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Agenda item 2

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

**Detailed conclusions of the Group of Human Rights Experts  
on Nicaragua**

## Contents

	<i>Page</i>
Part I: Introduction and contextual background .....	5
I. Reference Framework.....	5
A. Introduction.....	5
B. Mandate .....	6
1. Origins of the mandate.....	6
2. Interpretation of the mandate .....	6
C. Cooperation.....	9
1. Lack of cooperation of the State of Nicaragua .....	9
2. Cooperation with other stakeholders.....	11
D. Methodology and standard of proof.....	12
1. Victim-centred approach.....	12
2. Gender mainstreaming in the GHREN's work.....	13
3. Standard of proof.....	13
4. Methodology of the investigation.....	15
E. Legal framework .....	16
1. International Human Rights Law.....	17
2. International Criminal Law .....	18
II. Background and context.....	21
A. The dismantling of the democratic State governed by the rule of law .....	21
1. The Aleman-Ortega pact.....	21
2. Second Administration of Daniel Ortega: 2007-2012.....	23
3. Third Administration of Daniel Ortega: 2012–2017.....	26
4. Confusion between the State and the party, and the State and the parastatal .....	29
B. Institutional framework.....	30
1. State Powers.....	30
2. Other relevant institutions.....	38
3. Independence of judges and prosecutors.....	40
C. Security framework .....	41
1. Background and evolution of the State's security forces .....	41
2. State security institutions .....	44
3. Pro-government armed groups and other control mechanisms.....	50
D. The human rights situation prior to 2018 .....	55
1. Extrajudicial executions.....	56
2. Arbitrary detentions.....	56
3. Torture and other cruel, inhuman, or degrading treatment or punishment .....	57
4. Conditions of detention.....	59
5. Right to peaceful protest.....	59

6. The Situation of Human Rights Defenders .....	60
E. Timeline of significant events (18 April 2018 – 18 February 2023).....	62
1. April to September 2018: outbreak of social protests and repression.....	62
2. June to September 2018: “Operation Cleanup”.....	63
3. August to December 2018: persecution of civil society.....	64
4. February 2019 to February 2020: a new phase of dialogue and first releases from prison .	64
5. March 2020 to April 2021: COVID-19 outbreak and passage of repressive laws.....	65
6. May to December 2021: presidential elections and criminalization of the political opposition	65
7. January 2022 – the date of writing this report: total closure of the civic and democratic space	66
Part II: Findings .....	68
III. Human rights violations .....	68
A. Extrajudicial executions .....	68
1. Legal framework .....	68
2. Context of the arbitrary deprivation of life .....	70
3. Victims’ profiles.....	73
4. Patterns .....	77
B. Systematic violations of other civil and political rights.....	110
1. Legal framework .....	111
2. Victims’ profiles.....	120
3. Patterns .....	122
4. Impacts on the civic and democratic space .....	184
C. Gender dimensions.....	203
1. Contextual elements .....	203
2. Extrajudicial executions.....	206
3. Arbitrary detention and torture and other cruel, inhuman or degrading treatment or punishment	208
4. Closing of the civic and democratic space .....	210
5. The impact of repression on women and their environment .....	214
IV. Crimes against humanity .....	216
A. Norm of International Law .....	216
B. Elements of the international criminal offense .....	219
C. Widespread or systematic attack against a civilian population .....	220
1. Victimized community (“civilian population”).....	221
2. “Attack” .....	223
3. “Systematic or widespread” .....	228
D. Prohibited acts .....	233
1. Murder .....	233
2. Deportation .....	235
3. Imprisonment .....	242
4. Torture and other cruel, inhumane, or degrading treatment .....	245

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5. Persecution.....	250
E. Participation and knowledge of the attack.....	260
V. Accountability and access to justice.....	263
A. President, Vice President and main State institutions .....	263
1. Daniel Ortega and Rosario Murillo .....	263
2. The Branches of Government .....	266
3. Other public authorities .....	269
4. Pro-government armed groups.....	273
B. State responsibility.....	274
C. Individual criminal responsibility .....	276
D. Access to justice in third countries.....	277
VI. Recommendations.....	278
A. Recommendations to the Republic of Nicaragua .....	279
B. Recommendations to the international community .....	279
Annexes .....	280
Annex 1: Timeline of legislation passed in relation to security and defence matters .....	280
Annex 2: Organisational Chart of the Nicaraguan Army.....	290
Annex 3: Organisational Chart of the National Police of Nicaragua.....	291

## Part I: Introduction and contextual background

### I. Reference Framework

#### A. Introduction

1. On 31 March 2022, the Human Rights Council adopted resolution 49/3 on the “promotion and protection of human rights in Nicaragua”, establishing the Group of Human Rights Experts on Nicaragua (hereinafter “the Group” or “the GHREN”) for an initial period of one year.

2. On 24 May 2022, the President of the Human Rights Council appointed Jan-Michael Simon of Germany, Angela María Buitrago of Colombia and Alexandro Álvarez of Chile as independent members of the GHREN. Mr. Simon was appointed as Chair of the Group. On 31 January 2023, Mr. Álvarez resigned from his role as an expert of the Group. Accordingly, the present report is submitted to the Human Rights Council by Mr. Simon and Ms. Buitrago.

3. The members of the Group acted as independent, unpaid experts, with the support of a secretariat comprised of United Nations (UN) officials based in Panama City. The secretariat consisted of a coordinator, a victim protection officer, three human rights investigators, a legal officer, a gender adviser, a reporting officer and an administrative officer.<sup>1</sup>

4. In paragraph 15 of resolution 49/3, the Human Rights Council requested the Group to submit a written report to the Council at its fifty-second session during an interactive dialogue. For this first cycle, the GHREN produced two reports, the report submitted to the Human Rights Council (A/HRC/52/63) and the present expanded conference room paper, which further develops the investigation, analysis and conclusions contained in the report submitted to the Human Rights Council.

5. The GHREN faced several obstacles during the investigation, including the lack of cooperation of Nicaraguan authorities, the lack of access to official documentation and data, the inability to gain access to the country, and concerns regarding the protection of victims, witnesses and other sources cooperating with the GHREN. In particular, the Group expresses its concern about the recent escalation of persecution against real or perceived opponents, and the allegations received regarding attacks and harassment by individuals allegedly linked to the Government of Nicaragua against victims, relatives of victims, activists and Nicaraguan human rights defenders residing in Nicaragua and abroad.

6. Despite the aforementioned challenges, the GHREN was able to gather the information necessary to establish the facts and the circumstances of human rights violations, and to collect, consolidate, preserve and analyse information and evidence in accordance with its mandate. Through its investigation, the GHREN has identified specific incidents and patterns of conduct that provide reasonable grounds to believe that violations of international human rights law and crimes under international criminal law have been committed in Nicaragua.<sup>2</sup>

<sup>1</sup> The coordinator of the secretariat joined in July 2022, while the team was formed and operational by mid-September 2022. A public information officer also supported the team during the last three months of the mandate.

<sup>2</sup> In the Spanish version of the report, the terminology adopted here is “Derecho Internacional Penal” (DIP) and not “Derecho Penal Internacional”, because international law crimes are conducts which are criminalized under international law, in the sense that international law defines their elements and directly prohibits their perpetration regardless of whether such conducts have been criminalized under national law (see Commentaries No. 18-19 to Article 7(1) of the International Law Commission (ILC), Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction, 73<sup>rd</sup> session

## B. Mandate

### Origins of the mandate

7. Since its fortieth session, the Human Rights Council has adopted a series of resolutions regarding the human rights situation in the Republic of Nicaragua under item 2 of its agenda. In these resolutions, the Council expressed its grave concern at the continuing allegations of serious human rights violations<sup>3</sup> and urged the Government of Nicaragua to comply with its international obligations to combat impunity and to ensure accountability for human rights violations.<sup>4</sup>

8. Also since its fortieth session, the Council has requested OHCHR to submit reports and periodic updates on the human rights situation in Nicaragua. The reports submitted by OHCHR noted, among other issues, the failure to adequately investigate, identify, prosecute and punish those allegedly responsible for the deaths in the context of the protests,<sup>5</sup> the lack of willingness to ensure accountability, and the consolidation of impunity for perpetrators of human rights violations,<sup>6</sup> and stated that such impunity has led to the recurrence of human rights violations in Nicaragua.<sup>7</sup> In its report to the forty-ninth session of the Council, OHCHR recommended that the Council consider additional measures to strengthen accountability for serious human rights violations.<sup>8</sup> Already in its first report in 2018, OHCHR had recommended to the Council and the international community the creation of an International Commission of Inquiry or a hybrid (national-international) Truth Commission<sup>9</sup> Several Nicaraguan and international civil society organizations, including victims' organizations, also requested the Council to create an investigative mechanism.<sup>10</sup>

9. The creation of the GHREN should also be considered in light of Nicaragua's continued non-compliance with its international human rights obligations, its refusal to cooperate with the Council's special procedures and treaty bodies, its decision to discontinue its collaboration with international and regional human rights mechanisms, and its denunciation of regional instruments.<sup>11</sup>

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(18 April to 3 June and 4 July to 5 August 2022), A/77/10, Supplement No. 10, para. 69). They represent acts universally recognized as criminal which are considered a grave matter of international concern which, for some valid reason, cannot be left within the exclusive jurisdiction of the State which would have control over such jurisdiction in ordinary circumstances (US v. Wilhelm List et al., Case No. 7, Judgment, 19 February 1948, in United Nations War Crimes Commission, Law Reports of Trials of War Criminals, vol. VIII, Case No. 47, H.M.S.O., London 1949, 34-76, p. 54), and whose elements must be carefully considered in the light of the jurisdiction that an international Tribunal or Court is exercising, and the definition contained in its legal framework (see International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgment, 31 July 2003 (*Stakić*, Trial Judgment), para. 413, noting that the standards set out in Articles 2 to 5 of its Statute must be interpreted in light of their own historical and contextual background).

<sup>3</sup> A/HRC/RES/40/2, para. 1; A/HRC/RES/43/2, para. 1; A/HRC/RES/46/2, para. 1.

<sup>4</sup> A/HRC/RES/40/2, para. 7; A/HRC/RES/43/2, para. 7; A/HRC/RES/46/2, para. 14.

<sup>5</sup> OHCHR, Human Rights Violations and Abuses in the Context of the Protests in Nicaragua: 18 August 2018 (2018) (hereinafter "2018 Report"), available at: [https://www.ohchr.org/sites/default/files/Documents/Countries/NI/HumanRightsViolationsNicaragua\\_Apr\\_Aug2018\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/NI/HumanRightsViolationsNicaragua_Apr_Aug2018_EN.pdf), para. 114.

<sup>6</sup> A/HRC/42/18, para. 60.

<sup>7</sup> A/HRC/46/21, para. 65.

<sup>8</sup> A/HRC/49/23, para. 68(b).

<sup>9</sup> OHCHR, 2018 Report, para. 119 (15).

<sup>10</sup> See <https://www.mecanismo-paranicaragua.org/qui%C3%A9nes-somos>.

<sup>11</sup> A/HRC/RES/49/3, preamble, paras. 6–8.

### Interpretation of the mandate

10. According to paragraph 14 of resolution 49/3, the GHREN was established with the mandate:

(a) To conduct thorough and independent investigations into all alleged human rights violations and abuses committed in Nicaragua since April 2018, including the possible gender dimensions of such violations and abuses, and their structural root causes;

(b) To establish the facts and circumstances surrounding the alleged violations and abuses, to collect, consolidate, preserve and analyse information and evidence and, where possible, to identify those responsible, and to make such information accessible and usable in support of ongoing and future accountability efforts;

(c) To make recommendations with a view to improving the situation of human rights, to provide guidance on access to justice and accountability, as appropriate, and to ensure a victim-centred approach, including by addressing the impact of multiple and intersectional forms of discrimination;

(d) To engage with all relevant stakeholders, including the Government of Nicaragua, the Office of the High Commissioner, international human rights organizations, relevant United Nations agencies and civil society, with a view to exchanging information, as appropriate, and providing support for national, regional and international efforts to promote accountability for human rights violations and abuses in Nicaragua.<sup>12</sup>

(a) *Subject-matter scope (ratione materiae)*

11. According to resolution 49/3, the GHREN must “conduct thorough and independent investigations into all alleged human rights violations and abuses”. Thus, the GHREN investigated both violations by the Government of rights guaranteed by national, regional or international human rights norms, as well as acts or omissions attributable to the State that involve non-compliance with obligations derived from human rights norms.<sup>13</sup> The GHREN also investigated human rights abuses that are considered binding on certain non-State actors, or that, at a minimum, establish the responsibility of the State to prevent the commission of abuses by private parties.<sup>14</sup>

12. In accordance with its mandate and in line with the best practices of gender mainstreaming in human rights investigations,<sup>15</sup> the GHREN has devoted specific attention to gender issues and the impacts of violations and abuses. In its research, it focused its attention on violence against women, and it included in its report the gender dimensions of all the violations and abuses analysed.<sup>16</sup> Violence against women, particularly sexual violence, proved to be difficult to document due to the stigma still suffered by the victims. The GHREN believes that its research may have only partially captured the extent of the violations and abuses involved.

13. The GHREN considered that the object and purpose of the mandate received from the Human Rights Council is one of “accountability” and that the ultimate objective of its investigations is to determine whether serious violations of international human rights law and, in particular, of the most serious crimes of concern to the international community, have been committed in Nicaragua. In line with the practice of other international investigations mandated by the Human Rights Council, the GHREN understood its accountability mandate as contributing to the enforcement of possible legal responsibilities

<sup>12</sup> HRC/RES/49/3, para. 14(a)–(d).

<sup>13</sup> See OHCHR, Human Rights Monitoring Training Manual, HR/P/PT/7 (2001), para. 31.

<sup>14</sup> *Ibid.*, para. 27.

<sup>15</sup> Integrating a Gender Perspective in Human Rights Research, Guidance and Practice, HR/PUB/18/4 (2018).

<sup>16</sup> See *infra* Chapter III.C.

arising from serious violations of international law. This includes both State responsibility and possible individual criminal responsibility.<sup>17</sup>

14. In view of the breadth of the mandate and the limited resources available to comply with the established timeframe to implement it, this report cannot provide an exhaustive record of all the events that have occurred, and the alleged human rights violations and abuses committed in Nicaragua since April 2018. The GHREN decided to focus on the most serious violations and abuses of international human rights law and, in particular, those that may constitute international crimes, in the event that a mental element and a mode of individual responsibility under international law are present.<sup>18</sup> Priority was given to the investigation of violations of the right to life, liberty and due process, physical and moral integrity, the right to participate in public affairs, and the freedoms of opinion and expression, association, peaceful assembly, and thought, conscience and religion. The serious impacts of the prioritized violations and abuses on other rights were also documented, including on the right to freedom of movement, the right to leave any country and to return to one's country, the right to nationality and the right to family life, among others.

(b) *Personal scope (ratione personae)*

15. Paragraphs 14(b) and 14(d) of resolution 49/3 state that the GHREN has the mandate to investigate “and, where possible, to identify those responsible, and to make such information accessible and usable in support of ongoing and future accountability efforts; [...] providing support for national, regional and international efforts to promote accountability for human rights violations and abuses in Nicaragua”.

16. In accordance with the duality of legal responsibility, the GHREN distinguishes between accountability under human rights law and for crimes under international criminal law. With regard to the latter, the GHREN has sought, to the extent possible, to identify the individuals allegedly responsible and the chains of command, so that such information is accessible and can be used for accountability purposes.

17. In applying an approach of accountability for crimes under international law to its mandate, the GHREN is in line with previous international investigations mandated by the Human Rights Council. This includes both investigations without an explicit accountability mandate,<sup>19</sup> as well as those with an explicit mandate, even if there is no explicit reference in the text of the resolution to crimes under international law.<sup>20</sup> The latter, even without

<sup>17</sup> OHCHR, Who's responsible? Attributing individual responsibility for violations of international human rights and humanitarian law in United Nations commissions of inquiry, fact-finding missions and other investigations, HR/PUB/18/3 (2018) (hereinafter “Who's responsible”), p. 16, noting that the identification of individuals will always be in addition to the identification of the responsible State, State entity or non-State actor, as State responsibility is paramount in international human rights law.

<sup>18</sup> See Chapter III.A and Chapter III.

<sup>19</sup> Report of the UN Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, paras. 286–293; Report of the independent international fact-finding mission to investigate the impact of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/22/63, para. 17.

<sup>20</sup> See Investigation by the Office of the UN High Commissioner for Human Rights on Libya, A/HRC/31/47, para. 6; Report on the independent investigation on Burundi carried out pursuant to Human Rights Council resolution S-24/1, A/HRC/33/37, para. 12; Report of the Commission on Human Rights in South Sudan, A/HRC/34/63, para. 84; Report of the Independent International fact-finding mission on Myanmar, A/HRC/39/64, para. 10; Report of the Group of Eminent International and Regional Experts on Yemen, A/HRC/45/6, para. 13; Report of the Independent Fact-Finding Mission on Libya, A/HRC/50/63, para. 14; International Commission of Human Rights Experts on Ethiopia, Terms of Reference, No. 4, available at: [https://www.ohchr.org/sites/default/files/2022-06/TermsReferencia\\_CHRE\\_Ethiopia.docx](https://www.ohchr.org/sites/default/files/2022-06/TermsReferencia_CHRE_Ethiopia.docx).



expressly referring to the clarification of responsibilities or possible identification of individuals responsible,<sup>21</sup> which has been welcomed by the Council.<sup>22</sup>

18. Given the extent, their systematic and widespread nature, and the severity of the violations and abuses, in addition to individual and State responsibilities, the GHREN has also considered the responsibility of the international community to prevent the commission of these international crimes and to ensure they do not go unpunished, formulating recommendations in this regard.

(c) *Geographic scope (ratione loci)*

19. Paragraph 14(a) of resolution 49/3 provides that the GHREN shall conduct investigations of human rights violations and abuses “committed in Nicaragua”, in accordance with international law.<sup>23</sup> The GHREN interprets the geographic scope of its investigative mandate to mean that at least part of the commission of the violations and abuses must have taken place in the territory of the Republic of Nicaragua.

20. Paragraph 14(d) of resolution 49/3 states that the GHREN shall “[...] engage with all relevant stakeholders, [...] with a view to exchanging information, as appropriate, and providing support for national, regional and international efforts to promote accountability for human rights violations and abuses in Nicaragua”. The GHREN interprets the geographic scope of its collaboration mandate as universal.

(d) *Temporal scope (ratione temporis)*

21. Paragraph 14(a) of resolution 49/3 states that the GHREN should undertake investigations of human rights violations and abuses “committed [...] since April 2018, [...] including [...] their structural root causes”.

22. Events such as those that constitute the subject-matter scope of the GHREN’s mandate are not usually single or random occurrences, but, on the contrary, tend to emerge from a dynamic process. In light of the above, and in consideration of the mandate to investigate the structural root causes of violations and abuses, the GHREN considers that events prior to April 2018 that continue and/or have serious repercussions today are also within its mandate. Despite the limitations of time, resources, and available information, the GHREN has analysed these events where they are crucial to understand the violations and abuses committed since April 2018 and their political, cultural, and economic root causes.

## C. Cooperation

### 1. Lack of cooperation of the State of Nicaragua

23. As established by the Human Rights Council in resolution 49/3, the GHREN sought collaboration “with all relevant stakeholders, including the Government of Nicaragua, the Office of the High Commissioner, international human rights organizations, relevant United Nations agencies and civil society”.<sup>24</sup> In the same resolution, the Council called on the Nicaraguan authorities to cooperate fully with human rights mechanisms, including the GHREN, to allow it unfettered, full and transparent access throughout the country, and to facilitate visits, including to detention facilities, and providing necessary information.<sup>25</sup>

<sup>21</sup> See Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela (hereinafter “FFM Venezuela”), A/HRC/45/33, para. 11.

<sup>22</sup> A/HRC/RES/45/20, para. 2.

<sup>23</sup> See International Criminal Court (ICC), Pre-Trial Chamber III, Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19:CC-01/19-27, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, 14 November 2019, paras. 42–62.

<sup>24</sup> HRC/RES/49/3, paragraph 14(d).

<sup>25</sup> *Ibid.*, para. 19.

24. The GHREN regrets the lack of cooperation of Nicaraguan Government authorities and, in particular, the lack of access to the country and the impossibility of conducting its investigation *in situ*. Despite repeated requests by the GHREN, it has not been possible to establish a dialogue with the Nicaraguan authorities to discuss issues relevant to the Group's mandate. In such circumstances, public statements by the Government of Nicaragua affirming its respect for human rights standards could not be corroborated.

25. On 10 June 2022, the Members of the GHREN formally requested to hold a meeting and to establish a channel of communication with the Permanent Representative of the Republic of Nicaragua to the United Nations Office and other International Organizations based in Geneva. Having received no response, on 21 November 2022, the Experts sent a second letter to the Permanent Mission of Nicaragua to the United Nations, addressed to President Daniel Ortega, reiterating their interest in establishing a dialogue with the Government of Nicaragua, requesting access to specific information, and requesting a visit to the country. The GHREN did not receive any response to its correspondence. The GHREN followed up on these communications with letters sent to President Daniel Ortega on 8 and 28 December 2022.

26. On 28 December 2022, the GHREN also sent letters to the Magistrate President of the Supreme Court of Justice, the National Director of the Public Defender's Office, the Attorney General of the Republic of Nicaragua, the Director of the Legal Medicine Institute, the Minister of the Interior, the Director General of the National Prison System, and the Executive President of the Nicaraguan Institute of Telecommunications and Postal Services, requesting information on aspects of relevance to the implementation of its mandate. Again, the GHREN received no response or information.<sup>26</sup>

27. It should be noted that the lack of cooperation by the Government of Nicaragua with human rights mechanisms is not only limited to the Group of Experts. On 29 August 2018, OHCHR published a report on human rights violations and abuses in the context of the protests in Nicaragua from 18 April to 18 August 2018. The following day, the Government of Nicaragua rescinded the human rights agency's invitation to work in the country. In December of that same year, the Government suspended the presence of the Special Follow-up Mechanism for Nicaragua ("Mecanismo Especial de Seguimiento para Nicaragua", hereinafter "MESENI"), and announced the expiration of the period granted to the Interdisciplinary Group of Independent Experts ("Grupo Interdisciplinario de Expertos Independientes", hereinafter "GIEI Nicaragua") to work in the country, announcing the departure of the two mechanisms of the Inter-American Commission on Human Rights (IACHR) present in Nicaragua.

28. In recent years, the Government of Nicaragua has repeatedly refused to cooperate with, and has even questioned the legitimacy of, the mechanisms of the Human Rights Council and the UN treaty body system as a whole. In November 2022, the UN Committee against Torture (CAT) and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) issued a joint statement strongly condemning Nicaragua's failure to cooperate with both bodies to address and prevent torture in the country.<sup>27</sup> For their part, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee on Economic, Social and Cultural Rights have also noted the refusal of the Nicaraguan authorities to respond to the lists of issues and to engage in the respective constructive dialogues with these committees.<sup>28</sup> The

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<sup>26</sup> See the complete correspondence of the GHREN with the Government of Nicaragua, available at: <https://www.ohchr.org/en/hr-bodies/hrc/ghre-nicaragua/correspondence-group-human-rights-experts-nicaragua-2022-2023>.

<sup>27</sup> Decision adopted by the CAT on the requests submitted by the SPT under Article 16(4) of the Optional Protocol to the Convention concerning Nicaragua, CAT/C/75/2. See also the statement "Nicaragua: Two UN rights treaty bodies deplore Nicaragua's refusal to cooperate and lack of information", available at: <https://www.ohchr.org/en/statements/2022/11/nicaragua-two-un-rights-committees-deplore-refusal-cooperate-and-lack>.

<sup>28</sup> See CCPR/C/NIC/CO/4, CERD/C/NIC/CO/15-21, E/C.12/NIC/CO/5.

Nicaraguan authorities have also failed to respond to any of the letters sent by the Special Procedures of the Human Rights Council since November 2018.

29. In addition, on 18 November 2021, the Government of Nicaragua denounced the Charter of the Organization of American States (OAS), initiating the withdrawal of Nicaragua from this Organization. On 24 April 2022, and in violation of the commitments adopted by Nicaragua in the Charter,<sup>29</sup> Nicaraguan authorities announced the expulsion of the OAS from the country and the withdrawal of its diplomatic representation to this Organization. On the same day, the National Police occupied the OAS facilities in Managua, seizing goods and violating the inviolability of the Organization's archives.<sup>30</sup> It should be noted that the obligations voluntarily assumed by the State of Nicaragua in the inter-American treaties it has signed remain in force, even after the effective denunciation of the Charter. Despite having recognized the jurisdiction of the Inter-American Court of Human Rights (IACtHR) and the IACHR, Nicaragua has repeatedly ignored its obligations under the American Convention on Human Rights (American Convention) and other regional human rights instruments. In November 2022, the IACtHR declared Nicaragua in permanent contempt of Court for the authorities' refusal to comply with the provisional measures adopted by the IACtHR for the protection of the rights of 46 persons deprived of their liberty in 8 detention centres.<sup>31</sup>

## 2. Cooperation with other stakeholders

30. From the date of appointment of the members of the Group in May 2022 until 15 February 2023, the GHREN met with a wide range of stakeholders interested in improving the human rights situation in Nicaragua, including civil society organizations, UN and Inter-American system entities, and members of the international community. The Experts wish to thank the individuals and organizations that participated in these exchanges for their time and interest in cooperating with their mandate.

