

37. Many other persons detained in the context of the protests in other parts of La Modelo and La Esperanza faced similar substandard conditions of detention, with no access to sunlight except for 30 minutes a week and insufficient access to water, which was of poor quality. OHCHR also documented cases of lack of, or inadequate, access to medical attention and medication for some persons detained in the context of the protests. In addition, family visits, in principle allowed every 21 days, were not regular for these detainees and were sometimes cancelled or rescheduled at short notice.

38. Although former detainees interviewed by OHCHR mentioned visits by staff of the Office of the Human Rights Advocate to places of detention, detainees did not share any complaints with them because they perceived the institution as partial and not independent. In its capacity as the national mechanism for the prevention of torture, the Office stated that during the 12 visits it conducted in 2018 to La Modelo and La Esperanza prisons, it did not find any evidence of acts of torture or ill-treatment. It indicated that the right to food and contact with the external world were ensured at all times, and that access to drinking water was regularly ensured through pipes and taps.³⁹

VII. Right to a fair trial

39. A former justice of the Supreme Court, who resigned in January 2019, stated that charges against people in relation to the 2018 protests were politically motivated and that judges issued rulings following the Government’s narrative of the failed coup for fear of

³⁵ Communication from the Ministry of Foreign Affairs in response to the OHCHR questionnaire, pp. 36–37.

³⁶ *Ibid.*, pp. 4–5.

³⁷ *Ibid.*

³⁸ Rules 43 and 44.

³⁹ Hard copy of reports of the Office of the Human Rights Advocate shared with OHCHR in March 2019. These reports are not available online.

dismissal.⁴⁰ According to information collected by OHCHR, prosecutors and public defenders were not perceived as independent and impartial when acting in cases related to the sociopolitical crisis.⁴¹

40. OHCHR documented violations of the right to a fair trial in cases of persons prosecuted for their involvement in demonstrations, sometimes based on a distorted application of the criminal legislation, which is not in line with international human rights norms and standards. For example, judges repeatedly issued arrest, search or seizure warrants *post factum*, which, although allowed by the Criminal Procedural Code to render police actions lawful, contravenes international norms and standards. Judges have also imposed mandatory pretrial detention for particular crimes⁴² almost systematically and without proper reasoning, which is contrary to international norms and standards, according to which the imposition of such measures has to be exceptional and to take into consideration the defendant's individual circumstances.⁴³

41. Individuals who participated in the protests, took part in picket lines and roadblocks, collected money or supplies to support demonstrators or fired home-made mortars against security forces faced charges that were disproportionate to the seriousness of those acts. They were usually charged with terrorism, financing terrorism, kidnapping, organized crime or illegal possession of arms. Some judges have admitted inaccurate accusations, built on weak or contradictory evidence. In a number of cases, the prosecutors' accusations included inconsistencies about persons, places, periods of time and objects allegedly found at the crime scene. Despite objections by the defence, the judges accepted those allegations.

42. Numerous cases were investigated and prosecuted before courts in Managua, although the alleged criminal acts had occurred elsewhere. This was justified by the application of article 22 of the Criminal Procedure Code, as reformed by Law 952, which is vaguely worded.⁴⁴ Some of these cases were transferred to courts in Managua, without complying, with legal procedures. Almost all hearings before district judges were closed to the public without valid justification.⁴⁵ Other hearings held before pretrial judges were allegedly conducted in facilities that only judicial personnel – including public defenders – could access, without information on times and venues being communicated in advance to defence lawyers. The hearings would also occur at unusual times, for example at dawn and on weekends, to avoid public scrutiny.⁴⁶ The minutes would indicate that the hearings had taken place during working hours.

43. The authorities violated the right to presumption of innocence of most people detained in the context of the protests.⁴⁷ After a person was arrested, they would be publicly accused of being a terrorist and then placed in mandatory pretrial detention, in contravention of international norms.⁴⁸ Many were kept in prison for more than six months, others for almost a year, without any judicial review.⁴⁹

⁴⁰ See www.elnuevodiario.com.ni/nacionales/483132-rafael-solis-renuncia-corte-suprema-justicia/.

