

Nicaragua's OAS Raid and the Inter-American System

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On 24 April 2022, Nicaraguan National Police officers raided the premises of the Organization of American States (OAS) in Managua. After confiscating all documents at the premises, Nicaragua's foreign secretary called the OAS a "diabolic instrument" on live TV and announced Nicaragua's immediate and definitive withdrawal from all OAS organs. Nicaragua had already submitted its withdrawal to the OAS in November 2021. However, the withdrawal was only to take effect after a two-year period in 2023.

Therefore, the Secretary General of the OAS called the raid a "violation of the most elementary international norms", particularly of Art. 133 of the OAS Charter that guarantees immunity to the representatives of the organization in its member states. He also clarified that denunciation will only enter into force "subject to this country having complied by then with all the obligations that the Inter-American system imposes."

The raid has further aggravated tensions between the Nicaraguan government and the OAS which have built up in the aftermath of last year's election. The raid also marks decisive action against any political resistance: On 23 March 2022, Arturo McFields, Nicaragua's ambassador to the OAS, surprisingly denounced Ortega's regime for its human rights violations in an online plenary session and distanced himself from the government.

The raid thus marks a further step of the Nicaraguan government's disengagement with the Inter-American system. Against this backdrop, this blogpost develops a threefold argument: It lays out that the *withdrawal prima facie* does not meet democratic requirements set by the Inter-American Court, it details that the raid was a blatant violation of international law and lays out the continuing obligations of the Nicaraguan State in the Inter-American system.

From illegitimate elections to denunciation of the OAS Charter

On 7 November 2021, presidential elections were held in Nicaragua with an abstention rate of 81.5%, widespread electoral violence and oppositional leaders and seven presidential candidates arrested. On 12 November, the Nicaraguan elections were declared illegitimate by a majority of OAS Member States during the 51st OAS General Assembly. The United

States and the European Union shared this conclusion. In reaction, the Nicaraguan Foreign Ministry, backed by decisions of the Nicaraguan Parliament, its Supreme Court of Justice and the Supreme Electoral Council initiated the process of leaving the organisation by submitting a letter on 18 November in accordance with Art. 143 OAS Charter. Thereby, Nicaragua would cease to be a member of the OAS by 18 November 2023.

Nicaragua is only the second country to seek withdrawal from the OAS. Venezuela submitted its withdrawal in April of 2017. However, the interim government of Juan Guaidó withdrew the withdrawal just before the end of the two-year period. The OAS Permanent Council recognized the Guaidó government in April of 2019 and accepted its reversal on the withdrawal (CP/Res. 1124). Thus, from the perspective of the OAS, Venezuela remains a Member State of the organization, which is contested by the Maduro government.

The initial withdrawal of Venezuela, however, sparked a debate on the applicable Inter-American obligations during the two-year withdrawal period.

The Inter-American Court's Advisory Opinion 26/20

Amidst the discussions on the Venezuelan withdrawal, the Inter-American Human Rights Court issued Advisory Opinion 26/20 in 2020 (find a resume here). Colombia had requested the advisory opinion after the Venezuelan withdrawal and sought clarification from the court on the legal obligations applicable during the withdrawal, the effects of withdrawal declarations and the responsibilities of other OAS Member States. Its findings on these questions are highly relevant for Nicaragua's legal obligations. This blogpost will present its three main pillars.

First, the obligations under the OAS Charter remain unchanged during the two-year withdrawal period, a stance Nicaragua itself recognized in the written observations to the Court during the proceedings in 2020. This obligation is enshrined in Art. 143 and requires a Member state denouncing the Charter to comply with the "obligations arising" from the very same treaty until denunciation is completed. Art. 133 stipulates that the OAS shall enjoy "immunities as are necessary for the exercise of its functions and the accomplishment of its purposes". The raid at the OAS premises that was carried out without the consent of the organization's head of mission is therefore in clear violation of Art. 133 of the Charter. The immunity will persist as long as Nicaragua is a member of the organization, which was undisputedly the case on the morning of 24 April. Additionally, the withdrawal period cannot be cut short. The Nicaraguan recall of its envoys to the OAS on 24 April and its affirmation of definitive withdrawal are thus without additional effect.

Moreover, Nicaragua must comply with all human rights obligations and give effect to the measures taken by the Inter-American Commission of Human Rights and the Inter-American Court during the withdrawal period. In the case of Nicaragua, between 2018 and 2021, 119 precautionary measures were dictated by the Inter-American Commission (according to

IACHR statistics 2018-2020 and press releases 2021), and 3 contentious cases, 12 provisional measures and 2 urgent measures issued by the Inter-American Court. To date, Nicaragua has barely complied with any of these precautionary measures. Additionally, the inter-American and international treaties to which Nicaragua has voluntarily submitted remain in force, as long as they are not denounced separately. In the case of Nicaragua, the Universal Declaration of Human Rights, the American Declaration of Human Rights and Duties, the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, as well as the American Convention on Human Rights have even been constitutionally enshrined (Constitución Política de la República de Nicaragua, Art. 46). Also, as the Inter-American Court noted in its Advisory Opinion, treaties which do not have a withdrawal provision, such as the International Convention against Torture, cannot be denounced. Accordingly, a minimum of universal human rights standards will continue to bind Nicaragua after the withdrawal period ends.

Withdrawing without “a minimum level of democratic quality”

Beyond the applicable obligations during and after the withdrawal, the Inter-American Court’s advisory opinion sheds light on the material requirements for withdrawal from the OAS Charter. This may be considered a second pillar of the advisory opinion. According to the Court, a withdrawal must have a “minimum level of democratic quality”. Such minimum level is not in place, if the withdrawal occurs in a “context of serious, massive or systematic violations of human rights; in the context of the progressive erosion of democratic institutions; in the face of a manifest, irregular or unconstitutional alteration or rupture of the democratic order” (para. 113).

As we have argued before (here and here), last year’s elections in Nicaragua did not meet Inter-American democracy standards. Moreover, the democratic backslide under the Ortega regime is well documented. The OAS Permanent Council has insisted since July 2018 that Nicaraguan democracy is currently in a downward spiral. It has inter alia called for the “re-establishment of democratic institutions and respect for human rights in Nicaragua through free and fair elections” (28 June 2018; 21 October 2020), and noted “an alteration to the constitutional order that is prolonged over time”. In 2021, it decided not to recognise the elections as they were held in violation of democratic principles.

Therefore, the Nicaraguan withdrawal *prima facie* does not meet the requirements set by the Inter-American Court. The non-compliance with the most basic democratic standards leads to call for the application of a *collective guarantee mechanism* in reflection of the third pillar of the advisory opinion.

Collective Guarantee for Democracy in Nicaragua

The Court held in its advisory opinion that Member States of the Inter-American system have an obligation to prevent democratic backsliding. Specifically, the OAS' political organs can activate a collective guarantee mechanism to help restore the democratic order in a Member State. These include the investigation and prosecution of serious human rights violations, the guarantee of rights related to refuge and the granting of asylum, as well as the activation of bilateral relations in order to incentivize re-integration into the regional system. In reaction to the raid at the OAS premises, several OAS Members have signalled that they would engage in these practices to set Nicaragua back on a democratic course. The blatant violation of Art. 133 OAS Charter could accordingly trigger decisive action by OAS Member States to curtail the ongoing deterioration of the human rights and democracy situation in Nicaragua.



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