31. The GHREN notes the dynamic and active participation and valuable contributions to its mandate by Nicaraguan and international victims' and civil society organizations. The Group is especially grateful to the victims, survivors, and relatives of victims of human rights violations and abuses who shared their stories, experiences, and desires for justice with the Group of Experts during the drafting of this report.

32. The GHREN particularly appreciates the cooperation of the States that received visits from both the Group and members of its secretariat. These visits were crucial to the implementation of the GHREN's mandate, allowing the Group to hold meetings with victims and witnesses, gather information and evidence, and engage with civil society organizations, international agencies and State institutions working to protect the rights of Nicaraguans.

33. In compliance with its obligation to collaborate with all relevant and interested parties in order to exchange information that will help the Group of Experts fulfil its mandate, the GHREN held meetings with the IACHR and the OAS, and requested access to information contained in the databases of the GIEI Nicaragua and the MESENI. The GHREN appreciates the openness of these entities and the information shared by the IACHR.

34. The GHREN expresses its gratitude to OHCHR, which provided a dedicated secretariat, as well as to UN Women for its contribution to the investigation through the

<sup>29</sup> The Charter of the Organization of American States, 30 April 1948, 119 UNTS 3 (entered into force on 13 December 1951), establishes in its art. 143 a period of two years from the date of the notice of denunciation of the Charter for it to cease to be in force, subject to compliance by the denouncing State with the obligations emanating from the Charter.

<sup>30</sup> The Seizure of Offices of the Organization of American States, Resolution adopted by the Permanent Council at its special session held on May 13, 2022, OEA/Ser. G CP/RES. 1196 (2377/22).

<sup>31</sup> IACtHR, Juan Sebastián Chamorro et al. and 45 Inmates in Eight prisons Regarding Nicaragua, Provisional Measures, Order of 22 November 2022 (hereinafter "Case *Juan Sebastián Chamorro et al.*, Order on Provisional Measures"), available at: [https://www.corteidh.or.cr/docs/medidas/45personas\\_se\\_02.pdf](https://www.corteidh.or.cr/docs/medidas/45personas_se_02.pdf).

advice provided by a gender expert. OHCHR and UN Women's support was provided with due respect for the independence of the Group of Experts. Once selected as secretariat staff, the team members worked independently of these agencies.

## **D. Methodology and standard of proof**

35. The members of the Group of Experts agreed to and adopted their own terms of reference,<sup>32</sup> rules of procedure, guiding principles, standard of proof applicable to the findings, the investigation strategy, and its methodology; all in accordance with established methodologies and best practices developed by the UN for fact-finding in human rights investigations.<sup>33</sup>

36. In carrying out its functions, the Group was always guided by the principles of independence, impartiality, objectivity, transparency, integrity and the "do no harm" principle. The GHREN worked with complementarity and efficiency in mind and sought to avoid duplication of work with respect to other initiatives for the promotion and protection of human rights in Nicaragua, including with OHCHR's mandate.

### **1. Victim-centred approach**

37. The GHREN adopted a victim-centred methodology, which includes strict respect for the "do no harm" principle, prioritization of the "best interests" of the victim, the adoption of mitigation measures to prevent victims' re-victimization and to ensure their protection, and the guarantee of informed and empowered consent. The GHREN also developed operating and referral protocols to ensure the protection of victims, witnesses and other sources of information during all stages of the investigation.

38. In addition to conducting interviews with victims and witnesses, the GHREN held meetings with civil society groups, victims and relatives' associations, and vulnerable groups and individuals, to discuss their expectations, listen to their concerns, and seek their views on methodological issues, with a view to ensuring the effective protection and participation of victims in the process.

39. The GHREN assessed the risks and threats to witnesses and victims collaborating with the GHREN and took, to the extent possible and within its capabilities and mandate, measures to mitigate any physical, security, psychosocial or other risks to victims, witnesses, their families, intermediaries, and colleagues. The GHREN identified appropriate risk mitigation measures in coordination with national and international organizations and other relevant entities. The confidentiality and security of information and protection of the privacy of individuals were central considerations in the GHREN's work.

40. The GHREN ensured that it had the informed consent of each of the sources of information, including both the individuals interviewed by the team and the individuals and organizations that shared data and documentation with the Group. The GHREN respected the sources' wishes at all times before using any of the information provided.

41. Due to the sharp escalation of persecution by the Government against real or perceived opponents in February 2023, within days of the publication of this report, the GHREN had to take additional urgent measures to protect the victims, witnesses and other sources who collaborated in the preparation of the report. In this regard, the GHREN decided to anonymize the report, withholding the names and identities of the victims, and omitting most of the illustrative cases that had been developed as case studies.

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<sup>32</sup> See GHREN, Frequently Asked Questions, available at: <https://www.ohchr.org/es/hr-bodies/hrc/ghren-nicaragua/index>.

<sup>33</sup> See OHCHR, Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice, HR/PUB/14/7 (February 2015) (hereinafter "Guidance and Practice").

42. The mandate of the Group and the methodology of the Secretariat from OHCHR place the protection of victims and witnesses and the duty not to expose them to the risk of reprisals at the core of the investigation. For this reason, this report will be presented without some of the material investigated. All of the information collected by the GHREN will remain in its archive and may be used in future investigations and accountability efforts.

## 2. Gender mainstreaming in the GHREN's work

43. In compliance with its mandate, the GHREN systematically integrated a gender perspective into its work methodologies and tools; this includes: in the planning of its work; in defining and implementing gender-sensitive research strategies; in the conduct of interviews and the selection of emblematic cases; in the protection measures for victims and witnesses; as well as in the analyses carried out for the preparation of this report.

44. The GHREN examined the gender dimensions of the dynamics and of the events of violence, and how these have shaped the experiences of women, men, and people with diverse gender identities. It identified gender-motivated violations, including sexual violence, and those that disproportionately affect women and girls. It examined and analysed the differential impact of violent acts on the population and, in particular, on women and girls and people of different genders, sexual orientation, gender expression and sexual characteristics (hereinafter "LGBTI").

## 3. Standard of proof

45. Consistent with the general practice of investigative bodies established by the Human Rights Council, the GHREN applied the "reasonable grounds to believe" standard of proof. The reasonable grounds standard is met when, based on the body of verified factual information, an objective and ordinarily prudent observer would have reasonable grounds to conclude that the facts took place as described and, when drawing legal conclusions, that these facts meet all the elements of a violation or abuse.<sup>34</sup>

46. The factual findings form the basis for the legal qualification and, if applicable, for defining possible corresponding responsibilities. In defining its standard of proof, this investigation indicates the level of certainty in its conclusions, making them verifiable, both in terms of the facts and of their legal qualifications. The standard of proof applies to each of the elements that legally qualify the established facts.<sup>35</sup> In cases that do not meet the threshold, the present investigation may recommend that additional investigations be conducted.

47. The standard of proof applies to the determination of a) whether a violation, abuse or crime occurred and b) whether the person and/or entity identified was responsible. The threshold of reasonable grounds to believe is lower than the threshold required in criminal proceedings to bring charges, but is high enough to indicate that further investigations, including the opening of a criminal investigation, is warranted.

48. The fact that the threshold of reasonable grounds to believe is lower than the necessary threshold to sustain a conviction does not preclude the present international investigation from identifying possible individual responsibilities.<sup>36</sup> The threshold of

<sup>34</sup> See similarly, Report of the Commission of Inquiry on human rights in the Democratic People's Republic of Korea, A/HRC/25/63, para. 22; International Commission of Human Rights Experts on Ethiopia, Terms of Reference, no. 5; Independent International Commission of Inquiry on Ukraine, Frequently Asked Questions, p. 3, available at: [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/2022-06-30/FAQs-on-the-IICIU-29-June-2022\\_EN.doc](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/2022-06-30/FAQs-on-the-IICIU-29-June-2022_EN.doc); Detailed findings on the situation in Tarhuna: Conference room paper of the Independent Fact-Finding Mission on Libya, A/HRC/50/CRP.3, para. 10.

<sup>35</sup> *Ibid.*, regarding individual responsibility.

<sup>36</sup> See OHCHR, Who's responsible?, p. 16, note 15.

reasonable grounds to believe constitutes *prima facie* cause to initiate a criminal investigation,<sup>37</sup> or justifies further investigations.<sup>38</sup>

49. Under the Rome Statute of the International Criminal Court, reasonable grounds to believe corresponds to the threshold of information necessary to decide whether a situation warrants an investigation,<sup>39</sup> that is, whether a set of alleged crimes that appear to be representative of a broader pattern of victimization justifies an investigation.<sup>40</sup> In order to meet the threshold of information needed to justify an investigation, the investigation need not be exhaustive or definitive, as compared to the evidentiary requirements in a criminal investigation.<sup>41</sup> While the threshold of reasonable grounds to believe needed to decide about the issuance of an arrest warrant is higher than the threshold of reasonable grounds to believe necessary to open an investigation, these two standards are the closest<sup>42</sup> on the scale of the four thresholds set out in the Statute.<sup>43</sup>

50. For an arrest warrant to be issued under the Rome Statute, it is necessary for the threshold of reasonable grounds to believe to reach “reasonable grounds to suspect”,<sup>44</sup> which is more than mere suspicion, and supports an objective average observer’s conclusion that specific events may have taken place as described, including regarding the individuals identified as possibly involved. Under international human rights law,<sup>45</sup> and in line with the European<sup>46</sup> and the Americas contexts,<sup>47</sup> reasonable grounds to suspect is the required threshold to ensure that a detention is not arbitrary.

51. In some legal systems,<sup>48</sup> reasonable grounds to believe is below the threshold required to bring forward criminal charges<sup>49</sup> and to decide to send a case to trial,<sup>50</sup> as a result of a

<sup>37</sup> In a similar vein, Report of the Commission on Human Rights in South Sudan, A/HRC/37/CRP.2, para. 13; A/HRC/40/CRP.1, para. 14.

<sup>38</sup> FFM Venezuela, Detailed Findings of the International Independent Fact-Finding Mission on the Bolivarian Republic of Venezuela, A/HRC/48/CRP.5, para. 15 and A/HRC/45/CRP.11, para. 11.

<sup>39</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 UNTS 90 (entered into force 1 July 2002) (hereinafter “Rome Statute”), arts. 15(4), 53(1)(a) and 53(1)(b).

<sup>40</sup> See ICC, Office of the Prosecutor, Report on Preliminary Examination Activities 2020 (14 December 2020), para. 213.

<sup>41</sup> ICC, *Kenya*, Decision Pursuant to Article 15, para. 29.

<sup>42</sup> ICC, *Kenya*, Decision Pursuant to Article 15, paras. 28–29.

<sup>43</sup> See ICC, Pre-Trial Chamber II, *Prosecutor v. William Samoei Ruto et al.*, Case No. ICC-01/09-01/11-373, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 40.

<sup>44</sup> See, with regard to the Rome Statute, art. 58(1)(a); ICC, Appeals Chamber, *Prosecutor v. Omar Hassan Ahmad Al-Bashir*, Case No. ICC-02/05-01/09-73, Judgment on the appeal of the Prosecutor against the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, 3 February 2010, para. 31.

<sup>45</sup> Report of the WGAD, Chair-Rapporteur: El Hadji Malick Sow, A/HRC/22/44, para. 62.

<sup>46</sup> See Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), 4 November 1950, 213 UNTS 222 (entered into force 3 September 1953), art. 5(1)(c), regarding the threshold necessary to arrest a suspect in order to bring him or her before a competent legal authority; with respect to the case law of the European Court of Human Rights (ECtHR) in the cases of *Fox, Campbell and Hartley v. The United Kingdom*, application nos. 12244/86, 12245/86, 12383/86, Judgment, 30 August 1990, Series A no. 182, para. 32; *Gusinskiy v. Russia*, application no. 70276/01, Judgment, 19 May 2004, para. 53; *Ilgar Mammadov v. Azerbaijan*, application no. 15172/13, Judgment, 22 May 2014, para. 88.

<sup>47</sup> See jurisprudence in the countries of the region, cited by the IACtHR, *Fernández Prieto and Tumbeiro v. Argentina*, Judgment (Merits and Reparations), 1 September 2020, Series C No. 411, paras. 92–95.

<sup>48</sup> See, the case law of the German Federal Court of Justice, BGH, NJW 1960, 2346, 2347, regarding the “sufficient reason for choosing to bring public charges” in terms of “sufficient grounds for suspicion” of the prosecution, according to the German Code of Criminal Procedure, 170 (1).

<sup>49</sup> See also FFM Venezuela, A/HRC/48/CRP.5, para. 15 and A/HRC/45/CRP.11, para. 11, although categorically excluding reasonable grounds to believe of the threshold required “in criminal proceedings to sustain an indictment”.

preliminary assessment of the contents of the file that makes a conviction probable. This threshold is similar to the “*prima facie* case” standard for confirmation of charges<sup>51</sup> in the jurisprudence of the UN International Criminal Tribunal for the former Yugoslavia (ICTY).<sup>52</sup> Under the Rome Statute,<sup>53</sup> reasonable grounds to believe clearly falls below the “substantial grounds to believe” threshold necessary to sustain a decision to confirm charges.

#### 4. Methodology of the investigation

52. The findings reflected in this report have been documented and corroborated in accordance with the methodology and best practices developed by the UN for fact-finding in human rights-related investigations.<sup>54</sup> The GHREN exercised due diligence in assessing the reliability of sources, cross-checked and verified information to determine its validity, and conducted an independent and impartial analysis of the evidence collected.

53. The GHREN investigated 149 cases. Case selection criteria included substantive and safety considerations, as well as the quality and quantity of available evidence.

54. The major incidents described in this report are based on multiple victim and eyewitness accounts, as well as the analysis of open-source information, documentation and audio-visual material. Individual cases or incidents were corroborated by at least two primary, independent, and credible sources of information. Patterns in the report were identified based on the analysis of the totality of cases investigated by the GHREN, as well as the evaluation of complementary credible information.

55. This report is based on information and evidence collected and analysed by the GHREN. The GHREN collected information through the following main methods:

(a) Confidential interviews. In the course of its investigations, which effectively began in October 2022 for the reasons described above, the GHREN conducted 292 confidential interviews with victims and witnesses of alleged human rights violations and abuses, family members, former state officials, lawyers, journalists, human rights defenders, academics, and analysts, among others. These interviews were conducted face-to-face during work visits to third countries, as well as remotely using secure telephone and video connections.

(b) Confidential Documents. The GHREN received and reviewed confidential documents provided by individuals and organizations, including databases, forensic reports, and case files.

(c) Public call for submissions. In September 2022, the Group of Experts published a call for submissions on its website inviting all interested individuals, groups, organizations and institutions to submit information and/or documentation relevant to its mandate.<sup>55</sup> As of 31 January 2023, the GHREN had received a total of 169 contributions. When additional information was required, the GHREN secretariat contacted the source of the information.

<sup>50</sup> See, e.g., the case law of the German Federal Court of Justice, BGH, NJW 1970, 1543, 1544; 2000, 2672, 2673 regarding “sufficient grounds to suspect” to open the oral trial, according to the German Code of Criminal Procedure, § 203.

<sup>51</sup> Statute of the International Criminal Tribunal for the former Yugoslavia, Report Submitted by the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704/Add. 1, Addendum; S/25704, Annex (adopted by Security Council, S/RES/827 (1993), para. 1, last modified 6 September 2016 by S/RES/2306 (2016)) (ICTY Statute), art. 19(1).

<sup>52</sup> See ICTY case law, *Prosecutor v. Dario Kordić et al*, Case No. IT-95-14-1, Decision on the Review of Indictment, 10 November 1995, pp. 2–3; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54, Decision on Review of Indictment, para. 14, regarding the Prosecution’s “*prima facie* case” for confirmation of charges, in terms of the evidence in the case which, if accepted by the judge, would constitute a sufficient basis for a conviction.

<sup>53</sup> See Rome Statute, art. 61(7).

<sup>54</sup> See OHCHR, Guidance and Practice.

<sup>55</sup> See <https://www.ohchr.org/es/hr-bodies/hrc/ghre-nicaragua/index>.

(d) Other written documents. The Group reviewed over 1,500 documents. These included numerous official documents from the Government of Nicaragua, including: laws, regulations, decrees, resolutions, legislative initiatives, directives, policies, certificates, records, bulletins, and other types of communications. The GHREN also collected and analysed numerous reports and information materials on the human rights situation in Nicaragua, including official documents and information published by the Government of Nicaragua, reports prepared by monitoring and investigative mechanisms (GIEI Nicaragua, MESENI and OHCHR), and reports prepared by UN entities, civil society organizations, research centres and academics, among others.

(e) Analysis of public information. The GHREN used relevant open-source information in its investigations, including material available on social networks, websites, blogs, newspaper articles, press releases, etc. The GHREN was able to extract, verify and analyse publicly available data and audiovisual material, which it used to contextualize and corroborate details and information obtained through confidential interviews and documentary analysis. The GHREN also analysed public statements by Government representatives and institutions, including on television, radio, and social media. The GHREN used geo-location and chrono-location techniques, as well as the evaluation of the content and its consistency with the available body of evidence, in order to establish the reliability of publicly available information.

(f) Satellite imagery. The GHREN also made use of the services of the Operational Satellite Applications Programme of the United Nations Institute for Training and Research (UNOSAT) to obtain satellite imagery of several locations that were the scene of incidents of relevance to the mandate, as well as detention sites identified in the course of its investigations.

56. The Group considered as primary sources: interviews with victims, family members, lawyers and witnesses with direct knowledge and specific and credible information on individual cases and incidents; testimonies of officers of the security forces and Government officials (former or serving), as well as other persons with direct knowledge of specific cases or incidents (*insiders*); statements, documents or public information issued by Nicaraguan institutions and authorities; court rulings and court files; official documents issued by the different Branches of the Nicaragua Government, including laws, policies, regulations and directives; and verified audiovisual material and digital information (including social media content) containing direct information about a case or incident.

57. The Group considered secondary sources, among others: reports prepared by regional and UN system monitoring and research mechanisms; reports prepared by UN entities, civil society organizations, research centres, and academics; publications; presentations and academic articles; and press articles. In its evaluation of secondary sources, to the extent possible the GHREN sought to interview the researcher or author of the corresponding text, report, presentation or publication, in order to evaluate the methodology used and the credibility of the information derived therefrom.

58. The information collected by the GHREN was securely stored according to UN archiving protocols.<sup>56</sup> In order to fulfil its mandate to “preserve and analyse information and evidence” and to “make such information accessible and usable in support of ongoing and future accountability efforts” the GHREN recorded each piece of evidence and information collected in a specialized database designed to systematically and securely safeguard, organize, preserve and store all information. This integrated system is accredited, and offers all due information security and confidentiality guarantees, as well as respect for UN privileges and immunities.

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<sup>56</sup> See ST/SGB/2007/5; ST/SGB/2007/6, ST/SGB/2004/15, and UN standards and guidelines available at: <https://archives.un.org/content/policy>.



## E. Legal Framework

59. The Group of Experts investigated and documented the events in the Republic of Nicaragua since April 2018, in accordance with international human rights law and international criminal law. In doing so, it applied treaty law and customary international law,<sup>57</sup> as appropriate. The GHREN also examined the human rights guarantees reflected in Nicaraguan domestic law, as well as aspects of national legislation, where relevant.

### 1. International Human Rights Law

60. Nicaragua has the primary responsibility to respect and ensure respect for all human rights and fundamental freedoms, and to comply with and enforce obligations under human rights treaties and other instruments subscribed by Nicaragua. This includes the right to justice and to an effective remedy for victims of human rights violations, and the right to reparations and guarantees of non-recurrence.

61. The GHREN assessed the human rights situation on the basis of the international obligations voluntarily assumed by Nicaragua. The Republic of Nicaragua is bound by the UN Charter and has made a commitment to respect internationally recognized human rights. Nicaragua is a State Party to all major UN international human rights treaties,<sup>58</sup> with the exception of the International Convention for the Protection of All Persons from Enforced Disappearance (ICED).<sup>59</sup> Nicaragua is also bound by the relevant norms of international human rights law that are part of customary international law. Since 2018, Nicaragua has not ratified or acceded to any human rights protocols or treaties, despite having been recommended to do so.<sup>60</sup>

62. At the regional level, Nicaragua is bound by the various Inter-American treaties signed by the State,<sup>61</sup> which remain in force even after Nicaragua's denunciation of the

<sup>57</sup> Customary international law is the unwritten source of international law, and is binding on all States, except where the State has recurrently objected to a specific customary obligation; see ILC, Draft Conclusions on the Identification of Customary International Law, Report of the International Law Commission, 70<sup>th</sup> session (30 April–1 June and 2 July–10 August 2018), A/73/10, Supplement No. 10, para. 65 (para. 1, conclusion No. 15) and para. 66 (General Comment No. 3).

<sup>58</sup> Nicaragua is a party to the following universal human rights instruments: International Convention on the Elimination of All Forms of Racial Discrimination since 1978; International Covenant on Civil and Political Rights and its First Optional Protocol since 1980; International Covenant on Economic, Social and Cultural Rights since 1980; Convention on the Elimination of All Forms of Discrimination against Women since 1981; Convention on the Rights of the Child since 1990; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography since 2004; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 2005; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict since 2005; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families since 2005; Convention on the Rights of Persons with Disabilities since 2007; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 2009; Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty since 2009 and Optional Protocol to the Convention on the Rights of Persons with Disabilities since 2010.

<sup>59</sup> Nicaragua is also not a State Party to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

<sup>60</sup> E/C.12/NIC/CO/5, para. 54; A/HRC/42/16, paras. 125.1–125.7.

<sup>61</sup> Inter-American Convention on the Granting of Civil Rights to Women, since 1956; American Convention on Human Rights (Pact of San José), since 1979; Inter-American Convention to Prevent and Punish Torture, since 1985; Protocol to the American Convention on Human Rights to Abolish the Death Penalty, since 1990; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), since 1995; Inter-American Convention on Forced Disappearance of Persons, since 1995; Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, since 2002; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural

OAS Charter.<sup>62</sup> In addition, in February 1991, Nicaragua recognized the jurisdiction of the Inter-American Court as binding in all cases relating to the interpretation or application of the American Convention.

63. Article 46 of the Constitution of Nicaragua provides that “in the national territory every person enjoys the protection of the State and the recognition of the rights inherent to the human person, the unrestricted respect, promotion and protection of human rights, and the full exercise of the rights set forth in the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man; in the International Covenant on Economic, Social and Cultural Rights; in the International Covenant on Civil and Political Rights of the United Nations; and in the American Convention on Human Rights of the Organization of American States”.<sup>63</sup>

## 2. International Criminal Law

64. In accordance with the mandate given to the GHREN to identify, if possible, those responsible for human rights violations and abuses in Nicaragua, and to make the results of the investigation accessible and usable in ongoing and future accountability initiatives, as well as to provide support to national, regional and international efforts to promote accountability for violations and abuses, the present investigation has considered that the facts should be investigated in light of international criminal law.

65. International criminal law applies to situations in which a person may be held individually criminally responsible for serious violations of international human rights law. International criminal law establishes individual criminal responsibility for legal categories of conduct that constitute crimes under international law. It is possible to identify individuals who perpetrate human rights violations without recourse to international criminal law, in particular, without establishing a mental element of crime (*mens rea*) and a mode of liability. In this case, a conclusion will not involve a finding in international criminal law, but in the field of international human rights law.

66. Customary international criminal law has been used as the legal framework to assess whether the violations committed in Nicaragua may constitute crimes under international law. Notwithstanding the fact that international judicial decisions are not sources of international law *per se*,<sup>64</sup> and that only in some cases does the practice of international organizations contribute to the formation or manifestation of customary international law,<sup>65</sup> the GHREN relied in its work on the Statutes and the jurisprudence of the *ad hoc* tribunals established by the UN, namely the ICTY, the International Criminal Tribunal for Rwanda (ICTR) and their successor, the International Residual Mechanism for Criminal Tribunals (IRMCT).<sup>66</sup> It also relied on the legislation and jurisprudence of States to investigate, prosecute and convict those responsible for crimes under international law, taking into

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Rights (Protocol of San Salvador), since 2009; and Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), since 2021.

<sup>62</sup> IACtHR, Case of *Juan Sebastián Chamorro et al.*, Resolution on Provisional Measures, paras. 28–30.

<sup>63</sup> Consolidated Text of the Political Constitution of the Republic of Nicaragua of 1987, published in *La Gaceta, Diario Oficial* No. 5 of 9 January 1987 with incorporated amendments (hereinafter “Constitution of Nicaragua”), art. 46.

<sup>64</sup> See Statute of the International Court of Justice (ICJ), 26 June 1945, 33 UNTS 993 (entered into force 24 October 1945), art. 38(1)(d); ILC, Draft Conclusions on the Identification of Customary International Law, para. 66 (Comment no. 2 to Conclusion no. 13).