⁴¹ The Public Defenders' Office comes under the authority of the Supreme Court of Justice.

⁴² For instance, terrorism and organized crime (Law 735, art. 37 (b)).

⁴³ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 38.

⁴⁴ Judges from other judicial districts (e.g., Granada, Rivas, León and Juigalpa) who had previously convened hearings declined jurisdiction, in contradiction of the provisions of article 29 of the Criminal Procedure Code. The defence objected to these irregular proceedings, but the cases and the detainees were sent to the courts in Managua before the appeals were decided.

⁴⁵ The defendants' family members, national and international human rights institutions and independent media have generally been prevented from attending the hearings.

⁴⁶ According to the Government, hearings were held at the premises of courts of justice on the dates and at the time set by judges. Communication from the Ministry of Foreign Affairs in response to the OHCHR questionnaire, p. 12.

⁴⁷ Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

⁴⁸ Human Rights Committee, general comment No. 35, para. 38.

⁴⁹ *Ibid.*

44. On numerous occasions, defence lawyers were not allowed to review their clients' case files, and many defendants were only able to communicate with their legal counsels at the hearings, as the majority were not allowed to be visited in prison.⁵⁰ The Government has denied these claims.⁵¹ Moreover, some preliminary hearings were conducted in the absence of the lawyer chosen by the accused, who was assigned a public defender who allegedly did not act in an independent and diligent manner.⁵²

45. OHCHR documented a general failure of judges to respect equality between the parties to the proceedings. For instance, part of exculpatory evidence was usually dismissed, while the whole body of evidence proposed by public prosecutors was usually accepted. Furthermore, most witnesses for the prosecution were civil servants or police officers, including undercover agents, who testified with their faces covered, without any assurance that judges had verified their identity during a previous special hearing, as required by domestic legislation.

46. In some cases, prison authorities ignored the release orders of judges, keeping defendants arbitrarily deprived of their liberty. Those convicted were usually given disproportionate sentences, in some cases over 200 years of imprisonment, although the Constitution limits prison sentences to 30 years.⁵³ On 22 February 2019, the High Commissioner issued a press release expressing concern about the lack of due process and increasing criminalization of dissent, and calling for an independent review of convictions and sentences of opposition leaders and activists who had taken part in the protests.⁵⁴

47. All convictions related to the demonstrations and sociopolitical crisis have so far been imposed on individuals involved in the protests, with the exception of a private security guard sentenced for the homicide of a Brazilian university student.⁵⁵ On 15 July 2019, a court ordered the release of the security guard under the Amnesty Law.

VIII. Victims' right to a remedy and reparation

48. Despite questions about its independence, impartiality and objectivity, the Truth, Justice and Peace Commission continued operating. The Commission was established by the National Assembly on 27 April 2018, without consulting victims and civil society. The resolution that created this body did not define its powers, nor the process or criteria for the selection of the commissioners.⁵⁶ Besides, as illustrated by its report, the Commission considers members of the security forces and supporters of the ruling party as the primary victims of the crisis, to the detriment of people who were involved in the protests.⁵⁷ Although the police used excessive force on different occasions, the Commission did not recognize that these constituted human rights violations. Most recently, it praised the controversial Law on Comprehensive Care for Victims and the Amnesty Law.

⁵⁰ In a few cases, defence lawyers were able to interview their clients in prison after waiting from 6 a.m. to 3 p.m. The interviews would usually last 10 minutes, in the presence of a guard. Some older and sick detainees were exceptionally allowed to communicate more privately and for a longer time with their lawyers.

⁵¹ Communication from the Ministry of Foreign Affairs in response to the OHCHR questionnaire, p. 11.

⁵² According to domestic law, preliminary hearings may be held without the participation of a defence counsel, whether it is a lawyer chosen by the accused or appointed ex officio by the judge. According to international norms and standards, it is axiomatic that legal assistance be available at all stages of criminal proceedings.

⁵³ This was the case of peasant leaders Medardo Mairena and Pedro Mena, sentenced to 216 and 210 years, respectively.