<sup>65</sup> ILC, Draft Conclusions on the Identification of Customary International Law, para. 65 (para. 2 of Conclusion No. 4).

<sup>66</sup> To the extent that they reflect customary international criminal law, also the Statutes and jurisprudence of other Criminal Justice Entities created by/headed by/under the auspices of/supported by the UN, such as the Special Court for Sierra Leone (SCSL) and its successor, the Special Residual Special Court for Sierra Leone (SRCSL), the Special Tribunal for Lebanon (STL), the Criminal Chambers of the United Nations Transitional Administration in East Timor (UNTAET Chambers), and the Extraordinary Chambers in the Courts of Cambodia (ECCC).

account the dual role of the decisions of national courts and tribunals in the identification of customary international law.<sup>67</sup>

67. The GHREN also considered aspects of the Rome Statute and the jurisprudence of the ICC, to the extent that the Statute includes customary international criminal law and principles that are recognized in international instruments to which the Republic of Nicaragua is a party, and their violation is considered an international crime.

68. The aforementioned applies, notwithstanding that Nicaragua is not a State Party to the Rome Statute.<sup>68</sup> The principle of individual criminal responsibility for international crimes is well established under customary international law,<sup>69</sup> as is the need in international criminal law to establish criminal responsibility on a clear and solid basis in international customary law,<sup>70</sup> that is, that the application of the principle to a concrete case corresponds to a general practice that is accepted as legally binding,<sup>71</sup> meaning that the practice in question must be undertaken with a sense of legal right or obligation (*opinio iuris*).<sup>72</sup>

69. Moreover, the lack of ratification of the Rome Statute does not exclude the possibility that the Government of the Republic of Nicaragua may refer the situation in the country to the ICC in the future,<sup>73</sup> also *ex post facto*, after the commission of the alleged crime.<sup>74</sup> Likewise, third countries may invoke having criminal jurisdiction.<sup>75</sup> This includes exercising criminal jurisdiction regarding conduct of nationals whose countries have not ratified the Rome Statute, as is the case of the Republic of Nicaragua, with no possibility to challenge such practice based on the *nulla poena sine lege* principle, that is, on the grounds of lack of applicability, accessibility and predictability of the criminal conduct under international criminal law.<sup>76</sup>

<sup>67</sup> ILC, Draft Conclusions on the Identification of Customary International Law, para. 66 (comment No. 1 to Conclusion No. 13).

<sup>68</sup> In accordance with art. 122, paragraph 1, of the Rome Statute, States that are not parties to the Statute, but have signed the Statute or the Final Act of the Rome Conference, may be observers at the Assembly. Among the signatory States of the Observatory is Nicaragua.

<sup>69</sup> Commission of Independent Experts on Rwanda, Final Report of the Commission of Experts established pursuant to Security Council resolution 935 (1994), S/1994/1405, Annex, paras. 169–172; ICTY, *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-T, Opinion and Judgment, 7 May 1997 (*Tadić*, Trial Judgment), para. 623; *Prosecutor v. Zejnir Delalić et al.*, Case No. IT-96-21-T, Judgment, 16 November 1998 (*Čelebići*, Trial Judgment), para. 321; ICTR, *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR. ICTR-00-55-T, Judgment, 12 September 2006, para. 459; SCSL, *Prosecutor v. Moinina Fofana and Allieu Kondewa*, Case No. SCSL-04-14-T, Judgment, 2 August 2007, para. 103; *Prosecutor v. Iassa Hassan Sesay et al.*, Case No. SCSL-04-15-T, Judgment, 2 March 2009, para. 58.

<sup>70</sup> ICTY, *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003, para. 52.

<sup>71</sup> *Ibid.*, para. 12.

<sup>72</sup> ILC, Draft Conclusions on the Identification of Customary International Law, para. 65 (Conclusion No. 2 and para. 1 of Conclusion No. 9).

<sup>73</sup> Rome Statute, arts. 12(3), 13(a), 14.

<sup>74</sup> See regarding the situation in Cote D'Ivoire, ICC, Appeals Chamber, *Prosecutor v. Laurent Koudou Gbagbo*, Case No. ICC-02/11-01/11 OA 2, Judgement on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I on jurisdiction and stay of the proceedings, 12 December 2012, paras. 72–90; at least theoretically, the possibility of the UN Security Council referring the situation of the Republic of Nicaragua to the ICC Prosecutor is not excluded either, according to the Rome Statute itself. Rome Statute, art. 13(b).

<sup>75</sup> While the Rome Statute does not establish any obligation to implement the substantive criminal law of the Statute, many of the 123 States Parties (ratification status as of December 2022) have brought their substantive criminal law in line with the Statute. Although rules of international criminal law adopted in national legislation are formally part of domestic law, when interpreting them, national courts of States Parties are obliged to take into account the Rome Statute and customary international law, according to Gerhard Werle, Florian Jessberger, *Principles of International Criminal Law*, 4th edition, Oxford University Press, Oxford 2020, p. 186, no. 482.

<sup>76</sup> See ICTY, *Prosecutor v. Milan Milutinović et al.*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction - Joint Criminal Enterprise, 21 May 2003, para. 42.

70. Regarding the status of the provisions of the Rome Statute in international law, the present investigation is aware that, while the Statute may be regarded in many areas as a source indicative of the *opinio juris* of a great number of States,<sup>77</sup> deducing evidence of customary international law from an international treaty is not straightforward, since the existence of a treaty may also support the opposite inference; i.e., that without the conventional norm there is no customary norm.<sup>78</sup>

71. The starting point for taking the Statutes and jurisprudence of the ICTY and ICTR as a means to specify the legal framework of the present investigation, is that the UN Criminal Tribunals have not been an exercise of legislative creation of international law, but rather, in order to comply with the principle *nullum crimen sine lege*, according to the UN Secretary General, they had to apply the rules that, beyond any doubt, are part of customary international law.<sup>79</sup> Taking into consideration that substantive international criminal law had evolved since the early 1990s,<sup>80</sup> the Tribunals have interpreted the provisions defining the crimes under their jurisdiction in this sense, unless an intention to depart from customary international law was clearly expressed in the definitions of the crimes under their jurisdiction or in other authoritative sources,<sup>81</sup> or the conduct was manifestly criminal, according to the general principles of law recognized by all legal systems.<sup>82</sup>

72. In carrying out this work, the UN Criminal Tribunals relied on the codification work of customary international law carried out by international bodies, on international jurisprudence, sources particularly relevant for interpretation, and the legislation and practice of States.<sup>83</sup> Despite some criticism by commentators of the practice of the UN Criminal Tribunals,<sup>84</sup> this basis for identifying and interpreting the elements of crimes under international law is in line with the findings on the means of identification of customary international law of the International Law Commission,<sup>85</sup> and meets the particularities of international criminal law.

73. The present investigation is also aware that the definition of crimes under international law in the jurisprudence of the UN Criminal Tribunals or the ICC must be

<sup>77</sup> ICTY, *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgment, 10 December 1998 (*Furundžija*, Trial Judgment), para. 227.

<sup>78</sup> ICJ, Case Concerning Ahmadou Sadio Diallo (*Republic of Guinea v. Democratic Republic of the Congo*), Preliminary Objections, ICJ Reports 2007, 582–618, p. 615, para. 90. See also, similarly, ILC, Draft Conclusions on the Identification of Customary International Law, para. 66 (Comment No. 7 to conclusion No. 11), noting that “the concordant behaviour of the parties to the treaty among themselves could presumably be attributed to the treaty obligation, rather than to acceptance of the rule in question as binding under customary international law [...]”. While several States held the position that the Statute should codify customary international criminal law and not extend to the progressive development of international law, the present investigation accepts the lack of consensus as to which norms, prior to their inclusion in the Rome Statute, already reflected customary international criminal law or became customary international criminal law after their inclusion in the Statute, or which norms had this status at the time of their inclusion and continue to have it, or which did not have it and became so subsequently. Report of the Preparatory Committee on the Establishment of an International Criminal Court, Vol. I (Proceedings of the Preparatory Committee at the March-April and August 1996 Sessions), A/51/22, Supplement No. 22, para. 54. See *Furundžija*, Trial Judgment, para. 227.

<sup>79</sup> See Explanatory Memorandum of the Secretary-General, Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), S/25704, para. 34.

<sup>80</sup> *Stakić*, Trial Judgment, para. 412.

<sup>81</sup> ICTY, *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-A, Judgment, 15 July 1999 (*Tadić*, Appeal Judgment), para. 296.

<sup>82</sup> ICTY, *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgment, 20 February 2001, paras. 179–180.

<sup>83</sup> ICTY, *Prosecutor v. Radislav Krstić*, case no. IT-98-33-T, Judgment, 2 August 2001 (*Krstić*, Trial Judgment), para. 541.

<sup>84</sup> E.g., Göran Sluiter, “Chapeau Elements” of Crimes Against Humanity in the Jurisprudence of the UN Ad Hoc Tribunals, in L. N. Sadat (ed.), *Forging a Convention for Crimes Against Humanity*, Cambridge University Press, Cambridge et al. 2011, 102–141, pp. 109 et seq.

<sup>85</sup> ILC, Draft Conclusions on the Identification of Customary International Law, para. 65 (Conclusions Nos. 11–14).

carefully considered in light of the jurisdiction they are exercising and the definition contained in their legal framework.<sup>86</sup> The ICC is an institution created by a multilateral treaty that already has a number of safeguards protecting States from an expansive application of jurisdiction, and therefore very different from the UN Criminal Tribunals or the courts of States exercising universal jurisdiction.<sup>87</sup>

74. Finally, the GHREN notes that the Republic of Nicaragua reaffirms the importance of comparative jurisprudence in the area of Constitutional Justice.<sup>88</sup> This includes international criminal jurisprudence, to guarantee the full and unrestricted enforcement of human rights, the investigation of their violations, and the effective prosecution and punishment of those responsible for such crimes in the territory of the Republic, without discrimination and in accordance with the judicial guarantees and human rights protected by the principles of international law.

## I. Background and context

### A. The dismantling of the democratic State governed by the rule of law

75. During the 1990s, important advances were made towards the consolidation of a democratic rule of law in Nicaragua, with the strengthening of the separation of powers, efforts to develop a legitimate and independent electoral system, and the depoliticization of the security forces.

76. In 1995, under the government of Violeta Barrios de Chamorro, constitutional reforms were carried out to reduce some of the powers of the Presidency and strengthen the role of the National Assembly.<sup>89</sup> Among other aspects, presidential re-election was limited to two non-consecutive terms, the presidential term was shortened from six to five years, and the President's family members were prohibited from holding elected positions in the Executive Branch.<sup>90</sup> The rules for the election of the President of the Republic were also modified, from being elected by a simple majority to a system in which if no candidate obtained 45 percent of the votes, a second round of elections would be held.<sup>91</sup>

77. Since 2000, Nicaragua has experienced a reverse process of democratic regression. A series of constitutional, legal, and institutional reforms have progressively dismantled the division of powers and consolidated total control of the State by the Executive Branch.

#### 1. The Aleman-Ortega pact

78. In January 2000, the President of Nicaragua, Arnoldo Alemán, and Daniel Ortega, then leader of the *Frente Sandinista de Liberación Nacional* (FSLN), signed a pact officially named the “governability agreement”, popularly known as the “Pact”. Through this Pact, Alemán and Ortega carried out a series of institutional, legal, and constitutional reforms aimed at maintaining and expanding the power quotas of the two parties they led, the *Partido Liberal Constitucionalista* (PLC) and the FSLN, respectively, which at that time represented the two main political forces in the country. These reforms established a

<sup>86</sup> See *Stakić*, Trial Judgment, para. 413.

<sup>87</sup> Robert Dubler & Matthew Kalyk, *Crimes against Humanity in the 21st Century, Law, Practice and Threats to International Peace and Security*, Brill Nijhoff, Leiden & Boston 2018, p. 616.

<sup>88</sup> See Law No. 983, Constitutional Justice Act, published in *La Gaceta, Diario Oficial* No. 247, December 20, 2018, art. 3, para. 8 (“Other methods of interpretation: The interpretation of legal norms, shall be carried out attending to legislation, jurisprudence, general principles of law equality and equity, doctrine and comparative jurisprudence”). See also Constitution of Nicaragua, art. 46.

<sup>89</sup> Partial Reform of the Constitution of the Republic of Nicaragua Act, Law No. 192, approved on 1 February 1995, published in *La Gaceta, Diario Oficial* No. 124 of 4 July 1995 (hereinafter “Law No. 192”); Framework for the Implementation of the Constitutional Reforms Act, Law No. 199, approved on 3 July 1995, published in *La Gaceta, Diario Oficial* No. 125 of 5 July 1995.

<sup>90</sup> Law No. 192, art. 13, which amends articles 147 and 148 of the Constitution of Nicaragua.

<sup>91</sup> *Ibid.*

two-party political system and allowed the partisanship and subordination of the Electoral and Judicial Branches and other institutions that oversee the Executive Branch.

(a) *The constitutional reform of 2000*

79. The constitutional reform of 2000 reinforced the shielding of the head of the Executive Branch, raising the quorum to remove the immunity of the President of the Republic from an absolute majority to two-thirds of the members of the National Assembly.<sup>92</sup> The reform also established that, at the end of their presidential term, the President and the Vice President of the Republic would automatically occupy seats as regular and alternate representatives, respectively, of the National Assembly.<sup>93</sup> Likewise, a seat would be assigned to the candidates for the presidency and vice-presidency who had obtained the second place in the general elections. In this way, according to some commentators, the authors of the Pact guaranteed themselves parliamentary immunity during the following legislature.<sup>94</sup>

80. A crucial element of the reform was the modification of the rules for the presidential election. The percentage of votes required to win the presidency or vice presidency in the first round was lowered from 45 percent to 40 percent, or 35 percent in the case of a five percent lead over the next candidate.<sup>95</sup> This lowering of the electoral threshold would allow Daniel Ortega to return to the presidency in 2007.

81. The original Nicaraguan Constitution of 1987 established a Supreme Court of Justice (*Corte Suprema de Justicia*, CSJ) of 7 magistrates and/or judges, which the 1995 reform had increased to 12.<sup>96</sup> The constitutional reform increased the number of members of the Court to 16 magistrates and/or judges and 16 co-judges,<sup>97</sup> and reduced their term of service from seven to five years.<sup>98</sup> Similarly, the composition of the Supreme Electoral Council (*Consejo Supremo Electoral*, CSE) was modified from five magistrates and five alternate magistrates to seven magistrates and three alternate magistrates, who would serve for five years.<sup>99</sup> Law No. 330 also substituted the figure of the Comptroller General of the Republic for a collegiate body – the Superior Council of the Comptroller General of the Republic – made up of five proprietary comptrollers and three alternates, who would serve for five years.<sup>100</sup>

82. The modification of the term of office of the magistrates of the Judicial and Electoral Branches, and the Superior Council of the Comptroller General's Office, establishing five-year terms, made the expiration of their period of office coincide with the inauguration of a new President of the Republic, thus allowing the presidency to determine the renewal of the tenure of the members of these bodies. In practice, this reform meant the distribution between the FSLN and the PLC of the highest positions in the Judicial and Electoral Branches: in 2001, the CSE was integrated by four people linked to the FSLN and

<sup>92</sup> Partial Amendment to the Constitution of the Republic of Nicaragua Act, Law No. 330, approved on 18 January 2000, published in *La Gaceta, Diario Oficial* No. 13 of 19 January 2000 (hereinafter "Law No. 330"), art. 3 amending art. 130 of the Constitution of Nicaragua.

<sup>93</sup> *Ibid.*

<sup>94</sup> Manuel Ruiz Guerrero, "La Institucionalización del Sistema Político Nicaragüense: El Laberinto de las Reformas Constitucionales", 2016, pp. 162–163, 165–166. It should be noted that said pact was forged at a sensitive time for both leaders, in which they faced risks of being subjected to criminal proceedings. In the case of Arnoldo Alemán, the PLC leader faced serious accusations of corruption and embezzlement during his tenure as mayor of Managua and as President of the Republic; while Ortega faced an accusation of rape by his stepdaughter, Zoilamérica Narváez Murillo.

<sup>95</sup> Law No. 330, art. 4, amends art. 147 of the Constitution of Nicaragua.

<sup>96</sup> Law No. 192.

<sup>97</sup> The position of substitute magistrate replaced that of magistrate or alternate magistrate. Law No. 330, art. 3 reforming art. 134 of the Constitution of Nicaragua.

<sup>98</sup> *Ibid.*, art. 6 reforming art. 162 of the Constitution of Nicaragua.

<sup>99</sup> *Ibid.*, art. 7 reforming art. 170 of the Constitution of Nicaragua.

<sup>100</sup> *Ibid.*, art. 5 reforming arts. 154 and 156 of the Constitution of Nicaragua.

three people close to the PLC; and the CSJ was integrated by eight members linked to the FSLN and one to the PLC.<sup>101</sup>

(b) *Electoral Law of 2000*

83. The Alemán-Ortega pact also enabled the reform of the electoral legislation with the publication of the Electoral Law in January 2000.<sup>102</sup> This law limited electoral competition and restricted the exercise of the right to political participation by limiting participation in electoral processes to political parties, excluding petition candidacies (“popular subscription associations”). The new Electoral Law did not recognize the traditional forms of organization of the indigenous and Afro-descendant peoples, which made it impossible for the indigenous and ethnic communities of the Atlantic Coast to participate in the municipal elections of that year.<sup>103</sup>

84. The Electoral Law also limited the formation of political parties, the modalities of affiliation and the acquisition of legal personality.<sup>104</sup> It determined that, in order to obtain legal personality, the new political formations had to submit a number of signatures equal or superior to three percent of the national vote, and to form Municipal Directives with at least five members, in all the municipalities of the country.<sup>105</sup> On the other hand, the law expanded the grounds for the cancellation of parties to include, among others: self-dissolution or merger of the party with another; failure to participate in all elections called; inability to obtain at least four percent of the valid votes in national elections; or, in the case of electoral alliances, failure to obtain four percent of the votes multiplied by the number of parties comprising the coalition.<sup>106</sup> These and other provisions disproportionately limited the political participation of minority parties and other expressions different from the majority parties.<sup>107</sup>

85. Among other issues, the law determined that the presidents of the Departmental and Regional Electoral Councils of the Voting Boards would be “designated alternatively from among the political parties that had obtained the first and second place, in the last general elections held”.<sup>108</sup> In this way, they assured that in the following elections members of the two parties that signed the pact, the PLC and the FSLN, exercised the presidency of the Electoral Councils of the Boards Receiving Votes in the Departments and Autonomous Regions.

## 2. Second Government of Daniel Ortega: 2007–2012

86. In the 2006 general elections, under the new electoral system that lowered the threshold for obtaining the presidency, Daniel Ortega came to power with 38 percent of the valid votes at the national level. The FSLN obtained the presidency and a simple majority of seats in the National Assembly. Although they did not have an absolute majority in the Assembly, upon their arrival to power, as discussed above, the FSLN found a partisan judicial and electoral system in their favour.<sup>109</sup>

<sup>101</sup> IACHR, Nicaragua: Concentration of Power and Weakening of the Rule of Law, 2021, p. 40; CEJIL, “Nicaragua ¿Cómo se reformó la institucionalidad para concentrar el poder?”, 2017, p. 5, available at: [https://cejil.org/wp-content/uploads/pdfs/informe\\_cejil\\_sobre\\_nicaragua\\_-\\_derechos\\_politicos.pdf](https://cejil.org/wp-content/uploads/pdfs/informe_cejil_sobre_nicaragua_-_derechos_politicos.pdf).

<sup>102</sup> Electoral Act, Law No. 331, approved on 19 January 2000, published in *La Gaceta, Diario Oficial* No. 16 of 24 January 2000 (hereinafter “Electoral Act”).

<sup>103</sup> The indigenous organization Yapti Tasba Masraka Nanih Asla Takanka (YATAMA) filed a complaint before the IACHR. The IACHR referred the case to the IACtHR, which in 2005 declared Nicaragua internationally responsible for violating the YATAMA candidates’ political right to be elected. IACtHR, Case of *Yatama v. Nicaragua*, Preliminary Objections, Merits, Reparations and Costs, Judgment, 23 June 2005, Series C. No. 127, paras. 209–221.

<sup>104</sup> IACHR, Nicaragua: Concentration of Power and Weakening of the Rule of Law, 2021, pp. 10 and 29.

<sup>105</sup> Electoral Act, art. 65, nos. 8 and 9.

<sup>106</sup> Electoral Act, art. 74.

<sup>107</sup> CEJIL, “Nicaragua ¿Cómo se reformó la institucionalidad para concentrar el poder?”, 2017, p. 6.

<sup>108</sup> Electoral Act, art. 16.

<sup>109</sup> CEJIL, “Nicaragua ¿Cómo se reformó la institucionalidad para concentrar el poder?”, 2017, pp. 5–6.

87. Since 2007, the reforms and the adoption of laws and policies aimed at concentrating power in the figure of the President and guaranteeing the continued control of the State by the ruling party, have deepened.<sup>110</sup>

(a) *The weakening of the municipal authority*

88. In November 2007, the Government created the Councils of Citizen Power (*Consejos del Poder Ciudadano*, CPC) and Cabinets of Citizen Power (*Gabinetes del Poder Ciudadano*, GPC) by Presidential Decree,<sup>111</sup> after failing in its attempts to do so through legislation in the National Assembly.

89. The CPCs and GPCs were conceived as territorial structures for citizen participation and were implemented throughout the country. Although *a priori* these mechanisms could contribute to the democratic development of the country, they have been the object of harsh criticism and denunciations due to the proliferation of clientelist practices and partisan control over both structures.<sup>112</sup> The GHREN investigations have gathered information on the involvement of the CPCs and GPCs in the repression of social protest and of voices critical of the Government (see section B.3.b).

90. In addition, this system undermined municipal autonomy by providing for a limited role of the municipalities and centralizing the coordination of citizen participation structures in the National Cabinet of Citizen Power, presided over by the President of the Republic and coordinated by Rosario Murillo.<sup>113</sup> Thus, important tasks were delegated to the CPCs and GPCs, including those related to the management and distribution of aid and social benefits, which operated parallel to the municipal authority and coordinated directly from the presidency.

(b) *The 2008 municipal elections*

91. The CSE's actions during the 2008 municipal elections undermined the credibility of the electoral institution and the electoral processes in the country. The CSE initiated the 2008 municipal election campaign by depriving the opposition party *Movimiento de Renovación Sandinista* (MRS)<sup>114</sup> and the Partido Conservador (PC),<sup>115</sup> of their legal status, arguing that they had incurred the grounds for cancellation of "recidivism" and "self-dissolution" of the Electoral Law.<sup>116</sup> The CSE also ruled against Eduardo Montealegre in an

<sup>110</sup> IACHR, Nicaragua: Concentration of Power and Weakening of the Rule of Law, 2021, p. 24.

<sup>111</sup> Executive Decree No. 112–2007, Creation of the Councils and Cabinets of the Citizen Power, approved on 29 November 2007, published in *La Gaceta, Diario Oficial* No. 230 of 29 November 2007 (hereinafter "Executive Decree No. 112"). The CPC and GPC models had to be introduced by Executive Decree after the bill failed in the National Assembly, which triggered a political crisis that lasted for several months.

<sup>112</sup> In 2010, the Special Rapporteur on the right to food, in his report on his visit to Nicaragua, expressed concern about the role of CPCs in implementing programs to achieve food security and warned about the associated risks of political clientelism. See A/HRC/13/33/Add.5, paras. 56–58.

<sup>113</sup> Executive Decree No. 112, arts. 3–5.

<sup>114</sup> CSE, Resolution dated 11 June 2008, cancelling the legal personality of the MRS. The resolution refers to articles 173.12 of the Constitution of Nicaragua, articles 63.2, 72, 74.3, and 75 of the Electoral Act, and internal provisions of the MRS. The judgment supports the cancellation of the legal personality of the MRS in Articles 63.2 (recidivism) and 74.3 (self-dissolution) of the Electoral Act. See, IACHR, *Movimiento Renovador Sandinista y otros* (Admissibility), Report No. 18/19, Petition 1261–08, paras. 5–7.

<sup>115</sup> *Ibid.*, paras. 8–10. The Conservative Party was reinstated as a legal entity in May 2010.