⁵⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24193&LangID=E.

⁵⁵ OHCHR requested from the Government information on the number of police officers investigated, prosecuted and/or punished for alleged excessive use of force. The Government failed to provide such information. Communication from the Ministry of Foreign Affairs in response to the OHCHR questionnaire pp. 3–4.

⁵⁶ National Assembly resolution No. 01-2018 of 29 April 2018.

⁵⁷ Third Preliminary Report of the Truth, Justice and Peace Commission, February 2019. Available at www.cvjp.org.ni/home/informes.

49. On 24 January 2019, the National Assembly adopted Law 985, aimed at “implementing the general legal framework to guarantee a culture of dialogue, reconciliation, security, work and peace”.⁵⁸ The Law does not address the multiple human rights violations suffered by thousands of victims since April 2018. Its very general and vague provisions evoke the promotion of solidarity, values and behaviours to preserve peace, and of measures to safeguard peaceful coexistence among Nicaraguans. The Government indicated that pursuant to Law 985, 6,931 commissions of reconciliation, justice and peace were established, without providing further details on their members or their functioning.

50. Although the negotiation agenda adopted in March 2019 includes “truth, justice, reparation and non-recurrence”, no agreement had been reached on these matters at the time of writing. After the negotiations came to a standstill, the Government, with the support of the National Assembly, adopted unilateral measures purporting to address these issues, without consulting victims’ organizations.

51. On 29 May and 8 June 2019, the National Assembly adopted the Law on Comprehensive Care for Victims (Law 994) and the Amnesty Law (Law 996). The former focuses on granting victims priority access to health care, education, employment, housing and leisure, but does not provide for their right to remedy or other appropriate and proportionate measures of reparation, including compensation and guarantees of non-recurrence. Furthermore, the introduction of Law 994 refers to the willingness of the authorities to respond to the damage caused to victims the “failed coup d’état”, implying that opponents of the Government during the 2018 protests were perpetrators of the failed coup, rather than victims.⁵⁹

52. Law 996 can lead to impunity for gross human rights violations, in contradiction to international law. Article 1 of the Law provides for a broad amnesty that benefits all persons (without further identification) who participated in the events that have occurred in Nicaragua since 18 April 2018 and who have not been the subject of investigations; those who are being investigated or criminally prosecuted; and those whose sentences are in the execution phase. The Law also establishes that the authorities will not initiate investigations and will close criminal and administrative proceedings in progress. Article 2 provides that Law 996 applies to “all political crimes” (which are not defined in the Criminal Code) and to “related common crimes”, except for crimes regulated in international treaties to which Nicaragua is a party. The Law also contains a “non-recurrence” clause providing for the possible revocation of amnesty if the beneficiaries engage again in crimes listed in the Law. In July 2019, two civil society organizations filed legal motions before the Supreme Court to challenge the constitutionality of Law 996.

53. None of the unilateral measures undertaken by the Government has been designed for the purpose of establishing accountability which, coupled with the lack of independence in the administration of justice, entrenches impunity for human rights violations.

IX. Impact of the crisis on the enjoyment of economic, social and cultural rights

54. National authorities have implemented policies and measures which generated a reduction in the prevalence of general poverty from 42.5 to 24.9 per cent between 2009 and 2016, while extreme poverty fell from 14.6 to 6.9 per cent during the same period (E/C/12/NIC/5). Nicaragua was one of the first Latin American countries to meet the Millennium Development Goals of halving poverty and hunger between 1990 and 2015, as recognized by the Food and Agriculture Organization of the United Nations and the World Food Programme. It also met Millennium Development Goal 4 of reducing the under-five child mortality rate per 1,000 live births by two thirds by 2015 (A/HRC/WG.6/33/NIC/1).

⁵⁸ Communication from the Ministry of Foreign Affairs of 23 August 2019, with comments on the OHCHR report “Human rights violations”, p. 21.

⁵⁹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24684&LangID=E.