<sup>116</sup> The CSE's judgement is unclear in its justification for the cancellation of the party. According to the CSE, its decision would be linked to the internal reorganization process carried out by the MRS in 2007, which implied the termination of the functions of the party's Departmental and Municipal Boards of Directors, and the designation of Provisional Boards of Directors. According to the CSE, the MRS would have failed to comply with the obligation contained in art. 63.2 of the Electoral Act, to guarantee the greatest democratic participation in the election of its authorities and candidates. However, the judgement does not specify how this occurred or what facts determined the violation of art. 63. Furthermore, the CSE considered that the decision of the National Convention of the MRS to



internal conflict for the control of the centre-right *Alianza Liberal Nicaragüense* (ALN) party, ruling in favour to a sector close to the FSLN and giving control of the party to a person allegedly close to President Ortega, Eliseo Núñez Hernández.<sup>117</sup>

92. Before the municipal elections, the CSE denied accreditation of the OAS and other international observers and prohibited exit polls.<sup>118</sup> The CSE was also accused of manipulating the electoral lists and the voter registration process.<sup>119</sup> The political opposition denounced irregularities during election day, especially concerning the mayoralties of Managua and León, and called for demonstrations to protest the results which they considered fraudulent.<sup>120</sup> *Grupos de choque* or “clash groups” violently attacked these demonstrations, in what were some of the first reported incidents of attacks against demonstrators by pro-government armed groups.<sup>121</sup>

(c) *Repeal of the ban on presidential re-election*

93. In October 2009, the Government, together with a group of mayors and vice mayors, filed a request before the CSE for the non-application of the constitutional prohibition of re-election for two successive terms of the President,<sup>122</sup> Vice President, and mayors and deputy mayors,<sup>123</sup> arguing that such prohibition violated the principle of equality enshrined in the Constitution. After the CSE rejected the request, the petitioners filed an injunction before the Constitutional Chamber of the CSJ, which declared the articles prohibiting presidential re-election “inapplicable”.<sup>124</sup> In its ruling, the Court argued that such articles contradicted the principle of unconditional equality of all Nicaraguans in the enjoyment of political rights and that they generated discrimination since they were only applicable to those who held the offices of President, Vice President, mayor, and deputy mayor.<sup>125</sup>

94. In 2010, the CSJ annulled a constitutional provision prohibiting consecutive presidential terms.<sup>126</sup> This decision allowed Daniel Ortega, serving a second term as President, to run again in the 2011 elections.

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dismiss several party authorities from their positions would imply the self-dissolution of the party (art. 74.3 of the Electoral Act).

<sup>117</sup> Anderson and Dodd, “¿Progreso en Medio de Retroceso?”, *Journal of Democracy*, 2 July 2010, pp. 168–184; José Antonio Peraza, “Colapso del sistema electoral,” in Edmundo Jarquín, ed, “El régimen de Ortega ¿Una nueva dictadura familiar en el continente?”, 2016, p. 124.

<sup>118</sup> Jorge Salaverry, “Unas elecciones municipales cruciales en Nicaragua”, Real Instituto Elcano ARI No. 137/2008.

<sup>119</sup> *Ibid.*

<sup>120</sup> El País, “El fraude electoral divide a Nicaragua”, 13 November 2008.

<sup>121</sup> El País, “La oposición de Nicaragua marcha contra el fraude”, 16 November 2008, available at: [https://elpais.com/internacional/2008/11/17/actualidad/1226876402\\_850215.html](https://elpais.com/internacional/2008/11/17/actualidad/1226876402_850215.html).

<sup>122</sup> The Constitution of Nicaragua in force in 2009 prohibited the re-election for successive periods of the President and Vice President of the Government, and of mayors and deputy mayors in its art. 147, by virtue of which “the person who exercised or had exercised in property the presidency of the Republic at any time during the period in which the election is made for the following period, or the person who had exercised it for two presidential periods, may not be a candidate for the presidency of the Republic”.

<sup>123</sup> Constitution of Nicaragua of 1987, as amended in 1995, arts. 147 and 178.

<sup>124</sup> Supreme Court of Justice, Constitutional Chamber, Judgment No. 504, 19 October 2009 (hereinafter “Judgment No. 504”), available at: <https://www.legal-tools.org/doc/47dd99/pdf/>.

<sup>125</sup> In terms of the Judgment, “equality in the effective participation in the political life of the nation; the right to participate under equal conditions in political affairs and in the management of the State and to elect and be elected, for which this Court considers that articles 147 and 178 of the Constitution generate inequality and discrimination since it applies only to those who occupy the positions of president-vice-president; mayor-vice-mayor. However, it is inapplicable for other directly elected positions –deputies to the National Assembly, deputies to the Central American Parliament, members of the Councils of the Autonomous Regions of the Atlantic Coast–, or indirectly elected positions –magistrates of the Court of Justice, of the Electoral Council, prosecutor of the republic, members of the comptroller of the republic, attorney for the defence of human rights, intendant and superintendent, among others–”. Judgment No. 504, p. 15.

<sup>126</sup> Supreme Court of Justice, Judgement No. 6 of 30 September 2010.

95. As detailed below, in 2014 the National Assembly, already with an absolute majority of the ruling party, would reform the Constitution to eliminate all restrictions on presidential re-election and enable indefinite presidential re-election.<sup>127</sup>

(d) *The expiration of the terms of office of CSJ and CSE magistrates*

96. In 2010, President Ortega issued a decree to extend the mandate of the members of the CSE, the CSJ, the Comptroller General's Office, the Human Rights Ombudsperson's Office, and the Attorney General's Office.<sup>128</sup> However, according to the Constitution of Nicaragua, the aforementioned high positions can only be appointed by the National Assembly. Furthermore, these are bodies whose actions, independence, and autonomy have been widely questioned. As a result of this decree, the officials concerned continued to perform their functions for over three years, despite the expiration of their terms of office.<sup>129</sup>

(e) *The 2011 legislative and presidential elections*

97. The CSE declared President Daniel Ortega the winner of the 6 November 2011 general elections, with 62.5 percent of the valid votes, and assigned 63 seats to the governing party. International observers from the OAS and the European Union noted that the electoral process suffered from numerous irregularities and serious structural problems, including a lack of neutrality and transparency on the part of the CSE.<sup>130</sup> In addition, during Election Day, national and international observers were prevented from accessing several voting centres.<sup>131</sup>

98. The political opposition denounced fraud again, and the opposition presidential candidate, Fabio Gadea, rejected the results. International observers announced that it was impossible to independently verify the results since the CSE did not provide disaggregated data at the level of the voting centres, as established in the Electoral Law.<sup>132</sup>

99. The 2011 elections were marked by the measures adopted within the framework of the Alemán-Ortega Pact –including the electoral and constitutional reforms– the actions of the CSE and the CSJ, and the internal divisions of the political opposition. The 2011 legislative elections granted President Ortega absolute control of the National Assembly.

### 3. Third Administration of Daniel Ortega: 2012–2017

100. With 63 seats in the National Assembly, since 2012 the FSLN has had the majority necessary to adopt laws, appoint high-level State officials, and even reform Nicaragua's Constitution without reaching agreements with other political groups in the legislative body. The absence of checks and balances in the Legislative Branch has accelerated the erosion of the division of powers and the partisanship of the State, exacerbating the influence of the ruling party over the electoral and judicial system.<sup>133</sup>

<sup>127</sup> Partial Amendment to the Constitution of the Republic of Nicaragua Act, Law No. 854, approved on 29 January 2014, published in *La Gaceta, Diario Oficial* No. 26 of 10 February 2014 (hereinafter "Law No. 854").

<sup>128</sup> Executive Decree No. 3-2010, approved on 9 January 2010, published in *La Gaceta, Diario Oficial*, No. 6 of 11 January 2010.

<sup>129</sup> Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/23/43/Add.4, 2 April 2013, para. 68.

<sup>130</sup> OAS, "Informe verbal de la Misión de Acompañamiento Electoral en Nicaragua", 15 November 2011, available at: [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=S-41](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=S-41); European Union – Election Observation Delegation, Presidential, Legislative and PARLACEN Elections in Nicaragua, 4–8 November 2011, available at: [https://eulatnetwork.org/wp-content/uploads/2016/01/proyecto\\_informe\\_nicaragua\\_es.pdf](https://eulatnetwork.org/wp-content/uploads/2016/01/proyecto_informe_nicaragua_es.pdf).

<sup>131</sup> *Ibid.*

<sup>132</sup> The Carter Center, *The 2011 Elections in Nicaragua Report of a Study Mission*, 2011, pp. 8–9.

<sup>133</sup> In November 2012, during a regional consultation on the independence of the judiciary in Central America organized by the Special Rapporteur on the independence of judges and lawyers, participants stressed that the appointments of CSJ judges were heavily influenced by politics, especially given that

101. In May 2012, the National Assembly amended the Electoral Law, granting the CSE the power to review the electoral roll continuously and to eliminate persons who had not voted since 2006, to purge the roll of absentees and deceased persons.<sup>134</sup> It should be noted that this measure could result in a distortion of the electoral roll, by removing from it those who choose not to participate in the elections, either due to lack of confidence in the electoral processes, as an act of opposition, because they are out of the country, or for any other reason.

(a) *The 2012 municipal elections*

102. Six parties or alliances of parties participated in the municipal elections of 4 November 2012.<sup>135</sup> The FSLN mayoral candidates won 134 of the 153 mayorships in the country in a vote marked by accusations of fraud and high levels of abstention. The FSLN managed to control all departmental capitals except Bilwi, in the North Atlantic Autonomous Region (*Región Autónoma del Atlántico Norte*, RAAN), which remained in the hands of *Yapti Tasba Masraka Nanih Asla Takanka* (YATAMA).<sup>136</sup>

103. The OAS Mission of Electoral Accompaniment, which monitored the elections, recognized efforts from the electoral authorities to organize better electoral processes and more equitable elections. However, it also stated that the 2012 reforms to the Electoral Law had not taken into consideration elements that would allow the State of Nicaragua to move towards a more transparent and reliable electoral system, noting in particular the use of partisan criteria for the conformation of the various electoral bodies.<sup>137</sup>

(b) *The controversy surrounding the Gran Canal Interoceánico (Grand Interoceanic Canal) project*

104. Between 2012 and 2013, the National Assembly adopted several laws to build an interoceanic canal connecting the Caribbean Sea and the Pacific Ocean. These legislative initiatives were promoted by the FSLN representation in the Assembly as a matter of urgency and with practically no debate and without conducting impact studies.<sup>138</sup>

105. Under Law No. 840, introduced by President Ortega and approved by the National Assembly in June 2013,<sup>139</sup> the concessionaire of the project, a Chinese company known as HKND, would receive control over the infrastructure and property rights over the canal for 50 years, with the option to extend such privileges for another 50 years. At the same time, the Law granted the Government broad powers to expropriate private property and constitutionally protected indigenous ancestral lands.

106. The announcement of the interoceanic canal project, and the corresponding expropriations, resulted in demonstrations led mainly by indigenous and peasant groups, which followed one after another from 2013 until April 2018. The protests were repressed by police and clash groups on several occasions.<sup>140</sup>

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the ruling party had an absolute majority in the National Assembly. See A/HRC/23/43/Add.4, para. 66.

<sup>134</sup> Act Amending Law No. 331, Electoral Act, Law No. 790, approved on 26 May 2012, published in *La Gaceta, Diario Oficial* No. 95 of 23 May 2012.

<sup>135</sup> The YATAMA party was part of the FSLN alliance at the national level but competed individually as a seventh option in three municipalities in the RAAN. OAS, Report of the Electoral Accompaniment Mission, Municipal Elections of 4 November 2012, in the Republic of Nicaragua, p. 9, available at: [https://www.oas.org/es/sap/deco/moe\\_informe/info\\_final\\_moe\\_nicaragu%202012.pdf](https://www.oas.org/es/sap/deco/moe_informe/info_final_moe_nicaragu%202012.pdf).

<sup>136</sup> *Ibid.*, p. 27.

<sup>137</sup> *Ibid.*, p. 29.

<sup>138</sup> CEJIL, Nicaragua: How was institutionality amended to concentrate power, 2017, para. 43; CERD/C/NIC/CO/15-21, para. 22.

<sup>139</sup> Special Act for the Development of Nicaraguan Infrastructure and Transportation Quota to the Canal, Law No. 840, approved on 13 June 2013, published in *La Gaceta, Diario Oficial* No. 110 of 14 June 2013.

<sup>140</sup> El País, “Nicaragua reprime las protestas contra el Canal”, 30 November 2016, available at: [https://elpais.com/internacional/2016/12/01/america/1480549730\\_004865.html](https://elpais.com/internacional/2016/12/01/america/1480549730_004865.html).

107. Days after the vote on Law No. 840, FSLN congresswoman Xochilt Ocampo was deprived of her seat by the CSE, allegedly after abstaining from voting in favour of Law No. 840.<sup>141</sup> In July of the same year, the CSE removed congressman Agustín Jarquín, who had maintained an alliance with the FSLN since 2001, after he withdrew from the alliance and joined the bench of the opposition party *Partido Liberal Independiente* (PLI) as an independent congressman.<sup>142</sup>

(c) *The 2014 constitutional reform*

108. In 2014, the National Assembly adopted Law No. 854, reforming the Constitution of Nicaragua once again. The reform strengthened the powers of the President of the Republic and introduced changes to the rules for his or her election.

109. As mentioned above, with the 2014 reform, the Assembly formally eliminated the prohibition of presidential re-election from the Constitution, establishing the possibility of indefinite re-election.<sup>143</sup> It also established a new system of the presidential election by relative majority, eliminating the second round.<sup>144</sup> Additionally, the reform expanded the powers of the President to govern by decree,<sup>145</sup> established the ratification by a simple majority of the National Assembly of the high positions appointed by the Presidency,<sup>146</sup> and eliminated the obligation of the President to be accountable to the National Assembly through the submission of an annual report.<sup>147</sup> In the same line, it established the direct subordination of the National Police and the Army to the President of the Republic in his capacity as Supreme Chief of the National Police<sup>148</sup> and Supreme Chief of the Army,<sup>149</sup> and expanded the functions of the Army, empowering it to perform citizen security tasks.

110. The reform also introduced consequences for political turncoat “*transfuguismo*”), determining that persons elected by universal vote from closed lists proposed by political parties, who change their electoral option during the exercise of their office, will lose their status as representatives and their alternate will assume the seat.<sup>150</sup> Said precept would be used in 2016 to expel 28 deputies of the PLI from the Assembly.

111. Finally, the 2014 reform constitutionalized the methods of direct participation implemented by the Government since 2007, including the controversial CPCs and GPCs.

(d) *State security forces*

112. In addition to what has already been described, important changes to the chain of command, functions, and operation of the National Police and the Army have been

<sup>141</sup> La Prensa Panamá, “Destituyen a diputada sandinista que no votó por concesión de Gran Canal”, 25 June 2013, available at: [https://www.prensa.com/mundo/Destituyen-sandinista-concesion-Gran-Canal\\_0\\_3692630722.html](https://www.prensa.com/mundo/Destituyen-sandinista-concesion-Gran-Canal_0_3692630722.html); CNN en español, “Protestas contra el Canal Interoceánico en Nicaragua dejan varios heridos”, 1 December 2016, available at: <https://cnnespanol.cnn.com/2016/12/01/protestas-contra-el-canal-interoceanico-en-nicaragua-dejan-varios-heridos/>.

<sup>142</sup> CENIDH, “Informe Alternativo sobre Pacto Internacional de Derechos Civiles y Políticos – Estado a evaluar: Nicaragua”, 30 August 2019; El Faro, “Consejo Electoral de Nicaragua destituye a diputado oficialista por cambiar de bando”, 29 July 2013, available at: <https://elfaro.net/es/201307/internacionales/12799/Consejo-Electoral-de-Nicaragua-destituye-a-diputado-oficialista-por-cambiar-de-bando.htm>.

<sup>143</sup> Law No. 854, art. 29 reforming art. 147 of the Constitution of Nicaragua (from which the prohibition of re-election was eliminated).

<sup>144</sup> *Ibid.*, art. 28, which amends art. 146 of the Constitution of Nicaragua.

<sup>145</sup> *Ibid.*, art. 30 reforming art. 150 of the Constitution of Nicaragua.

<sup>146</sup> *Ibid.*, art. 27 reforming art. 138 of the Constitution of Nicaragua.

<sup>147</sup> *Ibid.*, art. 30, which amends art. 150 of the Constitution of Nicaragua, transforming the presentation of the annual report into an attribution or power of the President.

<sup>148</sup> *Ibid.*, Art. 17, which amends art. 92 of the Constitution of Nicaragua.

<sup>149</sup> *Ibid.*, Art. 16, which amends art. 95 of the Constitution of Nicaragua.

<sup>150</sup> Constitution of Nicaragua, art. 131.

implemented since 2014.<sup>151</sup> As a whole, these have allowed the increase of partisan influence within both institutions and have ensured the control by the figure of the President of the Republic over the State security forces.

113. The amendments have included the direct subordination of the National Police and the Army to the President, the expansion of the Army's powers and its involvement in citizen security tasks, the creation of the Voluntary Police, and the granting to the President of the power to extend the term of office of the top commanders of the Police and the Army, among others.

114. In 2015, the adoption of the Sovereign Security Act<sup>152</sup> blurred the boundaries between national security and internal security, leaving the President, as Supreme Chief of the security forces, a wide margin of discretion to interpret which person or which behaviours constitute a risk to Nicaragua's sovereign security.

(e) *The 2016 legislative and presidential elections*

115. In June 2016, a few months before the presidential elections, the CSJ ordered the removal of Eduardo Montealegre as leader of the PLI, which represented the main opposition coalition, and appointed Pedro Reyes as the party's new leader.<sup>153</sup> In July, the CSE expelled 28 PLI members of congress (16 elected and 12 alternates) from the National Assembly,<sup>154</sup> elected by popular vote, for refusing to accept the authority of the new leader.<sup>155</sup> Due to the PLI leadership change, Luis Callejas and Violeta Granera, the candidates for President and Vice President proposed by the PLI-led Coalition, were prevented from participating as candidates in the elections.

116. According to official data, in the general elections held on 6 November 2016, the FSLN obtained 77 percent of the seats (72 seats). Daniel Ortega achieved a third consecutive presidential term with 72.5 percent of the votes, while his wife, Rosario Murillo, was elected Vice President of the Republic. The opposition announced a high abstention rate, while the CSE reported that participation exceeded 65 percent.<sup>156</sup>

117. The practices and trends described in this section have been exacerbated since April 2018, with the increasing closure of civic and democratic space and numerous serious violations and abuses of human rights, particularly civil and political rights (see Chapter III).

#### 4. Confusion between the State and the party, and the State and the parastatal

118. The dismantling of democratic institutions in Nicaragua has often blurred the line between the institutional and parastatal spheres. State officials often hold public office and simultaneously form part of political or trade union structures of the FSLN, generating an overlapping of roles in which it becomes difficult to differentiate when a person is acting as

<sup>151</sup> Changes introduced by the 2014 constitutional reform, the reform of the Military Code (Law No. 855), and the new National Police Act (Law No. 872).

<sup>152</sup> Sovereign Security Law of the Republic of Nicaragua Act, Law No. 919, approved on 2 December 2015, published in *La Gaceta, Diario Oficial* No. 241 of 18 December 2015 (hereinafter "Sovereign Security Act").

<sup>153</sup> The CSE applied the figure of transfuguism (art. 131 of the Constitution of Nicaragua) and ruled that his election had been invalidated for having deviated from the "party line". See Supreme Court of Justice, Constitutional Chamber, Judgment Number 299, 8 June 2016.

<sup>154</sup> Five of the expelled congresspeople had run for the elections through the PLI, but belonged to the cancelled MRS.

<sup>155</sup> CNN, "Tormenta política en Nicaragua tras destitución de 28 diputados opositores", 29 July 2016, available at: <https://cnnespanol.cnn.com/2016/07/29/tormenta-politica-en-nicaragua-tras-destitucion-de-28-diputados-opositores/>; NY Times, Nicaragua's Supreme Electoral Council Removes 28 Opposition Members of Congress, 29 July 2016, available at: <https://www.nytimes.com/es/2016/07/29/espanol/america-latina/el-consejo-supremo-electoral-de-nicaragua-destituye-a-28-diputados-opositores.html>.

<sup>156</sup> El País, "Daniel Ortega gana las elecciones presidenciales en Nicaragua", 7 November 2016, available at: [https://elpais.com/internacional/2016/11/07/america/1478498299\\_310594.html](https://elpais.com/internacional/2016/11/07/america/1478498299_310594.html).

a public authority and when he or she is acting as a political leader or party member. In some municipalities, for example, the mayor is also the political secretary of the FSLN in the province and, therefore, the highest party authority in the region. The vice-president of the CSJ, Magistrate Marvin Aguilar, is also the national political secretary of the Sandinista Leadership Committee in the institution. The president of the National Assembly is Gustavo Porras (FSLN), who is the general secretary of the Health Union, the Coordinator of the National Workers' Front, and was the coordinator of the CPCs system until 2014.

119. The situation described above would also result in patronage practices and confusion for the population between programs and activities carried out with State resources and partisan advantages or rewards. An illustrative example is the delivery of food to vulnerable households under the “zero hunger” program or of zinc sheets under the “roof plan”. According to information gathered by the GHREN, the beneficiaries of these programs would be selected based on the recommendation or suggestion by the Family Cabinets (or CPCs) based on party loyalty. Members of the Sandinista Youth would carry out the deliveries.<sup>157</sup>

120. This dynamic also extends to repressive activities at all levels: from the national hierarchy to local structures. For example, there have been reports of the participation of State employees in “clash groups” that attacked demonstrators, who were allegedly recruited to participate in these groups by the respective Sandinista Leadership Committees (*Comités de Liderazgo Sandinista*, CLS) or union leaders in the public institution where they worked. At the community level, the CPCs coordinate not only closely with the mayor's offices, but also with the volunteer police and local FLSN structures. Thus, numerous witnesses link the harassment of persons considered to be opponents, including released prisoners and their families, to the CPCs, the police, and the “parapolice”.<sup>158</sup>

121. The practices and trends described in this section have been exacerbated since April 2018, with the increasing closure of civic and democratic space and numerous serious violations and abuses of human rights, namely civil and political rights (see Chapter III).

## B. Institutional framework

### 1. State Powers

122. The 1987 Constitution establishes that Nicaragua is a democratic, participatory, and representative republic, and that public power is divided into four branches: Executive, Legislative, Judicial, and Electoral.<sup>159</sup> However, since 2000, there has been a gradual erosion of the division of powers and a co-optation by the administration of all branches. The Group has also received information indicating that, since 2007, the Government has used public resources and institutional bodies to promote and defend the ruling party's interests.

123. The GHREN received multiple allegations regarding acts of corruption and the existence of criminal structures within public institutions. According to the analyses conducted by international organizations and experts interviewed by the Group, corruption and the economic capture of the State provided incentives to the political elites to participate in the commission of human rights violations while at the same time promoting and facilitating the execution of those violations.<sup>160</sup>

<sup>157</sup> GHREN interviews GGIV001, GGIV003.

<sup>158</sup> See Chapters III.A and III.

<sup>159</sup> Constitution of Nicaragua, art. 7.

<sup>160</sup> IACHR, OEA/Ser.L/V/II. Doc. 288, para. 113; GHREN interviews GGIV001, GGIV002. The Corruption Perceptions Index (CPI), prepared by Transparency International, gave Nicaragua a score (from 0 to 100, with 0 being the most corrupt and 100 being the least corrupt), a score of 20 in 2021, 22 in 2020 and 2019, 25 in 2018, 26 in 2017, 26 in 2016, 27 in 2015, and 9 in 2012; see also BTI, “BTI 2022 Country Report”, pp. 8, 12–13, available at: [https://bti-project.org/fileadmin/api/content/en/downloads/reports/country\\_report\\_2022\\_NIC.pdf](https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_NIC.pdf).

(a) *The Executive Branch*

124. The GHREN has received information indicating that, since April 2018, a variety of public entities and Government institutions coordinated actions that have facilitated or contributed to the commission of serious human rights violations.<sup>161</sup> These include many municipalities, as well as the Ministry of Health, the Ministry of the Interior,<sup>162</sup> the Ministry of Transportation,<sup>163</sup> the Ministry of Finance and Public Credit,<sup>164</sup> the National Institute of Social Security,<sup>165</sup> the Nicaraguan Institute of Telecommunications and Postal Services (*Instituto Nicaragüense de Telecomunicaciones y Correos*, TELCOR),<sup>166</sup> and the National Council for Economic and Social Planning (CONPES).<sup>167</sup>

125. The Executive Branch is composed of the President of the Republic, the Vice President of the Republic, the ministries, Government entities, banks, and state-owned companies.<sup>168</sup> The Executive Branch Law<sup>169</sup> establishes that there will be 16 ministries and determines their respective areas of competence.<sup>170</sup>

126. Nicaragua is a centralized State. The country is administratively divided into 15 provinces or “*departamentos*”, two autonomous regions, and 153 municipalities.<sup>171</sup> The local level of Government is organized into municipalities, governed and administered by

<sup>161</sup> See Chapters III and V.

<sup>162</sup> Its competencies include, among others: coordinating the activities necessary to guarantee public order and the prevention and prosecution of crimes; coordinating, directing, and administering the National Prison System; coordinating the General Directorate of Migration and Alien Affairs; registering the Statutes of Non-Profit Legal Entities, administering their registry and supervising their operation; and coordinating with the Ministry of Defence for the development of joint actions by the Police and the Army as instructed by the President. In 2014, the reform to the National Police Law abolished the role of the Ministry of the Interior as an intermediate oversight and control entity between the President and the head of the police institution. The position of Minister of the Interior has been held since January 2017 by María Amelia Coronel Kinloch; appointment published in *La Gaceta, Diario Oficial* No. 10 of 16 January 2017. Luis Cañas Novoa serves as Vice Minister of the Interior; appointed in *La Gaceta, Diario Oficial* No. 103 of 4 June 2015. Roger Ramírez Guzmán serves as Vice Minister for Specific Affairs; appointed by Presidential Agreement No. 16-2016, approved on 21 January 2016, published in *La Gaceta, Diario Oficial* No. 17 of 26 January 2016. Carla Eugenia Salinas as Vice Minister for Specific Functions; appointed by Presidential Decree No. 107-2020, approved on 4 September 2020, published in *La Gaceta, Diario Oficial* No. 168 of 8 September 2020.

<sup>163</sup> Óscar Mojica Obregón, a former retired military officer from the Army and Minister of Transportation and Infrastructure (MTI). Appointed by Presidential Agreement No. 126-2017, approved on 17 August 2017, published in *La Gaceta, Diario Oficial* No. 157 of 18 August 2017.

<sup>164</sup> Iván Acosta, Minister of Finance and Public Credit. Appointed by Presidential Decree No. 26-2012, approved on 13 February 2012, published in *La Gaceta, Diario Oficial* No. 29 of 14 February 2012.

<sup>165</sup> Roberto López serves as Executive President of INSS. Appointed with Agreement No. AP-01-2012 and published in *La Gaceta, Diario Oficial* No. 23 of 6 February 2012.

<sup>166</sup> Nahima Janet Díaz Flores, daughter of Commissioner General Francisco Díaz, succeeded Orlando Castillo as director of the Nicaraguan Institute of Telecommunications and Postal Services (TELCOR) as of June 2020. TELCOR is a decentralized entity under the direct sectorial stewardship of the Presidency.

<sup>167</sup> CONPES the President’s support body to direct the country’s economic and social policy. Among other functions, it is in charge of coordinating and implementing the CPC system, structures that have been noted for their participation in repressive actions against social protest and the surveillance and silencing of dissident voices.

<sup>168</sup> Constitution of Nicaragua, art. 3.

<sup>169</sup> Organization, Competence and Procedures of the Executive Branch Act with incorporated amendments, Law No. 290, published in *La Gaceta, Diario Oficial* No. 35 of 22 February 2013 (hereinafter “Executive Branch Law”).

<sup>170</sup> Ministry of Foreign Affairs; Ministry of the Interior; Ministry of Defence; Ministry of Education; Ministry of Health; Ministry of Agriculture and Forestry; Ministry of Development, Industry and Commerce; Ministry of Transportation and Infrastructure; Ministry of Finance and Public Credit; Ministry of Environment and Natural Resources; Ministry of Family, Adolescence and Children; Ministry of Energy and Mines; Ministry of Labor; Ministry of Family, Community, Cooperative and Associative Economy; Ministry of Women; and Ministry of Youth.

<sup>171</sup> Constitution of Nicaragua, art. 175.

the Municipal Council, presided over by the mayors and deputy mayors.<sup>172</sup> After the 2022 municipal elections, the Supreme Electoral Council assigned all of the country's mayoralties to the governing party (see chapter III.B.).<sup>173</sup>

127. The Constitution of Nicaragua recognizes the autonomy of the regions of the Atlantic Coast: the Autonomous Region of the South Caribbean Coast (*Región Autónoma de la Costa Caribe Sur*, RACCS) and the Autonomous Region of the North Caribbean Coast (*Región Autónoma de la Costa Caribe Norte*, RACCN).<sup>174</sup> These are legal and political entities made up of indigenous and Afro-descendant peoples, including the *Miskitu*, *Mayangna*, *Rama*, *Creole*, *Garifuna*, and *Mestizo* peoples, who have jurisdiction to administer their affairs and territory under their organization and law, based on their traditions and cultures.

128. According to the Constitution of Nicaragua, the President of the Republic is the head of Government, head of State, and supreme chief of the Army and the National Police of Nicaragua.<sup>175</sup> In practice, the Nicaraguan presidential system is marked by a strong historical tradition of concentration of power in the figure of the President, the revolutionary logic of the FSLN and of President Daniel Ortega's vision, and institutional weaknesses and democratic fragility. In addition, under the 2014 constitutional reform, the President can be re-elected indefinitely.<sup>176</sup>

129. Since Daniel Ortega took office in 2007, the creation of posts and the appointment of positions of trust has proliferated. For example, in July 2022, investigative journalists detected at least 27 presidential advisors on the State payroll.<sup>177</sup> According to media sources, the functions of these advisors are unknown. At least five were former *guerrilla* members, and two were former military personnel close to the Presidency. The son of the President and the Vice President, Laureano Ortega Murillo, was also among the presidential advisors.<sup>178</sup>

130. At the same time, a gradual process of the dismantling of democratic institutions and capture of the State by the ruling political party has taken place. Numerous sources reported that, in order to obtain a job in the public sector, it was necessary to have the recommendation of the local CPC or the secretaries or members of the CLS.<sup>179</sup> The persons interviewed denounced pressures within the institutions to pay monthly fees to the FSLN party, as well as to participate in political activities and activities in support of the Government.<sup>180</sup>

(b) *The Electoral Branch*

131. The Electoral Branch is the entity in charge of organizing, directing, and overseeing the electoral processes. It is composed of the CSE, the Departmental Councils, the Municipal Councils, and the Voting Boards.<sup>181</sup> The CSE is composed of seven magistrates

<sup>172</sup> Municipalities Act, Law No. 40, published in *La Gaceta, Diario Oficial* No. 155 of 17 August 1988, art. 18.

<sup>173</sup> 2022 municipal election results available at: <https://www.lagaceta.gob.ni/primeros-resultados-de-las-elecciones-soberanas-municipales-2022-en-nicaragua/>.

<sup>174</sup> Constitution of Nicaragua, arts. 180–181.

<sup>175</sup> *Ibid.*, arts. 92, 97 and 144.

<sup>176</sup> *Ibid.*, art. 148 (from which the prohibition of re-election was eliminated).

<sup>177</sup> The President would have more advisors than ministers.

<sup>178</sup> Nicaragua Investiga, “Los asesores decorativos de Daniel Ortega: un gasto de más de C\$30 millones al año”, available at: <https://nicaraguainvestiga.com/reportajes/89234-asesores-decorativos-daniel-ortega-gasto-millonario/>.

<sup>179</sup> GHREN interviews GGIV001, GGIV003, BBIV012, BBIV035. CPCs and CLSs constitute local units of political and social control at the level of institutions in the case of CLSs, and communities for CPCs.

<sup>180</sup> GHREN interviews BBIV001, BBIV006, BBIV012, BBBIV013 BBIV0015.

<sup>181</sup> Constitution of Nicaragua, arts. 168 and 169.



and three alternate magistrates, elected by the National Assembly for five years, during which they enjoy immunity.<sup>182</sup>

132. In Nicaragua, elections are held to elect the President of the Republic, members of congress at the national and departmental level, and at the level of the Central American Parliament, mayors, and council members.<sup>183</sup>

133. Since the 2008 municipal elections, numerous voices have denounced irregularities in the management of electoral processes by the CSE.<sup>184</sup> As discussed in Chapter 2.1.1, the CSE has acted with opacity and has adopted a series of decisions that have favoured the ruling party, thus facilitating the co-optation of the State.

(c) *The Legislative Branch*

134. According to the Constitution of Nicaragua, the National Assembly exercises legislative power by delegation and mandate emanating from the people. The Constitution guarantees universal, equal, direct, free, and secret vote through the proportional representation system.<sup>185</sup>

135. The National Assembly is comprised of 90 members of congress, with their alternates. 20 members are elected at the national level, and 70 in the regional constituencies and autonomous regions levels. The members are elected for five years, during which they enjoy immunity and are exempt from liability for their opinions.<sup>186</sup> It is important to note that, under the constitutional reform of 2000, the President of the Republic and the Vice President elected in the immediately preceding period, as well as the candidates for President and Vice President who obtained second place in such election, are to join the National Assembly as members of congress.<sup>187</sup>

136. The powers of the National Assembly include: the elaboration and approval of laws and decrees; the granting of amnesties and pardons; the supervision of the work of the Executive Branch;<sup>188</sup> the dismissal of Government officials; the granting and revocation of the legal status of civil associations; the approval or rejection of international instruments entered into with countries or organizations of International Law; and the election<sup>189</sup> of the magistrates of the CSJ and of the CSE, of the Attorney General, of the Attorney General and Deputy Attorney General for the Defence of Human Rights, and of the members of the Superior Council of the Comptroller General's Office, among others.<sup>190</sup>

137. Pluralism in the Legislative Chamber decreased since Daniel Ortega's return to government in 2007. The governing party, the FSLN, has enjoyed an absolute majority in the National Assembly since 2011.<sup>191</sup> Since then, the FSLN has had the majority necessary to carry out partial or total reforms to the Constitution.<sup>192</sup>

138. Composition during the term of office of the GHREN:

- 2017–2022. On 9 January 2017, 90 representatives elected to the National Assembly of Nicaragua were sworn in. Thus, the Assembly was composed of 71 FSLN

<sup>182</sup> *Ibid.*, arts. 170 and 172.

<sup>183</sup> Electoral Act, Art. 1.a.

<sup>184</sup> UN News, Nicaragua Elections: UN Human Rights Condemns Lack of Guarantees to Rights and Freedoms, 4 November 2021; Nicaragua: Elections 2021: A Dastardly Plan to End Democracy, available at: <https://www.idea.int/sites/default/files/publications/nicaragua-elecciones-2021.pdf>.

<sup>185</sup> Constitution of Nicaragua, art. 132.

<sup>186</sup> *Ibid.*, arts. 132, 136 and 139.

<sup>187</sup> *Ibid.*, art. 133.

<sup>188</sup> Through the request for reports and appearance of Ministers, Deputy Ministers, Attorney General and Deputy Attorney General, Presidents of autonomous and governmental entities.

<sup>189</sup> Candidates shall be proposed for each position by the President of the Republic and the members of the National Assembly, and elected by at least sixty percent of the members of the Assembly.

<sup>190</sup> Constitution of Nicaragua, art. 138.

<sup>191</sup> In 2011 they won 63 seats, which represented 68 percent of the National Assembly.

<sup>192</sup> Art. 194 of the Constitution of Nicaragua requires a 60 percent of the votes for the approval of a partial reform, or two-thirds for a total reform of the Constitution.

members of congress (70 elected plus the seat constitutionally reserved for the outgoing Vice President of the Republic), 13 from the PLC, 2 from the PLI, 2 from the ALN, 1 from the Conservative Party, 1 from the Alliance for the Republic, and 1 from the indigenous party YATAMA.

- 2022–2027. On 9 January 2022, the current National Assembly was installed. The FSLN occupies 75 seats; the PLC<sup>193</sup> has ten legislators (nine elected and one is Walter Espinoza, who was the runner-up in the presidential election); the PLI and the ALN have two seats, respectively; and Alianza por la República and YATAMA have one seat each. In addition to the Board of Directors of the Assembly, presided by Gustavo Porras,<sup>194</sup> FSLN parliamentarians preside over 13 of the 16 commissions of the National Assembly.

139. The absolute majority of the FSLN in the National Assembly allowed the governing party to adopt legislative measures expeditiously and to reinforce the concentration of power in the Executive and, in particular, in the figure of the President.

140. The National Assembly has failed to exercise its oversight of the Executive Branch effectively and has also adopted measures to guarantee impunity for serious human rights violations. In June 2019, the Assembly presented and approved an Amnesty Law initiative, despite concerns expressed by human rights institutions.<sup>195</sup> In November 2021, the Assembly requested President Daniel Ortega to expel the OAS from the country, following OAS criticism of the 2021 elections.<sup>196</sup>

141. The National Assembly has also contributed to the Government's actions to repress and silence real or perceived opponents. Since April 2018, the legislative body has developed and approved several laws that contribute to the destruction of civic space and criminalize the exercise of civil and political rights (see Chapter III.B). Likewise, the National Assembly played a direct role in cancelling the legal status of hundreds of civil society organizations.<sup>197</sup>

142. The FSLN's total dominance in the National Assembly since 2011 has also allowed the Government to control the appointment of all key positions in the remaining branches of Government, such as the Attorney General or the magistrates of the CSE and the CSJ.

(d) *The Judiciary Branch*

143. The Constitution of Nicaragua recognizes the right of all Nicaraguans to have access to effective justice<sup>198</sup> and establishes that magistrates and judges must be governed in the exercise of their judicial activity by the principles of equality, publicity, gratuity, and the right to a defence.<sup>199</sup>

144. The lack of independence of the judicial system –which includes both the jurisdictional bodies and the auxiliary bodies of the Judiciary– constitutes one of the structural factors that have contributed to the human rights violations and abuses identified by the GHREN. The misuse of the justice system to prosecute the exercise of fundamental

<sup>193</sup> The opposition considers the PLC as a party allied with the FSLN.

<sup>194</sup> This is the fifth consecutive term as legislator of Porras, who has presided over the National Assembly since 2017. It is important to note that Porras is one of three Sandinista congresspeople sanctioned by Canada, the United States, the United Kingdom, Switzerland, and the European Union. The lists of sanctions are available at: <https://www.canada.ca/en/global-affairs/news/2019/06/nicaragua-sanctions.html>, <https://home.treasury.gov/news/press-releases/sm715>.

<sup>195</sup> In June 2019, the then UN High Commissioner for Human Rights, Michelle Bachelet, warned about the Amnesty Law and the lack of reparations to victims and expressed that the adoption of a broad amnesty law could prevent the prosecution of individuals potentially responsible for serious human rights violations.

<sup>196</sup> Letter from the Minister of Foreign Affairs to the Secretary General of the OAS, Luis Almagro Lemes, 18 November 2021, MRE/DM/00284/11/21.

<sup>197</sup> DW in Spanish, “Denuncian la disolución de más de 3.000 ONG en Nicaragua”, 7 December 2022,

<sup>198</sup> Constitution of Nicaragua, art. 160.

<sup>199</sup> *Ibid.*, art. 165.

freedoms and the prevailing impunity for serious human rights violations not only constitute violations of the right to access to justice but have also facilitated the perpetuation and escalation of other violations and abuses.

145. The Courts of Justice form a unitary system whose highest organ is the Supreme Court of Justice. The Judicial Branch also consists of appellate, district and local courts.

146. The judicial careers<sup>200</sup> is governed by the principles of merit, responsibility, equality, publicity, stability, impartiality, independence, and specialty.<sup>201</sup> To enter the judicial careers, there should be merit-based competition and competitive examinations after a public announcement. However, information obtained by the GHREN indicates that there have been no competitive examinations since 2017.<sup>202</sup>

147. In criminal matters, local judges may hear and decide, in the first instance, cases involving criminal misdemeanours and less serious crimes. District judges sit and judge in the first instance on cases involving felonies, with or without the intervention of a jury, and in the second instance on rulings issued by local judges.<sup>203</sup> The criminal chambers of the appellate courts constitute the second instance regarding the orders provided for by the Code of Criminal Procedure and judgments issued by district judges. Since April 2018, the Criminal District Courts have tried, in the first instance, most of the cases against persons opposed to the Government or perceived as such. The highest instance in criminal matters is the Criminal Chamber of the CSJ, which is also competent for the review of felony cases.<sup>204</sup> The judges responsible for the enforcement of sentences monitor compliance with the correctional rules and regulations, and with the constitutional and legal purposes of sentences and security measures.

148. In cases against real or perceived Government opponents, the GHREN has identified a pattern of transferring the cases from the natural judge to the district courts of Managua (see Chapter III.B). This was carried out by referring to Article 22 of the Code of Criminal Procedure that allows for bypassing the natural judge of a case “when dealing with crimes of social relevance and national transcendence”. The vagueness of this provision does not offer criteria to determine the circumstances in which it would be applicable, opening the door to discretion and arbitrariness.

149. Also, according to information gathered by the GHREN, even though there is a random distribution system for judicial cases, a direct access code would allegedly allow the direct assignment of cases to specific courts. This code would have been used for influence peddling and for the distribution of cases to select courts based on political interests.<sup>205</sup>

(i) *Jurisdictional bodies*

a. The Supreme Court of Justice

150. The CSJ is competent, among other powers enshrined in the Constitution, to organize and direct the administration of justice; to consider and determine ordinary and extraordinary remedies against decisions of the courts of law in accordance with the procedures established by law; amparo proceedings brought for violation of the rights established in the Constitution in accordance with the Law on Constitutional Justice; and

<sup>200</sup> *Ibid.*, art. 159.

<sup>201</sup> Judicial Careers Act, Law No. 501, approved on 14 October 2004, published in *La Gaceta, Diario Oficial* Nos. 9, 10, and 11 of 13, 14, and 17 January 2005 (hereinafter “Judicial Careers Act”), art. 2.

<sup>202</sup> GHREN interviews BBIV001, BBIV006, BBIV012, BBIBV035; document on file with GHREN BBD0C337.

<sup>203</sup> Organic Law of the Judiciary, Law No. 260, approved on 7 July 1998, published in *La Gaceta, Diario Oficial* No. 137 of 23 July 1998 (hereinafter “Organic Law of the Judiciary”), art. 48, amended by art. 423, of the Code of Criminal Procedure. Code of Criminal Procedure of the Republic of Nicaragua, Law No. 406, published in *La Gaceta, Diario Oficial* No. 243 of 21 December 2001, and No. 244 of 24 December 2001 (hereinafter “Code of Criminal Procedure”).

<sup>204</sup> Code of Criminal Procedure, art. 21.

<sup>205</sup> GHREN Interviews BBIBV035, BBIV038.

applications for judicial review of the constitutionality of laws. Besides, the CSJ is competent to appoint and discharge the Magistrates of the Appellate Courts, to appoint members of the Military Tribunals, to appoint and discharge the secretary of the CSJ, the public defenders, and judges throughout the country; to determine requests for extradition and to authorize the enforcement of foreign judgements.<sup>206</sup> The plenary of the CSJ is also competent to hear criminal cases against the President and the Vice President of the Republic, once immunity has been lifted by the National Assembly.<sup>207</sup>

151. According to the Constitution of Nicaragua, the CSJ is formed by 16 Magistrates elected by the National Assembly from shortlists proposed by the President of the Republic<sup>208</sup> and by the members of congress.<sup>209</sup> The CSJ Magistrates are appointed for five years, enjoy immunity, and may only be removed from office for the causes provided for in the Constitution and the law. The CSJ is composed of the constitutional chamber, the civil, criminal, and administrative law chambers. Each chamber is made up of at least three magistrates.<sup>210</sup> Alba Luz Ramos Vanegas has served as president of the CSJ since 2010; the current vice-president of the CSJ is Marvin Aguilar García.<sup>211</sup>

152. The CSJ, through the National Council of Administration and Judicial Careers, plans and implements the administrative and financial policy of the Judicial Branch and has jurisdiction in disciplinary matters.<sup>212</sup> The Disciplinary Regime Commission of the CSJ is formed by a minimum of three CSJ Magistrates<sup>213</sup> and has first instance jurisdiction in disciplinary matters of officials of the judicial careers.<sup>214</sup> It has also jurisdiction in disciplinary matters of lawyers and notaries.<sup>215</sup>

b. The appellate courts

153. The Organic Law of the Judiciary establishes an appeals court in each of the nine judicial districts of Nicaragua.<sup>216</sup> These courts have second instance jurisdiction in appeals filed against district court decisions; in *amparo* and *habeas corpus* writs, as well in appeals in criminal matters. Additionally, these courts have first instance jurisdiction in particular offenses committed by specific public officials and, in the second instance, for crimes committed by local judges.<sup>217</sup>

c. District courts

154. Each province and autonomous region in Nicaragua have at least one district court, seated in the capital of these provinces and regions. District courts are unipersonal courts, classified, according to the subject matter, into single, civil, family, criminal, labour, and special courts. District court judges are appointed by the plenary of the CSJ for an unlimited period, and are irremovable, except in cases of dismissal for the reasons established by law.<sup>218</sup>

<sup>206</sup> Constitution of Nicaragua, art. 164.

<sup>207</sup> *Ibid.*, art. 130.

<sup>208</sup> *Ibid.*, art. 163. As of December 2022, the CSJ was composed by ten magistrates; four had resigned (Rafael Solís, Carlos Aguerri Hurtado, José Adán Guerra and Ileana Pérez) and two had died (Francisco Rosales and Ligia Molina).

<sup>209</sup> Each Magistrate is elected with the favourable vote of at least sixty percent of the members of the Assembly; Constitution of Nicaragua, art. 138.

<sup>210</sup> Constitution of Nicaragua, arts. 162–163.

<sup>211</sup> The president and vice-president of the CSJ are elected by a majority of the judge's votes that comprise it for two years and may be re-elected. See Constitution of Nicaragua, arts. 162–163.

<sup>212</sup> Judicial Careers Act, art. 4.

<sup>213</sup> Organic Law of the Judiciary, art.71.

<sup>214</sup> *Ibid.*, art.72.

<sup>215</sup> *Ibid.*, art.72.

<sup>216</sup> *Ibid.*, arts. 38 and 40.

<sup>217</sup> *Ibid.*, art. 41.

<sup>218</sup> *Ibid.*, arts. 44–46.

## d. Local courts

155. The Organic Law of the Judiciary establishes at least one local court in each municipality seated in the municipal capital. Like the district courts, local courts are classified as single, civil, family, criminal, labour, and special courts. They are unipersonal, and their judges are irremovable.<sup>219</sup>

(ii) *Auxiliary bodies of the Judicial Branch*

## a. The National Directorate of the Public Defenders' Office

156. The Constitution of Nicaragua enshrines the right to a proper defence and establishes that every person has the right, among other minimal guarantees linked to effective judicial protection, to have access to a public defender.<sup>220</sup> The State, through the Public Defenders' Office, guarantees legal services by a public defender to defendants who are not able to compensate a private counsel, and in cases where the defendant is able to compensate counsel but still cannot obtain counsel.<sup>221</sup> The Code of Criminal Procedure establishes that a public defender will only be appointed in those cases in which the defendant has not obtained a freely chosen counsel.<sup>222</sup>

157. The Public Defenders' Office was created in 1998 as an autonomous body of the Judicial Branch.<sup>223</sup> The office of public defender belongs to the judicial careers. The Directorate of Public Defenders is a body under the CSJ,<sup>224</sup> headed by Clarisa Indiana Ibarra Rivera. The Public Defenders' Office has a total of 18 regional delegations throughout the country.<sup>225</sup>

158. As detailed below, investigations conducted by the GHREN have established the involvement of the Public Defenders' Office in the violation of due process rights by representing persons, including persons arbitrarily deprived of their liberty, against their will and in contravention of their right to a counsel of their choice. The GHREN has received multiple and credible information indicating that members of the Public Defenders' Office have allegedly acted against the interests of real or perceived opponents while being in charge of their defence (see chapter III.B).

## b. The Forensic Medicine Institute

159. The Forensic Medicine Institute (*Instituto de Medicina Legal, IML*) and its forensic doctors aims at assisting the courts and tribunals, the National Police, the Attorney General's Office, and the Human Rights Ombudsperson's Office, impartially, by providing thanatological, clinical, and laboratory services and expert reports, as well as evaluations of the individual conditions of detained, injured or sick persons subject to the jurisdiction of these authorities and to the prison system.<sup>226</sup> Dr. Julio Espinoza Castro serves as Director of the IML since April 2022, following the dismissal of his predecessor, Zacarías Duarte, after having served 17 years as the head of the institution.<sup>227</sup>

160. The IML comprises the National Forensic System and all forensic doctors in Nicaragua.<sup>228</sup> The IML has 28 delegations and judicial districts<sup>229</sup> and is attached to the CSJ;

<sup>219</sup> *Ibid.*, arts. 52–54.

<sup>220</sup> Constitution of Nicaragua, art. 34.1.

<sup>221</sup> Code of Criminal Procedure, art. 4, para. 1.

<sup>222</sup> Constitution of Nicaragua, art. 34 and Code of Criminal Procedure, art. 4, para. 2.

<sup>223</sup> The Organic Law of the Judiciary was enacted on 23 January 1999. It was implemented on 14 May 1999, creating the Public Defenders' Office as a body under the CSJ with functional autonomy.

<sup>224</sup> Organic Law of the Judiciary, arts. 146 and 211.

<sup>225</sup> Map of Public Defenders' Offices in Nicaragua, available at: <https://www.poderjudicial.gob.ni/defensoria/mapadp.asp>.

<sup>226</sup> Organic Law of the Judiciary, arts. 184–185; Regulations of the Organic Law of the Judiciary, art. 88.

<sup>227</sup> Re-elected in 2017 through Agreement Number 192-2017 of the National Council for the Administration of the Judicial Careers.

<sup>228</sup> Regulations of the Organic Law of the Judiciary, art. 87.

it has the mandate to operate autonomously in the performance of its professional technical functions.<sup>230</sup>

161. Forensic doctors may be appointed and dismissed, with just cause, by the plenary of the CSJ.<sup>231</sup> They are considered personnel in the service of the Administration of Justice and are directly assigned to the courts.<sup>232</sup>

162. The IML and forensic doctors were instrumental in failing to investigate violations of the rights to life and integrity of the person –murder and physical injuries of all kinds– committed by State agents or armed groups aligned with the Government. According to multiple credible sources, forensic doctors and IML officials have participated in the concealment or falsification of files and forensic reports. In some cases reported to the GHREN, no autopsy ever took place despite requests from the victims’ families. Likewise, the IML played an essential role in the elaboration of forensic reports regarding injuries sustained by the riot police who participated in the repression of the 2018 demonstrations (see Chapter III.A).