55. Nevertheless, the persistent sociopolitical crisis has had an adverse impact on the enjoyment of economic and social rights. After a growth rate of more than 4.5 per cent in 2016 and 2017, Nicaragua's economy experienced a 3.8 per cent contraction in 2018 which, according to the World Bank, is expected to worsen in 2019.⁶⁰ Hotels, restaurants and retail business, where women are predominantly employed, have been among the most affected sectors.

56. According to the National Institute for Social Security, from March 2018 to February 2019, more than 140,000 formal jobs were lost, which account for 15.7 per cent of the total number of jobs. According to a civil society organization, 66 per cent of the affected people were men and 44 per cent were women. As of April 2019, annual inflation had reached 3.1 per cent and the Ministry of Finance indicated that prices of basic consumer goods had increased by 2 per cent on average, while the price of water and power utilities had increased by 8.9 and 3.7 per cent respectively.⁶¹ All these factors led to decreasing the purchasing power of households.

57. On 28 February 2019, in an attempt to compensate for these harmful effects, the National Assembly adopted, by a large majority, a tax reform – an amendment to Law 822 – to increase tax revenues in 2019.⁶² On 1 February 2019, Presidential Decree No. 06-19 came into effect, introducing reforms to the Social Security Law Regulations that increased employers' contributions to social security and reduced future retirement pensions. According to the business sector, both reforms may lead to a further deterioration of "the national economy and the well-being of the Nicaraguan people".⁶³

58. In this context, welfare programmes, including health and education services, may be affected and progress achieved could be reversed, particularly among people in situation of vulnerability, especially those living in rural areas, including women and girls, persons of African descent and indigenous peoples.

59. In addition, despite the adoption of an advanced legal framework that allowed the State to recognize more than 37,842 km² of collective land tenure (A/HRC/42/G/2, para. 54), indigenous peoples and persons of African descent continued to be limited in the use of their land and territories due to the presence of settlers.

X. Conclusions

60. **OHCHR, the Inter-American Commission on Human Rights and the Interdisciplinary Group of Experts have documented gross human rights violations committed since mid-April 2018 in the context of the protests. Yet, State authorities have so far denied any responsibility and 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. With the exception of one sentence, the investigations and prosecutions carried out at the time of writing had targeted only individuals who participated in protests, provided support to those protesting or were critical of the Government. OHCHR is not aware of any other investigation into allegations of violations and abuses committed by police or pro-Government elements in the context of the protests. This situation reflects a lack of will to ensure accountability and entrenches impunity for human rights violations, denying victims' rights to justice, truth, reparation and guarantees of non-recurrence. It also further erodes public trust in State institutions.**

61. **Institutional and legislative measures adopted with the stated purpose of reconciliation and guaranteeing reparation for all victims of the sociopolitical crisis**

⁶⁰ See www.worldbank.org/en/country/nicaragua/overview.

⁶¹ Communication from the Ministry of Foreign Affairs in response to the OHCHR questionnaire, p. 40.

⁶² Statement by the Government of Nicaragua published on 28 January 2019 in the newspaper *El 19 Digital*. The tax increases were said to be necessary to compensate for serious damage to the Nicaraguan economy caused by "coup mongers".

⁶³ FUNIDES, *Informe de Coyuntura*, p. 12.

were imposed without consultations and do not comply with relevant international principles. Independence from the Government and inclusion of all stakeholders, especially victims, are essential conditions for any initiative seeking justice and reparation.

62. The most recent phase of the repression against sectors critical of the Government has been marked by violations of the rights to freedom of expression, association and peaceful assembly. Moreover, government officials have resorted to rhetoric discrediting and attacking human rights defenders, journalists and persons critical of the Government. This situation has led to a continued and notable reduction of civic space.

63. Arbitrary arrests and detentions continued to be used as a means to repress the expression of dissent, and instances of torture and ill-treatment targeting persons deprived of liberty in relation to the protests persisted. The authorities have thus far failed to conduct prompt and impartial investigations into allegations of torture and ill-treatment in custody.