## 2. Other relevant institutions

### (a) *The Public Prosecutor’s Office*

163. The Public Prosecutor’s Office is responsible for the prosecution and represents the interests of society and of the victims of crime in criminal proceedings. The Public Prosecutor’s Office is led by the Attorney General of the Republic. It is an independent institution with organizational, functional and administrative autonomy, which responds solely to the Constitution and the laws,<sup>233</sup> and technically is not part of the Judiciary or the Executive Branch.<sup>234</sup>

164. According to its legal attributions,<sup>235</sup> the Public Prosecutor’s Office must promote, ex officio or at the request of a party, the investigation and prosecution of indictable crimes; refer reported incidents to the National Police for further investigation; and exercise private legal action in cases where victims are unable to act and lack legal representation; as well as civil legal actions in some specific cases determined by law.<sup>236</sup>

165. The main agencies of the Public Prosecutor’s Office are the Attorney General, the Deputy Attorney General, the Inspector General’s Office, the 16 prosecutors from the provinces and autonomous regions of the Caribbean Coast, the auxiliary prosecutors, and the special prosecutors.<sup>237</sup> The Attorney General is the head of the Public Prosecutor’s Office.<sup>238</sup> The National Assembly appoints the Attorney General, the Deputy or Assistant Attorney General from a list proposed by the President of the Republic.<sup>239</sup> The position of Attorney General is held by Ana Julia Guido Ochoa; Julio González serves as Deputy Attorney General.<sup>240</sup>

<sup>229</sup> IML, Department of Statistics, “Boletín Estadístico Agosto 2022”, available at: [https://www.poderjudicial.gob.ni/pjupload/iml/pdf/boletin\\_agosto\\_2022.pdf](https://www.poderjudicial.gob.ni/pjupload/iml/pdf/boletin_agosto_2022.pdf).

<sup>230</sup> Regulations of the Organic Law of the Judiciary, art. 87.

<sup>231</sup> Organic Law of the Judiciary, art. 64.

<sup>232</sup> *Ibid.*, art. 183.

<sup>233</sup> Organic Law of the Public Ministry, Law No. 346, published in *La Gaceta, Diario Oficial* No. 196 of 17 October 2000, arts. 3–6 and 10 (hereinafter “Organic Law of the Public Prosecutor’s Office”).

<sup>234</sup> Constitution of Nicaragua, art. 138(9)(b).

<sup>235</sup> Code of Criminal Procedure, art. 54.

<sup>236</sup> See Code of Criminal Procedure, art. 144.

<sup>237</sup> Organic Law of the Public Prosecutor’s Office, arts. 13 to 19.

<sup>238</sup> Constitution of Nicaragua, arts. 138 and 150.

<sup>239</sup> Organic Law of the Public Prosecutor’s Office, art. 24.

<sup>240</sup> El 19 Digital, “Asamblea Nacional nombra a magistrados del CSE”, 9 April 2014, available at: <https://www.el19digital.com/articulos/ver/titulo:17656-asamblea-nacional-nombra-a-magistrados-del-cse>

166. According to concurring sources and numerous open sources, the Specialized Unit Against Organized Crime of the Public Prosecutor's Office has been instrumental in directing cases against real or perceived Government opponents.<sup>241</sup>

167. The Organic Law of the Public Prosecutor's Office establishes that the principles of equality, merit, capacity, stability, efficiency, specialty, and responsibility shall govern the careers of the Public Prosecutor's Office.<sup>242</sup> The selection of candidates must be through a competitive public examination.<sup>243</sup> The Group has received information indicating that in recent years authorities have failed to hold open competitions, and that prosecutors close to the Government have been recruited only through internal processes.<sup>244</sup>

168. The Law provides for the stability or irrevocability in office of prosecutors and civil servants of the Public Prosecutor's Office, and the right to refuse to pay donations, funding or provide any form of economic and material contribution to political parties, organizations, or other entities.<sup>245</sup> The Group has been informed that, since April 2018, State officials and public servants have been pressured to pay membership fees to the FSLN regularly, putting the autonomy of Public Prosecutor's Office officials and State officials, in general, into question.<sup>246</sup>

169. This investigation has revealed lack of due process, the instrumentalisation of the law for the purpose of persecution, including trumped up charges by the Public Prosecutor's Office in bringing to court real or perceived opponents to the Government (see Chapter III.B).

(b) *The National Prison System*

170. The National Prison System (*Sistema Penitenciario Nacional*, SPN) is the State agency vested with authority to enforce custodial sentences passed by the Nicaraguan judicial authorities. Its main purposes are the enforcement of prison sentences and pre-trial detention orders, as well as the re-education and reintegration of the convicted into society. The SPN's jurisdiction extends to the entire territory of the State, with control, re-education, and prison security functions.<sup>247</sup>

171. The SPN is an armed, civilian, apolitical, non-partisan corps at the level of a General Directorate within the organisational structure of the Ministry of the Interior. In this sense, the Ministry of the Interior is responsible for coordinating, directing, and administering the SPN through its Director General.<sup>248</sup> The Director General is the hierarchical superior and highest authority of the SPN and is in charge of the implementation of the prison policy.<sup>249</sup> The Prison System Directorates are the bodies responsible for the administration, control, and safeguarding of persons deprived of their liberty.<sup>250</sup>

172. The GHREN documented cases of torture and cruel, inhuman, and degrading treatment or punishment perpetrated by SPN agents in several prisons. In particular, the GHREN documented several cases in La Modelo prison, whose Director since 2018 is

<sup>241</sup> GHREN interviews BBIV001, BBIV021.

<sup>242</sup> Public Prosecutor's Office Careers Law, Law No. 568, approved on 20 June 2006, published in *La Gaceta, Diario Oficial* No. 192 of 4 October 2006 (hereinafter "Public Prosecutor's Office Careers Law"), art. 3.

<sup>243</sup> Public Prosecutor's Office Careers Law, art. 18.

<sup>244</sup> GHREN interview BBIV021.

<sup>245</sup> Public Prosecutor's Office Careers Law, art. 31.

<sup>246</sup> GHREN interviews BBIV001, BBIV006, BBIV0012, BBBIV013, BBIV0015.

<sup>247</sup> Prison System and Enforcement of Sentences Act, Law No. 473, published in *La Gaceta, Diario Oficial* No. 222 of 21 November 2003 (hereinafter "Prison System Act"), arts. 3, 5–6.

<sup>248</sup> Prison System Act, art. 4; Regulation of Law No. 473, Prison System and Enforcement of Sentences Act, approved on 12 March 2004, Executive Decree No. 16-2004, published in *La Gaceta, Diario Oficial* No. 54 of 17 March 2004, art. 8 (hereinafter "Rules of the Prison System Act").

<sup>249</sup> Prison System Act, arts. 14–15.

<sup>250</sup> *Ibid.*, art. 26.

Venancio Allaniz Ulloa, and particularly severe treatment in its maximum-security section under the responsibility of Director Roberto Clemente Guevara Gómez.<sup>251</sup>

173. SPN officials participated in the commission of violations and abuses –including acts of torture and cruel treatment, arbitrary detentions, and violations of due process– perpetrated against real or perceived Government opponents in detention centres under their jurisdiction (see Chapter III.B).

### 3. Independence of judges and prosecutors

174. The independence and autonomy of magistrates and judges are firmly recognized in the Constitution.<sup>252</sup> The Organic Law of the Judiciary also recognizes their internal independence in all their actions, notwithstanding that the hierarchical superior may issue general instructions of a procedural nature.<sup>253</sup> Similarly, the Constitution establishes the independence and organic, functional, and administrative autonomy of the Public Prosecutor’s Office.<sup>254</sup>

175. The Code of Ethics establishes that justice officials must not allow any interference in the exercise of the jurisdictional function by other powers and institutions of the State, nor allow themselves to be influenced or pressured by the media, public opinion, political parties, or other groups.<sup>255</sup> The Law also prohibits the participation of magistrates and judges in political electoral processes, as well as in meetings, demonstrations and other acts of a political electoral or partisan nature.<sup>256</sup>

176. The GHREN’s investigations reveal interference in the exercise of judicial and prosecutorial functions, which hinder access to justice for victims, and the right to a fair trial by an independent and impartial tribunal.<sup>257</sup>

177. The party in Government has obtained control gradually over time, culminating with the appointment by the National Assembly, in 2014, of 11 CSJ magistrates aligned with the party,<sup>258</sup> and resulting in more intense partisan interference in the institutions since April 2018.<sup>259</sup>

178. The GHREN’s investigation confirmed that the President and Vice President of the Republic exert their influence over the different structures within the Judicial Branch and the Public Prosecutor’s Office through the CLS and the Sandinista Youth.<sup>260</sup> According to testimonies collected by the GHREN, the personnel of the Judicial Branch and the Public Prosecutor’s Office have been forced to pay membership fees and contributions to the FSLN party, as a sign of their loyalty and support to the Government.<sup>261</sup>

179. According to the information received by the GHREN, the President’s instructions were transmitted to each institution through the persons who held the position of political secretary of the FSLN within the institution. In the case of the Judicial Branch, the political secretary is Marvin Aguilar García, vice-president of the CSJ, while in the case of the Public Prosecutor’s Office the secretary is directly Ana Julia Guido Ochoa de Romero,

<sup>251</sup> GHREN interviews EEIV005, EEIV016, EEIV017, EEIV023, EEIV050, EEIV064, EEIV067, EEIV069, EEIV009, EEIV069. See <https://www.migob.gob.ni/penitenciario/establecimientos-penitenciarios/>.

<sup>252</sup> Constitution of Nicaragua, art. 165; Organic Law of the Judiciary, art. 6.

<sup>253</sup> Organic Law of the Judiciary, art. 8.

<sup>254</sup> Constitution of Nicaragua, art. 138(9)(b); Law No 346, Organic Law of the Public Prosecutor’s Office, Consolidated Text, art. 1.

<sup>255</sup> Code of Ethics for Judicial Branch Officials and Employees, art. 7.

<sup>256</sup> Organic Law of the Judiciary, art. 144.

<sup>257</sup> GHREN interviews BBIV001, BBIV005, BBIV006, BBIV011, BBIV012, BBIV015, BBIV035, BBIV038.

<sup>258</sup> <https://noticias.asamblea.gob.ni/eligen-magistrados-de-la-corte-suprema-de-justicia/>

<sup>259</sup> GHREN interview BBIV005.

<sup>260</sup> IACHR Annual Report 2018, Special Report on Nicaragua, paras. 87 et seq.

<sup>261</sup> GHREN interview BBIV001.



Attorney General. The Group has received allegations indicating that the judges and prosecutors who refuse or ignore those instructions suffer harassment and reprisals.<sup>262</sup>

180. The GHREN received information indicating that judges in charge of proceedings against real or perceived Government opponents were compensated for their loyalty with promotions, despite the fact that the trials they presided over were plagued with due process violations.<sup>263</sup> According to testimonies received by the GHREN, corroborated by public information published on the Judiciary's website, there have been no competitive public examinations since 2017, and all of the appointments made since then have been of persons close to the FSLN.<sup>264</sup>

181. According to several sources with insider knowledge, the political secretaries are, within the CSJ, Marvin Aguilar, vice-president of the CSJ, and for the Court of Appeals of Managua, magistrate Leonel Ernesto Rodríguez Mejías. Magistrates Octavio Rothschild and Henry Morales Under –in charge of overseeing trials of particular interest to the President– and Karen Vanessa Chavarría –Judge of the Ninth Court of Appeals of Managua– would fall under Rodríguez Mejías' hierarchy. They would allegedly transmit instructions “under the guidance of Marvin Aguilar”.<sup>265</sup> According to a testimony, “*the guidelines come from El Carmen [residence of Daniel Ortega and Rosario Murillo]. No one moves here unless they authorize it*”.<sup>266</sup>

182. The same can be said for the Public Prosecutor's Office.<sup>267</sup> As one witness expressed, “*everything is hierarchical; not a single page moves without the Attorney General's authorization*”. Furthermore, according to the testimonies of former employees of the Judiciary and the Public Prosecutor's Office collected by the GHREN, cases against those known as “autoconvocados” and other persons considered to be opponents, are spuriously devised by a group of prosecutors trusted by the Government, while other prosecutors are forced to sign the indictments of these “political” cases as proof of their loyalty.<sup>268</sup>

183. According to the testimonies received by the GHREN, the interference of the Executive Branch has led to numerous unjustified dismissals and resignations of magistrates, judges, prosecutors, and other justice officials.<sup>269</sup> The interference of the Executive would have also resulted in trials based on unfounded assumptions rather than in law and on evidence, to the fabrication of evidence and manipulation of proceedings, as well as to numerous violations of due process guarantees, resulting in serious violations of the right to due process and in arbitrary detentions.

## C. Security framework

### 1. Background and evolution of the State security forces

184. In 1979, after the fall of the government of Anastasio Somoza Debayle, the FSLN's Government of National Reconstruction, dissolved the National Guard, the National Security Office and the Military Intelligence Service through the promulgation of the Fundamental Statute of the Republic of Nicaragua, and established the National Army, made up of FSLN combatants, and members of the National Guard who had participated in

<sup>262</sup> GHREN interviews BBIV001, BBIV021.

<sup>263</sup> GHREN interviews BBIV001, BBIV006, BBIV012, BBIV015, BBIV030, BBIV035. A notorious case of promotion is that of Ernesto Rodríguez, who went from being Judge of the Third Local Criminal Court to Presiding Judge of the Court of Appeals of Managua.

<sup>264</sup> The GHREN requested updated information from the Government of Nicaragua on the competitive examinations and appointment processes for Magistrates, Judges, and Prosecutors. The Group did not receive a response to its request.

<sup>265</sup> GHREN interviews BBIV001, BBIV021.

<sup>266</sup> GHREN interviews BBIV012, BBIV035, BBIV038.

<sup>267</sup> GHREN interview BBIV012.

<sup>268</sup> GHREN interviews BBIV001, BBIV021.

<sup>269</sup> GHREN interview BBIV021.

<sup>269</sup> GHREN interviews BBIB001, BBIV005, BBIV006, BBIV030, BBIV035.

the fight.<sup>270</sup> The Fundamental Statute attributed the command of the Army to the military chiefs and leaders “of the armed movement that put an end to the dictatorship”.<sup>271</sup> In 1990, through the approval of the Military Organization of the Sandinista Popular Army Act, the National Assembly established the functions and structure of the military institution.<sup>272</sup> The current Army is intrinsically linked to the Sandinista revolution, both by its origins and in terms of its composition and leadership.

185. Likewise, the background of the current National Police can be traced back to the Sandinista Police, the first police force of the State,<sup>273</sup> created in 1980 as a body under the Ministry of the Interior.<sup>274</sup> Its mission and powers were defined in Law No. 65 of 1989.<sup>275</sup>

186. With the election of the National Opposition Union coalition candidate, Violeta Barrios de Chamorro, to the presidency of Nicaragua in 1990, a series of agreements aimed at guaranteeing a peaceful political transition, promoting the de-politicisation and the professionalisation of the Army and the reduction of its ranks, and defining aspects of the demobilization of members of the Nicaraguan Resistance, were signed.<sup>276</sup>

187. During the 1990s, the strengthening of the Army and the professionalisation and reduction of military personnel were promoted. At the same time, the National Police also underwent a period of transition, during which a reorganization and internal strengthening process took place, which included a change of name and uniform, as well as the regulation of police actions.<sup>277</sup>

188. The 1995 constitutional reform formally transformed the Sandinista Popular Army into the Army of Nicaragua and the Sandinista Police into the National Police, allowing their respective missions to be implemented as independent national institutions, not linked to a specific political party or government.<sup>278</sup> In the following years, efforts continued for the institutionalization, democratization, and professionalisation of the defence and security

<sup>270</sup> Fundamental Statute of the Republic of Nicaragua approved on 20 July 1979, published in *La Gaceta, Diario Oficial* No. 1 of 22 August 1979, Chapter VI – The Armed Forces (hereinafter “Fundamental Statute”).

<sup>271</sup> Fundamental Statute, art. 26.

<sup>272</sup> Military Organization of the Sandinista Popular Army Act, Law No. 75, of 27 December 1989, published in *La Gaceta, Diario Oficial* No. 39 of 23 February 1990. This Organic Law was repealed and replaced by the Organic Military Law No. 181, Code of Organization, Jurisdiction and Military Social Welfare from 9 February 1994, and updated more recently through the Nicaraguan Legal Digest of the National Security and Defence Matter Act, Law No. 1009, approved on 27 November 2019.

<sup>273</sup> Government Board of National Reconstruction of the Republic of Nicaragua, Decree Law No. 559 of 25 October 1980, published in *La Gaceta, Diario Oficial* No. 253 of 3 November 1980.

<sup>274</sup> *Ibid.* art. 1.

<sup>275</sup> Functions of the Sandinista Police Act, Law No. 65, approved on 10 October 1989, published in *La Gaceta, Diario Oficial* No. 244 of 26 December 1989.

<sup>276</sup> Protocol of Procedures for the Transfer of Executive Power of the Republic of Nicaragua; Toncontín Agreements, 23 March 1990; Managua Agreement, 18 April 1990. By July 1990, 22,413 members of the Nicaraguan Resistance had demobilized and surrendered their weapons, and 54,446 of their family members had accepted the Demobilization Plan. As a result of the process of reduction and restructuring of the Army, approximately 55,000 members of the Sandinista Popular Army retired. There was also a reorganization of the General Staff and the concentration and storage of about 78,000 weapons assigned to the irregular fighting units (Irregular Fighting Battalions, Light Hunter Battalions, Permanent Territorial Company, exploration platoons and reserve and militia units). Nicaraguan Army, “Ejército de Nicaragua 30 años de vida institucional: (1979–2009)”, pp. 77–79, available at: <https://www.ejercito.mil.ni/contenido/relaciones-publicas/publicaciones/docs/memoria-1979-2009.pdf>.

<sup>277</sup> Decrees and laws were enacted to regulate the actions of the National Police, including the Functions of the Police in Judicial Assistance Act, Law No. 144, of 19 February 1992, published in *La Gaceta, Diario Oficial* No. 58 of 25 March 1992; and Executive Decree No. 45 of 1992, which established that the President of the Republic would exercise the Supreme Command of the Police through the Minister or Vice-Minister of the Interior.

<sup>278</sup> Constitution of Nicaragua, arts. 92–93.

sector. The police function was regulated, a national headquarters was created,<sup>279</sup> and the National Police Regulations were adopted.<sup>280</sup>

189. In early 2000, a modernization and training program was carried out for the Police Academy and the National Police,<sup>281</sup> and the “Integral Police-Community and Human Rights Policy” was implemented to guarantee the strengthening of the relationship between the Police and the communities.<sup>282</sup> In 1997, the Army adopted the Central American Framework Treaty for Democratic Security (*Tratado Marco de Seguridad Democrática de Centroamérica*, TMSD)<sup>283</sup> and in 1998, the military career was defined,<sup>284</sup> and the relations of the armed forces with the civilian institutions of the administration were regulated.<sup>285</sup>

190. Since 2007, with the electoral victory of the FSLN, the regulations regarding the State security forces have undergone considerable changes. In 2007, the legal responsibility of the Director General of the National Police to ensure compliance with the orders of the President of the Republic and the Minister of the Interior was established.<sup>286</sup> In 2014, the ninth constitutional reform transformed the institutional relationships of the security forces, and militarized national security and defence, leaving its scope and definition to the discretion of the President of the Republic.<sup>287</sup> The President became the Supreme Chief of the Army and the National Police, exercising functions previously belonging to the Ministries of Defence and the Interior.<sup>288</sup> It also eliminated the prohibition for any incumbent military officer to hold high public office.<sup>289</sup> The 2014 reform to the Constitution enshrined the participation of the inhabitants, the family and the community in the implementation of the so-called “community model” of the National Police.<sup>290</sup>

191. The National Assembly, predominantly composed of the Government party, quickly approved laws and decrees that consolidated a regulatory framework strengthening the military and surveillance and intelligence functions. A new Police Law was adopted<sup>291</sup>, as well as military regulations on organization, jurisdiction, and social security.<sup>292</sup> The adoption of the Sovereign Security Act in 2015 introduced significant changes in the

<sup>279</sup> National Police Act, Law No. 228, approved on 31 July 1996, published in *La Gaceta, Diario Oficial* No. 162 of 28 August 1996.

<sup>280</sup> Regulations of the National Police Law, Decree No. 26-96, approved on 25 October 1996, published in *La Gaceta, Diario Oficial* No. 32 of 14 February 1997.

<sup>281</sup> Ministry of the Interior, National Police, “Programa de Modernización y Desarrollo de la Policía Nacional de Nicaragua para el Fortalecimiento de la Seguridad Ciudadana”, October 2000, available at: [https://www.policia.gob.ni/cedoc/\\_private/lev2/sector/diagnostico/programamodernizacionpn.pdf](https://www.policia.gob.ni/cedoc/_private/lev2/sector/diagnostico/programamodernizacionpn.pdf).

<sup>282</sup> Integrated Police-Community and Human Rights Policy, February 2002.

<sup>283</sup> The TMSD was ratified by Nicaragua, Costa Rica, El Salvador, Guatemala, Honduras, and Panama to promote a new regional security model. Framework Treaty on Democratic Security in Central America, 15 December 1995, available at: <http://legislacion.asamblea.gob.ni/Instrumentos.nsf/bde7f9f0e2863496062578b80075d822/57814b7ae898a23f062573da005b17a4?OpenDocument>.

<sup>284</sup> Internal Military Regulations, published in *La Gaceta, Diario Oficial* No. 165 of 2 September 1998.

<sup>285</sup> Organization, Competence and Procedures of the Executive Branch Act, Law No. 290, approved on 27 March 1998, published in *La Gaceta, Diario Oficial* No. 102 of 3 June 1998.

<sup>286</sup> Amendment and Addition to Law No. 290, Law of Organization, Competence, and Procedures of the Executive Branch Act, Law No. 612, approved on 24 January 2007, published in *La Gaceta, Diario Oficial* No. 20 of 29 January 2007.

<sup>287</sup> Partial Amendment to the Constitution of the Republic of Nicaragua Act, Law No. 854, approved on 29 January 2014, published in *La Gaceta, Diario Oficial* No. 26 of 10 February 2014.

<sup>288</sup> Constitution of Nicaragua, arts. 95 and 97.

<sup>289</sup> This prohibition was explicitly formulated in the Constitution as of the reform implemented through Law No. 192 of 1995.

<sup>290</sup> Constitution of Nicaragua, art. 97.

<sup>291</sup> Organization, Functions, Careers and Special Social Security Regime of the National Police Act, Law No. 872, approved on 26 June 2014, published in *La Gaceta, Diario Oficial* No. 125 of 7 July 2014 (hereinafter “National Police Law”).

<sup>292</sup> Code of Organization, Jurisdiction and Military Social Welfare, Law No. 181, of 12 February 1994, published in *La Gaceta, Diario Oficial* No. 165 of 2 September 1994; it was updated by Law No. 855, approved on 30 January 2014, and published in *La Gaceta, Diario Oficial* No. 27 of 11 February 2014 (hereinafter “Military Code”).

national democratic security policy and within the State's security structures. It expanded the competencies of the Army, militarizing civil order matters and encompassing activities related to citizen security within the concept of national security. This law has been widely criticized nationally and internationally<sup>293</sup> and was the object of an action of unconstitutionality by the "Centro Nicaragüense de Derechos Humanos" (CENIDH), but the Supreme Court has not yet ruled on the matter. One of the most problematic aspects of the law is its definition of "risk to sovereign security", as those factors are "uncertain or random with a degree of uncertainty". This ambiguous conceptualization of threats to sovereign security leaves a wide margin for interpretation and discretion applying the law.

192. The Sovereign Security Act created the National Sovereign Security System, headed by the President of the Republic, and whose Technical Secretariat is overseen by the Army's Defence Information Directorate (*Dirección de Información para la Defensa*, DID). This system is integrated by a variety of public institutions, including the Army, the National Police, the Ministry of Defence, the Ministry of the Interior, the Ministry of Foreign Affairs, the Public Prosecutor's Office, the Attorney General's Office, and the General Directorate of Customs Affairs. Its activities, information, structure, and organization are classified.<sup>294</sup>

193. The annex to this report summarizes the legislative developments and State policies on security and defence during the period 1979–2020.

## 2. State security institutions

194. The Ministry of Defence, as an advisory body to the President, oversees the formulation and implementation of National Defence plans and policies. It has no major coordination or administrative functions, nor is it part of the chain of command of the Nicaraguan Army.<sup>295</sup> On citizen security, the Ministry of the Interior has coordination and planning functions; its oversight function regarding the National Police was abolished in 2014.

### (a) *The Nicaraguan Army*

195. The Nicaraguan Constitution defines the armed institution as a "national, professional, non-partisan, apolitical, obedient and non-deliberative institution" and affirms its subordination to the civil authority exercised directly by the President of the Republic.<sup>296</sup> The Military Code provides that the Army shall be governed by the Constitution and the laws, as well as by international instruments on human rights, international humanitarian law and other instruments of international public law ratified and approved by Nicaragua.<sup>297</sup>

196. The Constitution defines the mission of the armed institution in terms of the defence of sovereignty, independence, and territorial integrity, and establishes that, in exceptional cases, when the stability of the country is threatened by major internal disorders, calamities, or natural disasters, the President, at a Council of Ministers' meeting, may order the intervention of the Army in support of the National Police.<sup>298</sup>

<sup>293</sup> See IACHR, Annual Report 2015, Chapter IV. A Use of Force, para. 31, available at: <https://www.confidencial.digital/politica/ley-de-seguridad-soberana-ambigua-y-discrecional/>; [http://www.oas.org/es/cidh/informes/pdfs/2021\\_nicaragua-es.pdf](http://www.oas.org/es/cidh/informes/pdfs/2021_nicaragua-es.pdf). In the Universal Periodic Review framework in 2019, different human rights organizations recommended the repeal of the Sovereign Security and Anti-Money Laundering and Countering the Financing of Terrorism Acts. See <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/046/75/PDF/G1904675.pdf?OpenElement>.

<sup>294</sup> See Sovereign Security Act, art. 14, which establishes that both the internal and institutional order and the reserved nature of its work and information and/or data, constitute reserved public information, following the provisions of the Access to Public Information Act, Law No. 621, approved on 16 May 2007, and published in *La Gaceta, Diario Oficial* No. 118 of 22 June 2007 (hereinafter "Access to Information Act").

<sup>295</sup> Constitution of Nicaragua, art. 13, letter e).

<sup>296</sup> *Ibid.*, art. 93.

<sup>297</sup> Code of Organization, Jurisdiction and Military Social Welfare, art. 1.

<sup>298</sup> Constitution of Nicaragua, art. 92.

197. Since 2014, the functions and activities of the Army have expanded beyond the scope of national defence. The Military Code as amended in 2014, extends the functions of the Army to the fight against drug trafficking, organized crime, and related activities; to contribute to the national development; natural disaster management and emergency support; electoral support; environmental protection and the protection of national communication systems.<sup>299</sup> Likewise, in case of necessity, the President, at a Council of Ministers' meeting, may order the intervention of the Army "in riots or civil disturbances that exceed the capacity of the National Police forces to put an end to it".<sup>300</sup>

(i) Organisational structure and chain of command

198. The forces of the Nicaraguan Army are composed of the Ground Force, the Air Force, and the Naval Force. The Regional Military Commands are the administrative and military territorial command bodies of the ground troops in the political-administrative territory to which they are circumscribed.

199. The military hierarchy comprises the following levels of command:

- 1) **The Supreme Command.** The Army is subordinated to the civil authority, exercised by the President of the Republic, Daniel Ortega, as Supreme Chief of the Army.<sup>301</sup> Unlike in other countries, the Ministry of Defence is not part of the chain of command.
- 2) **The High Command.** It corresponds to the General Command, composed of the Commander in Chief of the Army (General Julio César Avilés Castillo),<sup>302</sup> to whom all Army forces are subordinated; the Army's Chief of Staff (General Bayardo Ramón Rodríguez Ruiz),<sup>303</sup> and the General Inspector (General Marvin Elías Corrales Rodríguez).<sup>304</sup> These three positions are appointed directly by the President of the Republic as Supreme Chief of the Army.
- 3) **The Military Council.** It is the highest consultative body of the High Command for doctrine and strategy matters related to the development of the military institution and defence plans. It is composed of the heads of the Directorates of the General Staff; the heads of the Support Organs of the General Command with hierarchical equivalence; the heads of the Air Force and Naval Forces; the heads of Large Units directly subordinated to the High Command; and the Senior Officers.<sup>305</sup>
- 4) **The Superior Command.** It is represented by the Army's General Staff, made up of the Chief of the General Staff and the heads of the directorates.<sup>306</sup> The

<sup>299</sup> Military Code, art. 2 "Functions of the Army", numeral 6.

<sup>300</sup> *Ibid.* art. 6.

<sup>301</sup> Constitution of Nicaragua, art. 92.

<sup>302</sup> The current Commander in Chief of the Army has held this position for 12 years. See <http://legislacion.asamblea.gob.ni/normaweb.nsf/3133c0d121ea3897062568a1005e0f89/9e3d01ba3274a78d062584b9006147b4?OpenDocument>. The Army Commander, General Avilés and the Chief of Staff, General Rodríguez, were sanctioned by the U.S. Office of Foreign Assets Control (hereinafter OFAC for its acronym in English); according to this entity, they would have provided weapons to the groups that carried out acts of violence against civilians in the framework of the 2018 protests, and would have refused to order their disarmament and dismantling.

<sup>303</sup> Brigadier General Bayardo Ramón Rodríguez Ruiz was appointed new Chief of Staff of the Armed Forces in 2017, the second highest position in the Armed Forces. Presidential Agreement 64/2017 of 11 May 2017, promotes him to Major General. See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/9e314815a08d4a6206257265005d21f9/951b8627774a1eaa062586e300765dac?OpenDocument> (not in force).

<sup>304</sup> Inspector General Major Marvin Elías Corrales Rodríguez was promoted to Major General by Presidential Agreement 64/2017 of 11 May 2017, and appointed Inspector General by Order 031/2017.

<sup>305</sup> Military Code, art. 14.

<sup>306</sup> The Directorates of the General Staff are Personnel and Staff, Military Intelligence, Operations and Plans, Logistics, Doctrine and Education, Civil Affairs, and Finance.

General Staff is the technical, operational, administrative, and service body on which the High Command relies for the planning, direction, and control of the Army, as well as for its training and technical-material and operational assurance.<sup>307</sup>

- 5) **Command Unit.** It corresponds to the chiefs of the Air Force and the Naval Force, to the chiefs of the large units subordinated to the high command, to the chiefs of common bodies of the army, and to the chiefs of other units.<sup>308</sup>
- 6) **Commands of common bodies.** The common bodies of the forces of the Army are the Logistic Support Command, the Military Medical Corps, the University, Military Schools and Academies, the Honor Guard Unit, the Civil Defence General Staff, the Corps of Engineers, the Corps of Transmissions, the Directorate of Military Counterintelligence, and the DID.

(ii) The Directorate of Defence Intelligence (DID)

200. The DID is the Executive Secretariat of the National Sovereign Security System. The structure and functioning of the DID are not publicly known, as it is considered reserved information according to the definition of that term in the Law on Access to Public Information.<sup>309</sup> The DID is the successor to the General Directorate of State Security (*Dirección General de la Seguridad del Estado*, DGSE), created in the 1980s within the Ministry of the Interior, and known for its role as a political watchdog of the Sandinista Government of the time. After the 1990 elections, it changed its name to DID and was transferred to the Army as the State's intelligence agency.

(iii) Promotions, appointments, and other benefits

201. As Supreme Chief of the Army, the President of the Republic has the power to appoint and remove the Commander in Chief of the Army and the Deputy General Directors and the Inspector General. The 2014 reform to the Military Code eliminated the clause that prevented the re-election of the Commander in Chief of the Army, allowing the renewal of the position by the President of the Republic.<sup>310</sup> This reform also empowered the President of the Republic to extend the time of military service for General Officers and other officers, and to reinstate officers in retirement or reserve status to occupy positions in the military institution.<sup>311</sup>

202. With the 2014 reform to the Military Code, the ban on members of the Army from holding public positions was also eliminated, establishing that "they may temporarily hold positions in the Executive Branch, for reasons of National Security when so required for the supreme interest of the Nation".<sup>312</sup> According to public information, at least 22 former members of the military sanctioned for their alleged participation in the commission of human rights violations and acts of corruption are in charge of the management of State-owned companies, ministries, and other political entities.

203. A pattern of promotions and appointments of members of the Army has been identified, as well as appointments of military and ex-military personnel related to the Government of Daniel Ortega and Rosario Murillo in institutions of the Executive Branch and in State or mixed capital companies. During 2021, 1,568 decorations were granted (1,459 in ordinary processes, 46 to foreign personalities, 56 to officers who passed to the honourable condition of retirement, and 7 posthumous decorations).<sup>313</sup> According to the

<sup>307</sup> Military Code, art. 10. Superior Command.

<sup>308</sup> Military Code, art. 12.

<sup>309</sup> See Access to Information Act.

<sup>310</sup> Military Code, art.8.

<sup>311</sup> *Ibid.*, art. 35.

<sup>312</sup> *Ibid.*, art. 31 *quinquies*.

<sup>313</sup> National Army, Report, 43<sup>rd</sup> anniversary of the founding of the Army of Nicaragua, 2 September 2022, p. 17.

media, in 2019,<sup>314</sup> 2020,<sup>315</sup> 2021,<sup>316</sup> and 2022,<sup>317</sup> at least 300 property titles were given to former military members of the National Army.

(b) *The National Police of Nicaragua*

204. The National Police is the only police force in the country. It is the successor to the Sandinista Police, which it formally replaced in 1995.<sup>318</sup> The competencies of the Police include a variety of functions in the areas of prevention and citizen and human security, investigations, judicial assistance and police intelligence, and security and protection of public figures.<sup>319</sup> The National Police Law establishes that the police will work following a preventive, proactive, and community model, with the protagonist participation of the inhabitants, the family, and the community. It also reaffirms respect for human rights and gender equity as two of the seven doctrinal principles of the institution.<sup>320</sup>

205. At the end of 2021,<sup>321</sup> the National Police was composed of 17,349 men and women, with an average of 260 police officers per 100,000 inhabitants.<sup>322</sup> The Police is territorially structured in delegations, which are constituted and located in certain territorial districts, and are responsible for the prevention and investigation of crime.

(i) Organisational structure and chain of command

206. The Supreme Command of the National Police corresponds to the President of the Republic, Daniel Ortega. The President has the power to make strategic and operational decisions, as well as to appoint and dismiss the General Director, the Deputy General Directors, and the Inspector General of the National Police.

207. The National Headquarters comprises the Director General of the Police, the Deputy Directors, and the Inspector General. The Director General of the Police directs, administers, and exercises the sole command in the institution and ensures compliance with the orders of the President of the Republic.<sup>323</sup> According to the National Police Law, the President of the Republic, as Supreme Chief of the National Police, is vested with the authority to appoint and dismiss the senior officers of the police institution.<sup>324</sup>

208. As of 5 July 2018, the Director General of the National Police is Commissioner General Francisco Javier Díaz.<sup>325</sup> According to media reports, Díaz also heads the National

<sup>314</sup> El 19 Digital, “Retirados del ejército reciben títulos de propiedad”, 17 August 2019, available at: <https://www.el19digital.com/articulos/ver/titulo:93203-retirados-del-ejercito-reciben-titulos-de-propiedad>

<sup>315</sup> Viva Nicaragua 13, “Gobierno entrega títulos de propiedad a retirados del Ejército de Nicaragua”, available at: <https://www.youtube.com/watch?v=ZhmGplBEulM>.

<sup>316</sup> La Gente, “Entregan títulos de propiedad a exmilitares”, 30 October 2021.

<sup>317</sup> According to the Assistant Attorney General of the Attorney General’s Office, Mr. Ervin Gutiérrez, the February 2022 delivery complied with the instructions of President Daniel Ortega and Vice President Rosario Murillo. El 19 Digital, “Gobierno de Nicaragua otorga 100 títulos de propiedad a retirados del Ejército”, 12 February 2022, available at: <https://www.el19digital.com/articulos/ver/titulo:125320-gobierno-de-nicaragua-otorga-100-titulos-de-propiedad-a-retirados-del-ejercito->.

<sup>318</sup> Constitution of Nicaragua, art. 97.

<sup>319</sup> National Police Act, art. 7.

<sup>320</sup> National Police Act, art. 5.

<sup>321</sup> At the closing date of this report, more recent official public information was unavailable.

<sup>322</sup> National Police, Statistical Yearbook 2021, p. 49, available at: <https://www.policia.gob.ni/wp-content/uploads/2022/07/Anuario-Estad%C3%ADstico-Policial-2021.pdf>.

<sup>323</sup> National Police Act, art. 13 (powers and functions of the Director or Director General).

<sup>324</sup> *Ibid.*, art. 10, paras. 2–5.

<sup>325</sup> Francisco Díaz was formally appointed by Presidential Agreement No. 98-A-2018 of 5 July 2018. He is Daniel Ortega’s in-law; Daniel Ortega’s daughter, Blanca Díaz Flores is married to Maurice Díaz. He was *de facto* appointed in 2017, and the presidential agreement of his appointment was issued in 2018 (Agreement 98-A-2018); see <http://200.62.64.4/contenido/noticias/2018-03/dea-realiza-visita-cmdancia.html>.

Anti-Money Laundering Commission.<sup>326</sup> Between 5 September 2006 and 5 July 2018, the Director General of the Police was First Commissioner Arminta Granera Sacasa.<sup>327</sup>

209. The Deputy General Directors perform specific functions in operational matters, political intelligence, judicial investigation, surveillance, patrolling, and communications. The Deputy General Directors of the Police, Commissioners General Adolfo Joel Marengo Corea, and Ramón Antonio Avellán Medal were appointed in August 2018.<sup>328</sup> Deputy Director Marengo was the Chief of Police Intelligence and Investigation of the National Police between August 2018 and October 2022, and chaired the National Commission on Organized Crime. In November 2022, he was “sent to retirement” and Commissioner General Zhukov Serrano Pérez was promoted in his place.<sup>329</sup>

210. The National Council of the National Police is the advisory and consultative body of the National Headquarters. It is composed of the Director General, Deputy General Directors, the Inspector General, Police Area Chiefs, National Specialties, Support Bodies, and Police Delegations. See the annex to this report for an organizational chart showing the structure and chain of command of the National Police.

211. Numerous promotions have been granted in recent years, including to persons allegedly involved in the commission of human rights violations. The number of General Police Commissioners has increased from 4 in 2007 to 24 in 2018 and 37 in 2020.<sup>330</sup> These include the Chief General Commissioner of the Directorate of Judicial Assistance (*Dirección de Auxilio Judicial*, DAJ), Luis Alberto Pérez Olivas, and General Commissioner Zacarías Salgado, head of Block II of TAPIR.<sup>331</sup>

212. At the national level, the National Police is comprised of 23 “specialties” that carry out surveillance, intelligence, investigation, and operations, as well as seven support bodies. These include the specialties of Police Intelligence, Judicial Assistance, Public Security, Coexistence and Citizen and Human Security, and Special Police Operations.

(ii) The Public Security Directorate and the Volunteer Police

213. The Public Security Directorate (*Dirección de Seguridad Pública*) of the National Police is in charge of the implementation of the Preventive, Proactive, and Community Policing Model, of supervising and controlling events or activities whose legal authorization corresponds to the National Police, of issuing the corresponding licenses and permits, and of overseeing and carrying out the recruitment, organization, supervision, and control of the Volunteer Police.<sup>332</sup>

214. The Volunteer Police Corps was conceived as a citizen participation modality and created as an auxiliary body to support the National Police. Although the Volunteer Police is under the Public Security Directorate, it is attached and subordinated to the respective

<sup>326</sup> Nicaragua Investiga, “Un delito sin condenados en Nicaragua, el lavado de dinero”, 1 April 2022, available at: <https://nicaraguainvestiga.com/reportajes/79742-delito-condenados-nicaragua-lavado-dinero/>

<sup>327</sup> Granera was appointed in 2006 for a five-year term. However, her term was extended for a total of 12 years until she was removed from the police careers in July 2018 by virtue of Presidential Agreement No. 113-A-2018.

<sup>328</sup> Presidential Decree No. 137-A-2015, published in *La Gaceta, Diario Oficial* No. 162 on 23 August 2018. The designation was made on 1 September 2015.

<sup>329</sup> Presidential Agreement No. 168 of 2022, dated 21 November 2022, published in *La Gaceta, Diario Oficial* No. 220 of 23 November 2022.

<sup>330</sup> Statistical Yearbooks of the National Police.

<sup>331</sup> Zacarías Salcedo was investigated for his role in the so-called “Las Jagüitas Massacre”, the GHREN has been unable to obtain documentation on this case. See *La Prensa*, “Expolicías en La Jagüita estarán entre 2 y 11 años en la cárcel”, 30 July 2015, available at: <https://www.laprensani.com/2015/07/30/nacionales/1875245-leen-sentencia-contra-policias-involucrados-en-caso-las-jaguitas>.

<sup>332</sup> National Police Act, art. 23.



police delegations. In accordance with the law, its functions are mainly surveillance and citizen security.<sup>333</sup>

215. According to the GHREN's investigations, the Public Security Directorate, in coordination with other directorates, departments, and specialties of the National Police, played a central role in the actions implemented in the framework of the April 2018 demonstrations (see Chapter III.A). In addition, the Public Security Directorate coordinated and directed the interventions of the Volunteer Police in the context of the repression of protests and roadblocks in 2018. The Government itself emphasized the role of the Voluntary Police, together with the National Police, in such activities.

(iii) The Directorate of Special Police Operations

216. Access to public information on the legal basis, composition, structure, and staffing of the Directorate of Special Police Operations of the National Police (*Dirección de Operaciones Especiales*, DOEP) is limited. Article 7, numeral 15 of the National Police Law, establishes that it is responsible for "(...) intervening to reestablish public order in the event of serious disturbances, participating in special operations against drug trafficking, terrorism, organized crime, and other serious criminal activities, assisting in the protection and security of the President of the Republic and other national and foreign personalities, supporting the civilian population in the event of calamities and natural disasters and in any other critical situation that affects public order, stability and citizen and human security".

217. The DOEP comprises different elite special forces units, such as the Police Tactics and Weapons Intervention and Rescue Detachment (TAPIR), the Special Anti-Riot Brigade, and the Rapid Intervention Group. These units have trained personnel to intervene in crises and in contexts of organized crime, terrorism, and the fight against drug trafficking, at the national level, and are equipped with long-range weapons and snipers. Commissioner General Justo Pastor Urbina has been the head of the DOEP since before 2018.

218. The intervention of local police officers, jointly with specialized members of the Special Anti-Riot Brigade and TAPIR, during the repression demonstrates an articulation from the highest levels as well as at the territorial level. The GHREN's investigations conclude that the anti-riot teams and other members of the National Police played a central role in the repression of social protests and that they used force disproportionately and carried out other abuses against the demonstrators, resulting in a large number of fatalities. In addition, pro-government armed groups acted in coordination or with the acquiescence of the National Police and, specifically, of the Special Anti-Riot Squad (see Chapter III.A).

(iv) The Judicial Assistance Directorate

219. The DAJ is the specialty of the National Police in charge of conducting criminal investigations in coordination with the Public Prosecutor's Office. According to the National Police Law, the police, in its judicial assistance functions, investigates, collects evidence, carries out procedures for the verification of crimes, and arrests the alleged perpetrators; carries out the initial procedures and prepares the investigative files to send to the Public Prosecutor's Office; provides assistance to the Judicial Power; and executes and guarantees compliance with the Judiciary's orders and instructions.<sup>334</sup>

220. The current head of the Judicial Assistance Directorate is Major Commissioner Luis Alberto Pérez Olivas, a member of the FSLN and historically linked to the National Police. The U.S. Government sanctioned him for his role as head of the Police and director of the El Chipote prison.<sup>335</sup>

<sup>333</sup> National Police Act, art. 7, letter r).

<sup>334</sup> National Police Act, arts. 46–47.

<sup>335</sup> In 2016, Pérez Olivas was promoted to the Directorate of Judicial Assistance. Pérez Olivas is therefore responsible for El Chipote and El Nuevo Chipote. In 2018, he was promoted to Commissioner General.

221. El Chipote was the headquarters of the Police Assistance Directorate. It was built in 1931 on the shores of the Tiscapa Lagoon in Managua. El Chipote was historically used as a torture centre under the Somoza dictatorship and after the Sandinista Revolution. All its cells were “punishment cells”, very small, unsanitary, with inadequate ventilation and lack of access to natural light. In February 2019, the new DAJ facilities were inaugurated under the name Evaristo Vásquez Police Complex, known as “El Nuevo Chipote”, where most of the people previously detained in the old facilities were transferred. Although these new facilities have a more adequate and sanitary infrastructure, the practices of interrogation, torture, and cruel, inhuman, and degrading treatment or punishment persisted (see Chapter III.B).<sup>336</sup>

222. As detailed below, the DAJ authorities have misused the figure of police detention by using El Nuevo Chipote as a detention centre for convicted persons who should not be held there. The GHREN has reasonable grounds to believe that serious human rights abuses and violations have occurred at El Chipote and El Nuevo Chipote detention centres since April 2018, including arbitrary detention, torture, and other inhuman, cruel, or degrading treatment or punishment (see Chapter III, A-B).

### 3. Pro-government armed groups and other control mechanisms

#### (a) Pro-government armed groups

223. The GHREN identified a pattern of intervention by pro-government armed groups as of 18 April 2018 (see Chapter III.A). Pro-government armed groups violently attacked participants in social protests in Nicaragua and engaged in operations to eliminate barricades or “tranques”, in coordination with State security forces, and following instructions from State authorities and/or territorial leaders of the Government party. In several cases investigated by the GHREN, members of pro-government armed groups were directly responsible for the deaths of protesters.

224. Investigations carried out by the GHREN have evidenced that, since April 2018, these groups have repressed social protests, have been involved in arbitrary detentions, and have carried out surveillance and harassment activities against real or perceived Government opponents (see Chapter III.A and III.B).<sup>337</sup> The GHREN has gathered abundant information indicating that these groups acted in a coordinated manner and/or with the acquiescence of State security forces, both in joint and separate interventions. Furthermore, the GHREN has reasonable grounds to believe that pro-government armed groups acted with the acquiescence of high-level State authorities, which guaranteed total impunity for their abuses.

225. The GHREN considers it a priority to continue to investigate these groups in depth, including their command structures, actions, methods, financing, training, and links with other actors.

#### (i) Notion

226. In the context of the Nicaraguan social protest, the terms “clash groups” (*grupos de choque*), “Sandinista mobs” (*turbas sandinistas*), “parapolice” (*parapoliciales*),<sup>338</sup>

<sup>336</sup> GHREN interviews EEIV024, EEIV038, DDIV022.

<sup>337</sup> See also GIEI Nicaragua Report, pp. 54–56 Amnesty International, “Shoot to kill: Nicaragua’s strategy to repress protest”, 29 May 2018 (hereinafter “Shoot to kill”), pp. 10–15, available at: <https://www.amnesty.org/en/documents/amr43/8470/2018/en/>, Connectas, “Armados en las calles: la red de paramilitares al servicio de Daniel Ortega”, available at: <https://www.connectas.org/paramilitares-daniel-ortega/>.

<sup>338</sup> See IACHR Report “Graves violaciones a los Derechos Humanos en el marco de las protestas sociales en Nicaragua”, OEA/Ser.L/V/II. Doc. 86, 21 June 2018 (hereinafter “IACHR Report on Grave Breaches”), paras. 35, 58 et seq. available at: <http://www.oas.org/es/cidh/informes/pdfs/Nicaragua2018-es.pdf>; Amnesty International, Shoot to kill, Title 3.2. Use of vigilante groups, pp. 10–15.

“parastatal forces” (*paraestatales*)<sup>339</sup> and “paramilitaries” (*paramilitares*)<sup>340</sup> have often been used by the media, national and international organizations, in popular culture, as well as in testimonies collected by the GHREN, to describe armed groups acting on behalf of the Government to repress social protest, and with the connivance or acquiescence of state security forces.

227. The GHREN uses the term “pro-government armed groups” to refer to groups of heterogeneous composition and with varying organization levels. They have the following common characteristics: a) they carry out repressive functions in favour of the Government, through the use of force and/or violence; b) they do not identify themselves as members of the State security forces; c) they use weapons, including blunt weapons and firearms; d) they act in collaboration with the police; and e) they work in an articulated manner with the local political structures of the FSLN.

(ii) Characterization

a. “Sandinista mobs” and “clash groups”

228. These are groups of Sandinista sympathizers organized and active before 2018, with presence throughout the country. They are characterized by their actions to impede or disperse public demonstrations perceived as contrary to the Government. Actions frequently employed include: organizing counter-protests; the occupation of public space; and the use of intimidation, threats, and violent attacks against demonstrators.

229. The first reports on the actions of clash groups date back to November 2008, when these groups allegedly attacked people who were demonstrating against the results of the municipal elections in several municipalities in the country.<sup>341</sup> Similar patterns of attacks against demonstrators by mobs or clash groups have been reported since 2008. For example, in 2013, in the context of protests by retired people over their pensions –in the case known as *Ocupalms*–, or in 2016 in the context of protests against the interoceanic canal project.<sup>342</sup> According to various sources, from early on, these groups were known to operate with the approval of or tolerance by the police.<sup>343</sup>

230. These groups were mobilized again to counter the 18 April 2018 demonstrations. The repression of the initial protests by these groups and the National Police led to increased social discontent, triggering a wave of protests throughout the country.

231. According to testimonies collected by the GHREN, members of the Sandinista mobs and clash groups were armed with blunt objects such as clubs and sticks and wore helmets. In some cases, these groups had motorized individuals amongst them. The Sandinista mobs and clash groups were mainly composed of young men, including members of the Sandinista Youth, young persons at risk of social exclusion –including current and former gang members– and workers from state institutions. According to numerous sources,<sup>344</sup> the individuals were allegedly recruited, coordinated, and directed through local FSLN structures, local government officials, and, at the community level, by the Family, Community, and Life Councils (formerly known as CPC), as well as by the CLS and the unions of the different State institutions.<sup>345</sup>

<sup>339</sup> GIEI Nicaragua Report, pp. 54–56.