64. The justice system has been used to criminalize dissent and to ensure impunity for those responsible for human rights violations, demonstrating the lack of independence of the judiciary from the executive. The monitoring of some criminal proceedings against persons detained in the context of the protests has also unveiled notorious weaknesses and incompatibilities of application of the national criminal legislation with international norms and standards on fair trial.

XI. Recommendations

65. The High Commissioner calls on the State of Nicaragua to:

(a) Urgently resume a meaningful and inclusive dialogue, in line with its international human rights obligations, and fully implement the agreements reached with the Civic Alliance in March 2019;

(b) Guarantee the exercise of the freedoms of peaceful assembly, expression and association, and publicly condemn and sanction any attack or intimidation against, inter alia, human rights defenders, community leaders, journalists and media workers and any individual critical of the Government;

(c) Urgently restore the legal personality of civil society organizations and media outlets that were sanctioned and return all their seized assets, documents and equipment;

(d) With the support of OHCHR through the provision of technical cooperation as well as the assistance of regional human rights institutions, establish a comprehensive action plan towards accountability that is inclusive and victim-centred, which would include the following:

(i) Prompt, thorough and transparent criminal investigations into and prosecutions of all allegations of human rights violations and abuses that have occurred since 18 April 2018, especially gross human rights violations such as extrajudicial killings, torture and sexual violence, in particular through the establishment of a special unit within the Prosecutor's Office;

(ii) Participatory and inclusive consultations to reform the judicial sector, including reappointments in line with international standards such as the Basic Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors;

(iii) Following consultation with associations of victims of human rights violations in the context of the protests, development and implementation of a comprehensive package of measures that ensure access to justice and reparation (restitution, compensation, rehabilitation, satisfaction and

guarantees of non-recurrence) to all victims of human rights violations that have occurred since 18 April 2018, including the repeal of Laws 994 and 996;

(iv) Dismantlement and disarmament of pro-Government armed elements and comprehensive reform of the security sector, including human rights vetting, civilian supervision and oversight, and revision of Law 872 in conformity with human rights norms and standards;

(e) Take immediate measures to halt and effectively prevent acts of torture and ill-treatment in custody, including prolonged solitary confinement; carry out prompt, impartial and effective investigations into any allegation of torture and ill-treatment and into the violent events that followed the protest inside La Modelo prison on 16 May 2019; bring perpetrators to justice and ensure reparation to the victims;

(f) Put an end to arbitrary arrests and release all persons arbitrarily deprived of their liberty in the context of the protests or for expressing views critical of the Government;

(g) Amend the criminal law to ensure its full compatibility with international norms and standards, in particular to ensure that any deprivation of liberty is authorized by a judicial authority; that pretrial detention is imposed only if considered necessary and proportionate, taking into account the defendant's individual circumstances; and that arrest, seizure and search warrants are issued by a judicial authority before being enforced;

(h) Promptly ensure the implementation of electoral and institutional reforms aimed at guaranteeing fair and transparent elections.

66. The High Commissioner calls on the national human rights institution to:

(a) Fully comply with its mandate, including as national mechanism for the prevention of torture, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to effectively and independently promote and protect human rights in accordance with the country's international obligations;

(b) Seek cooperation from OHCHR, the Global Alliance of National Human Rights Institutions and the Subcommittee for the Prevention of Torture to address issues that led to the downgrading of its status and to reinforce its mandate, including as national mechanism for the prevention of torture.

67. The High Commissioner calls on the Human Rights Council and international community to:

(a) Urge Nicaragua to abide by its international human rights obligations and to fulfil its voluntary commitments and pledges, including by scheduling visits of special procedure mandate holders, in line with the standing invitation extended on 26 April 2006;

(b) Urge Nicaragua to promptly resume cooperation with OHCHR and regional human rights mechanisms and to grant them access to the country;

(c) Reaffirm the commitment of the international community to support Nicaragua to find a solution to the sociopolitical crisis it faces, including efforts to establish a comprehensive action plan towards accountability;

(d) Request OHCHR to enhance its monitoring, documentation, analysis and public reporting on the human rights situation in Nicaragua, notably as a contribution to ensuring accountability, and to support the rule of law and security sector reforms.