<sup>340</sup> CENIDH-FIDH, “¡Basta ya de impunidad! Ejecuciones extrajudiciales y represión en Nicaragua, ¿hasta cuándo?”, 2021.

<sup>341</sup> The IACHR condemned the violence in its press release 51/08 “IACHR expresses concern over the situation in Nicaragua” of 25 November 2008.

<sup>342</sup> OHCHR, Report 2018, p. 37.

<sup>343</sup> IACHR Report on Grave Breaches, par. 58 and cc; Lira, Elvira Cuadra. “Dispositivos del silencio: control social y represión en Nicaragua”; “Nicaragua En Crisis: Entre La Revolución y La Sublevación”, edited by Aleksander Aguilar Antunes et al., CLACSO, 2018, pp. 245–256.

<sup>344</sup> GHREN interviews BBIV023, BBIV031. See also: “Dispositivos del silencio: control social y represión en Nicaragua”; “Nicaragua En Crisis: Entre La Revolución y La Sublevación”, edited by Aleksander Aguilar Antunes et al., CLACSO, 2018, pp. 247–249; GIEI Nicaragua Report, pp.54–56.

<sup>345</sup> GHREN interviews BBIV013, BBIV024, BBIV031.

## b. Criminal structures

232. Organizations and media outlets have denounced the recruitment of young people at risk of exclusion through violence prevention and reinsertion programs for young gang members promoted by the National Police's Youth Affairs Directorate.<sup>346</sup> According to allegations received by the GHREN, the police and local authorities have mobilized groups of youths structured in drug dealing or petty theft networks to repress social protest.<sup>347</sup>

## c. Militarized pro-government groups

233. Following the first incidents in April 2018, and because protests and roadblocks exceeding the response capacity of the National Police and clash groups continued, a transformation of armed groups in favour of the Government began to take place. Highly organized and prepared groups appeared, and were able to exercise more lethal violence through military and/or police tactics. The members of these groups used military symbols such as insignia and clothing, often wearing shirts of a distinctive colour, and used firearms, including weapons traditionally used in a war context.<sup>348</sup>

234. According to information received by the GHREN, these groups were mainly composed of former combatants of the Sandinista Popular Army, former members of the Army, the Police<sup>349</sup> and State security<sup>350</sup> agents, and workers of public institutions. Some high-ranking retired military officers contributed to the recruitment of members and the organization of the militarized groups.<sup>351</sup> These groups played a central role in the repression, and during the so-called "Operation Cleanup".<sup>352</sup>

## (iii) The Government's position

235. The authorities' position vis-à-vis the actions of pro-government armed groups has been contradictory. President Daniel Ortega denied the Government's links with paramilitary forces before the international media. On the contrary, he accused the political opposition of forming "armed paramilitary groups" financed by drug trafficking activities and international organizations to attack the police and Government.<sup>353</sup>

236. When confronted by a journalist with a photograph of armed men carrying FLSN flags and insignia, President Daniel Ortega denied that they were paramilitaries and said they were "citizens defending themselves". Then, he mentioned that the photo could be a montage.<sup>354</sup> On another occasion, President Ortega identified the members of the armed

<sup>346</sup> GIEI Nicaragua Report, p. 55; see CENIDH-FIDH, "¡Basta ya de impunidad! Ejecuciones extrajudiciales y represión en Nicaragua, ¿hasta cuándo?", 2021. See also: Confidencial, "Complicidad oficial con pistolero FSLN", 7 September 2015; La Prensa, "Pistolero es fuerza de choque oficialista," 5 September 2015, available at: <https://www.laprensani.com/2015/09/05/nacionales/1896576-pistolero-es-fuerza-de-choque-oficialista>.

<sup>347</sup> See chapter III.A.

<sup>348</sup> *Ibid.* See also GIEI Nicaragua Report, p. 190.

<sup>349</sup> According to information received by the GHREN, the National Police reportedly recruited former police officers who had been discharged for various reasons (including dishonourable discharge) to rejoin the police force or to form pro-government armed groups.

<sup>350</sup> Former employees of the Ministry of the Interior (MINT) and the General Directorate of State Security (DGSE).

<sup>351</sup> GIEI Nicaragua Report, p. 56; Lira, "Dispositivos del silencio: control social y represión en Nicaragua"; "Nicaragua En Crisis: Entre La Revolución y La Sublevación", edited by Aleksander Aguilar Antunes et al., CLACSO, 2018, pp. 249–250.

<sup>352</sup> The events and violations linked to "operation cleanup" are described in detail in chapter III.A of this report.

<sup>353</sup> CNN, "Daniel Ortega concede una entrevista a CNN", available at: <https://edition.cnn.com/videos/spanish/2018/07/31/nicaragua-protestas-daniel-ortega-entrevista-oppenheimer-kay-guerrero-fernando-rincon.cnn>; Youtube Bret Baier. Bret Baier interviews President Daniel Ortega. <https://www.youtube.com/watch?v=IU-vsCDeUjI>.

<sup>354</sup> CNN, "Daniel Ortega sobre presunta foto de paramilitares: Son ciudadanos defendiéndose", available at: <https://cnnespanol.cnn.com/video/nicaragua-paramilitares-daniel-ortega-entrevista-intvw-oppenheimer-cara-a-cara-p2/>.

groups aligned with the Government as “volunteer policemen”, stating that they supported the National Police and that their members could carry out this work “masked” during the development of special operations.<sup>355</sup> The above would contravene the provisions of the law, which, as noted above, establishes that the members of the Volunteer Police perform only preventive work and that “*they will be duly identified with uniforms and proper badges, their activity must always be coordinated and supervised by a member of the National Police, and in their actions, they are subject to the fundamental principles of action of the institution*”.<sup>356</sup>

237. Despite these statements by the President, the Director General of the National Police, Commissioner Francisco Díaz, at the time stated that, “*not everyone was a volunteer, but also our professional police officers. In the law of any country, when life is in danger, the police are allowed to wear balaclavas to protect their identity*” and added that “*most of them were professional police officers doing undercover work*”.<sup>357</sup> It should be noted that international standards on the use of force establish that law enforcement officers must identify themselves as such,<sup>358</sup> and that uniformed police officers must always be identified during demonstrations or public gatherings.<sup>359</sup>

238. According to media reports, the head of the Nicaraguan Army, General Julio César Avilés, denied the presence of “paramilitaries” in Nicaragua. He affirmed that the Army does not have the legal basis or the equipment to disarm pro-government armed groups but he did not deny their existence.<sup>360</sup>

239. In its official response to a joint letter sent by a special procedures group of the Human Rights Council in November 2018,<sup>361</sup> the State of Nicaragua expressed that the “illegal roadblocks” had been lifted by the National Police, and that “the National Police with the support of the Community has reestablished constitutional order”.<sup>362</sup>

(b) *Surveillance and social control mechanisms*

240. The Sandinista Leadership Committees, the Sandinista Youth, the unions linked to the FSLN, and the Family Cabinets, formerly known as Councils of Citizen Power (CPC), make up an organizational network with a broad territorial and sectoral implantation. This structure combines and articulates formal institutions and the FSLN’s own forms of organization.<sup>363</sup>

<sup>355</sup> Euronews. “Daniel Ortega niega querer perpetuarse en el poder en Nicaragua en su entrevista con euronews” (min. 7:23).

<sup>356</sup> National Police Act, art. 25.

<sup>357</sup> Statements by Commissioner Francisco Díaz to the Norwegian newspaper Dagbladet, available at: [https://www.youtube.com/watch?v=zB\\_VD2JuGG0&t=49s](https://www.youtube.com/watch?v=zB_VD2JuGG0&t=49s).

<sup>358</sup> UN, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, A/CONF.144/28/Rev.1, pp. 117–124, para. 10.

<sup>359</sup> Human Rights Committee, General Comment No. 37 (2020), on the right to peaceful assembly (art. 21), CCPR/C/GC/37, paras. 77, 89, 92.

<sup>360</sup> La Prensa Nicaragua, “El Ejército no tiene estructura ni equipos para el orden público”, 25 July 2019, available at: <https://www.youtube.com/watch?v=yz7DXNbFci4&t=216s>; La Prensa, “El ejército no tiene estructura ni equipos para el orden público, asegura el General del Ejército Julio César Avilés”, 24 July 2019, available at: <https://www.laprensani.com/2019/07/24/nacionales/2572528-el-ejercito-no-tiene-estructura-ni-equipos-para-el-orden-publico-asegura-el-general-de-ejercito-julio-cesar-aviles>.

<sup>361</sup> AL/NIC/5/2018 (7 November 2018), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24170>.

<sup>362</sup> Report of the State of Nicaragua Regarding the Joint Communication from the Special Procedures of the Office of the United Nations High Commissioner for Human Rights (27 November 2018) (emphasis added), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34426>.

<sup>363</sup> GIEI Nicaragua Report, pp. 56–57.

## (i) Citizen's Power Councils and Family Cabinets

241. The CPCs and GPCs were created by the Government in 2007 as territorial structures of citizen participation, with a presence throughout the territory of Nicaragua.<sup>364</sup> The CPCs and GPCs were implemented in each neighbourhood, community, municipality, department, or autonomous region and integrated into the National Cabinet of Citizen Power. Participation in the CPCs and GPCs was voluntary and unpaid.<sup>365</sup>

242. The CPCs and GPCs were formed as a network of governmental structures integrated in the National Council for Economic and Social Planning (*Consejo Nacional de Planificación Económica y Social*, CONPES).<sup>366</sup> The current Vice President of the Government, Rosario Murillo, then Coordinator of the Secretariat of Communication and Citizenship, was appointed Executive Secretary of CONPES, overseeing the coordination and supervision of the national structure of citizen participation institutions. The current president of the National Assembly, Gustavo Porras, held the position of Deputy Secretary.

243. The CPCs were divided into working groups to address the community's various needs. In November 2007, the Citizen Security CPC replaced the Crime Prevention Committees, which until then had been the form of community organization and participation promoted by the Police for the implementation of crime prevention activities.<sup>367</sup>

244. In 2014, the Family, Community, and Life Cabinets ("Gabinetes de Familia") were created.<sup>368</sup> They were present at departmental, municipal, neighbourhood, and county levels<sup>369</sup> and composed of "people, women, men, young people, older adults who [promote] family values and unity, self-esteem, responsibility, rights and duties, communication, coexistence, understanding, and community spirit to achieve coherence between what one is, what one thinks and what one does".<sup>370</sup> The competencies and objectives of the Family Cabinets overlap significantly with those of the CPCs, which, generally, achieve greater implementation in the communities. The mayor's offices have citizen participation offices responsible for coordinating actions with the Family Cabinets.

245. Since their creation, the Government used the citizen participation structures with partisan objectives. As corroborated by various sources, the CPCs and the GPCs were co-opted by persons or members of the FSLN or by persons close to it and have been used to channel benefits and social aid to persons linked to the Government to generate or reinforce loyalties.<sup>371</sup> Before and after 2018, the Family Cabinets carried out surveillance and social control tasks, rewarding people sympathetic to the Government with recommendations, positions and other benefits. The GHREN received information on the role of these groups in generating intelligence on real or perceived Government opponents and their activities, in threatening and intimidating these individuals, and even in participating in arrest operations.<sup>372</sup>

<sup>364</sup> Executive Decree No. 112 of 29 November 2007, approved on 29 November 2007, published in *La Gaceta, Diario Oficial* No. 230 of 29 November 2007.

<sup>365</sup> *Ibid.*, art. 1.

<sup>366</sup> Salvador Martí i Puig, Nicaragua 2008: polarization and pacts. *Revista de ciencia Política*, Volume 29, No. 2, 2009, pp. 515–531.

<sup>367</sup> Cuadra, Elvira. "Dispositivos del silencio: control social y represión en Nicaragua"; "Nicaragua En Crisis: Entre La Revolución y La Sublevación", edited by Aleksander Aguilar Antunes et al., CLACSO, 2018, pp. 250–251.

<sup>368</sup> Despite the creation of the Family Cabinets in 2014, Nicaraguan people, including media, experts, and witnesses, often refer to the CPCs or the "formerly called CPCs" to identify these structures.

<sup>369</sup> Family Code, Law No. 870, approved on 24 June 2014, published in *La Gaceta, Diario Oficial* No. 190 of 8 October 2014 (hereinafter "Family Code"), art. 34.

<sup>370</sup> *Ibid.* art. 32.

<sup>371</sup> GHREN interviews GGIV001, GGIV003; IACHR, Nicaragua: Concentration of Power and Weakening of the Rule of Law, 25 October 2021, OEA/Ser.L/V/II. Doc. 288, pp. 37–38.

<sup>372</sup> See Chapter III.

## (ii) The Sandinista Leadership Committees

246. The CLS are part of the FSLN party structure, together with the Sandinista Youth, unions linked to the FLSN and other structures. According to testimonies received and other sources consulted,<sup>373</sup> the CLS were established within all public institutions to monitor public officials and their political activities and coordinate and promote their participation in activities in support of the Government.

247. Each CLS is headed by a political secretary, who liaises between State institutions and the FSLN. According to various sources, the political secretary in Managua, Fidel Moreno, was in charge of convening the meetings of the political secretaries at the national level and transmitting instructions from President Daniel Ortega and Vice President Rosario Murillo.<sup>374</sup> In testimony before the U.S. Congressional Human Rights Commission, a former public official confirmed that Rosario Murillo's order to attack opposition individuals was channelled through the political structures of the FSLN:

*[O]n 19 April, all the political secretaries, the coordinators of the Sandinista Youth, and the secretaries of the unions were summoned to the auditorium of the Japanese Park. At the entrance, officials scanned the IDs of all participants, and Fidel Moreno Briones prohibited people from recording the meeting. We all put our cell phones away. The purpose of the meeting was to organize the response to the street protests. Moreno Briones had a clear message: "We must defend the Revolution, we are going all out, we will not allow them to steal the Revolution".<sup>375</sup>*

248. In 2018, numerous sources pointed to the responsibility of political secretaries in attacks against protesters and roadblocks or barricades. According to testimonies available in open sources from members of pro-government armed groups, the political secretaries allegedly recruited, provided weapons, made payments or promises, and issued orders to members of these groups.<sup>376</sup>

**D. The human rights situation prior to 2018**

249. The described processes of gradual erosion of the rule of law, the separation of powers, democratic guarantees, and institutionality resulted in a progressive deterioration of the human rights situation in Nicaragua, which accelerated with the regime of President Ortega in 2007.

250. The human rights violations and abuses committed in the country since 2018 and documented in this report, do not represent isolated events; these acts are related to pre-existing patterns of violations reported by Nicaraguan civil society organizations to international human rights mechanisms. The lack of effective and adequate responses and of remedies following these acts, is associated mainly with the lack of effective judicial control and the failure to implement the necessary legal and institutional reforms. It generated a climate of impunity that facilitated the escalation of violence and persecution against real or perceived opponents from April 2018 onwards.

<sup>373</sup> GIEI Nicaragua Report, p. 57; IACHR, Nicaragua: Concentration of Power and Weakening of the Rule of Law, 25 October 2021, OEA/Ser.L/V/II. Doc. 288; Lira, Elvira Cuadra, "Dispositivos del silencio: control social y represión en Nicaragua"; "Nicaragua En Crisis: Entre La Revolución y La Sublevación", edited by Aleksander Aguilar Antunes et al., CLACSO, 2018, p. 251; Comisión de la Verdad, Dictatorship and Repression in Nicaragua: Fighting Impunity, 2021.

<sup>374</sup> GHREN interview BBIV013; confidential documents on file with GHREN GGCS088, GGCS102.

<sup>375</sup> Complaint before the "Tom Lantos" Committee of the U.S. Congressional Foreign Affairs Committee, available at: [https://humanrightscommission.house.gov/sites/humanrightscommission.house.gov/files/documents/Testimonia\\_Ligia%20Gomez\\_final%20%282%29.pdf](https://humanrightscommission.house.gov/sites/humanrightscommission.house.gov/files/documents/Testimonia_Ligia%20Gomez_final%20%282%29.pdf).

<sup>376</sup> Nicaragua Investiga, "Así los secretarios políticos y alcaldes del FSLN fueron piezas fundamentales de la represión del 2018", 18 April 2022, available at: <https://nicaraguainvestiga.com/politica/80732-secretarios-politicos-alcaldes-represion-2018/>.

251. This section describes the human rights situation before 2018, particularly emphasizing the patterns of human rights violations that were the focus of the GHREN's investigation in its first report. The situation regarding rights related to gender identity and sexual orientation during this period, including as pertaining to sexual and gender-based violence, is analysed in the chapter on the gender dimensions of human rights violations (*infra*, III.C).

## 1. Extrajudicial executions

252. In its last observations on Nicaragua, dating from 2008, the Human Rights Committee expressed concern about the “disproportionate use of force by the police”, and recommended that the State take the necessary measures for the protection of the right to life and physical integrity in the context of police actions.<sup>377</sup> The Committee expressly referred to the excessive use of police force in prisons, in the process of arrests, and in the context of social protests.<sup>378</sup>

253. During this period, several deaths in police custody were documented. For example, Lubi Jesús Pérez Oporta died on 26 April 2013, allegedly at the hands of police officers while detained in a police cell in District Six of Managua. The murder, initially attributed to another inmate, was dismissed in the first instance by the Departmental Prosecutor's Office.<sup>379</sup>

254. International human rights mechanisms also documented cases of extrajudicial executions in the context of security operations. For instance, the case of Modesto Duarte Altamirano, who was allegedly tortured and summarily executed on 25 January 2015, in the community El Portal, Jinotega, supposedly by a group of twenty members of the army.<sup>380</sup>

255. One of the most emblematic cases of extrajudicial executions in the context of security operations is the “Jagüitas massacre” case. On 11 July 2015, in Managua, minors José Efraín and Aura Marina, 11 and 12 years old, and their aunt Katherine Anielka Ramírez Delgadillo, 22 years old, were shot by agents of the National Police Anti-Narcotics Directorate. Although nine officers were charged and sentenced to prison terms for reckless homicide and other crimes, the media revealed that eight of them remained on active duty and had benefited from promotions, including the head of the operation.<sup>381</sup>

## 2. Arbitrary detentions

256. Before 2018, international human rights mechanisms warned about an arbitrary detention pattern in Nicaragua. This pattern continued to be widespread despite the adoption of the 2001 Criminal Procedure Code, which replaced the old inquisitorial system with an adversarial system.

257. The last country visit of the UN Working Group on Arbitrary Detention (WGAD) took place in 2006. Already at that time, the Working Group expressed its concern by “a growing trend to tolerate, in practice, violation of the procedural time limits pertaining to the legal framework of detention”.<sup>382</sup> This included the failure to present the detainee to the preliminary hearing judge within the 48-hour time limit prescribed by law for the preliminary hearing,<sup>383</sup> as well as the 12 days following the arrest established by law for the second hearing.<sup>384</sup>

<sup>377</sup> Concluding observations of the Committee against Torture: Nicaragua, CAT/C/NIC/CO/1 (10 June 2009), para. 16.

<sup>378</sup> *Ibid.*, paras. 14, 16.

<sup>379</sup> UN Special Procedures, Joint Allegation Letter No. NIC 3/2014 (16 December 2014).

<sup>380</sup> UN Special Procedures, Joint Allegation Letter No. NIC 2/2015 (23 March 2015).

<sup>381</sup> 100% Noticias, “La impunidad viaja en patrulla en Nicaragua: el crimen de Las Jagüitas”, 21 January 2021, available at: <https://www.connectas.org/especiales/nicaragua-no-calla/la-impunidad-viaja-en-patrulla-en-nicaragua/>

<sup>382</sup> Report of the WGAD, A/HRC/4/40/Add.3 (9 November 2006), para. 80.

<sup>383</sup> *Ibid.*, paras. 77–78.

<sup>384</sup> *Ibid.*, para. 79.



258. In its report on Nicaragua, the WGAD expressed its concern about the situation of the so-called “donados”, persons detained without any contact with the outside world and without any access to prison benefits, and who were often held beyond the term of their sentences.<sup>385</sup>

259. Human rights mechanisms identified deficiencies in the registration system as one of the main factors contributing to the widespread practice of arbitrary detention. The Committee against Torture warned about the “absence in police stations of effective, clear and systematic registers” to know with clarity and certainty the dates of entry and exit of detained persons from police stations, as well as the places and authorities to whom they have been presented or entrusted.<sup>386</sup> For example, the WGAD was able to verify the absence of such records during its visit to the police stations in Estelí and Bluefields, where the lack of records made it impossible to determine whether the detainees had even been presented before a judge weeks after their arrest.<sup>387</sup>

260. During 2012–2019, the WGAD issued observations in several cases of arbitrary detentions. These cases had as common denominator that the arrests had been carried out without warrants and without the detained persons being informed of the charges, nor having access to legal or medical assistance, among other violations of due process rights.<sup>388</sup>

261. International human rights mechanisms also identified a pattern of mass arbitrary detentions in the context of social protests, as was particularly evident during the mobilizations against the project for the construction of the interoceanic canal, beginning in 2013. On 23 December 2014, the violent dispersal of a group of 110 people was reported when they were peacefully demonstrating at kilometre 110 of the Pan-American Highway, at the height of the Department of Rivas, as well as at the town of El Tule, at kilometre 26 of the San Carlos–Managua highway. During these operations, it is estimated that up to 87 people were arbitrarily detained, some of whom were accused of serious crimes such as terrorism or exposing persons to danger, and transferred to El Chipote. The protesters reported that they did not have access to communication with their families and lawyers, nor were they presented to the judge within the prescribed period, and that they were subjected to ill-treatment.<sup>389</sup> They were subsequently released. Similar cases of arrests occurred in the context of the October 2015 protests against the interoceanic canal.<sup>390</sup>

### 3. Torture and other cruel, inhuman, or degrading treatment or punishment

262. The regular practice of torture and ill-treatment against prisoners and their families had been the subject of constant complaints before the 2018 social protest. As pointed out by international human rights mechanisms, among the factors that contribute to the persistence of this phenomenon are the absence of effective mechanisms to prevent acts of torture and the widespread impunity for said acts.

263. In 2009, the Committee against Torture reviewed Nicaragua’s compliance with obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). In its final observations regarding Nicaragua, the Committee noted that in 2009 the new Criminal Code entered into force. The new Criminal Code, in its article 436 provided, for the first time, an explicit definition of torture under a chapter dedicated to crimes against humanity.<sup>391</sup> The Committee expressed concern about the lack of consistency between the definition in the Criminal Code and the definition in article 1 of the Convention against Torture, as the Criminal Code definition did not specifically cover acts “committed by, or at the instigation, or with the

<sup>385</sup> *Ibid.*, para. 84.

<sup>386</sup> CAT/C/NIC/CO/1, para. 20.

<sup>387</sup> A/HRC/4/40/Add.3, paras. 81–83.

<sup>388</sup> WGAD, Case 10/2012 (4 May 2012); Case 16/2016 (25 April 2016).

<sup>389</sup> UN Special Procedures, Joint Allegation Letter, Case No. IAS 1/2015 (23 February 2015).

<sup>390</sup> UN Special Procedures, Joint Allegation Letter, Case No. NIC 6/2015 (14 January 2016).

<sup>391</sup> Criminal Code, Law No. 641, published in *La Gaceta, Diario Oficial* Nos. 83–87, dated 5–9 May 2008 (hereinafter “Criminal Code”), art. 486.

consent or acquiescence of, a public official or other person acting in an official capacity”.<sup>392</sup> The Committee also criticized the lack of a definition of torture in the 2006 Military Criminal Code.<sup>393</sup>

264. The Committee against Torture expressed concern about the “complete absence of cases and sentences relating to the offences of torture and ill-treatment”, which, in the Committee’s view, could “be viewed as akin to impunity”.<sup>394</sup> Among the data provided by the Government, the Committee highlighted that the vast majority of investigations in cases of human rights violations by public officials (68 percent) were declared negative and that only 4 percent were referred to the Public Prosecutor’s Office.<sup>395</sup> The Committee also drew attention to several structural shortcomings in the prevention of torture, including the absence of an effective inspection system to verify conditions of detention and the lack of access by non-governmental organizations.<sup>396</sup>

265. In 2014, the SPT conducted its first country visit, and concluded that the situation of persons deprived of their liberty was “extremely worrying”.<sup>397</sup> In its report to the Government of Nicaragua, the Subcommittee documented numerous allegations of forms of torture and ill-treatment during arrest or detention, initial interrogations, and transfers, concluding that such acts were “very frequent” in the prisons visited,<sup>398</sup> and that the medical examinations of the IML were not effectively contributing to documenting and preventing such cases.<sup>399</sup> The Subcommittee also warned of a pattern of mistreatment and abuse, including cases of sexual abuse, against family members of detainees.<sup>400</sup>

266. Civil society complaints focused particularly on cases of torture and ill-treatment in the DAJ’s prison, El Chipote. According to non-governmental organizations, allegations of torture by police officers in El Chipote increased with President Ortega’s rise to power in 2007, and more frequently involved ideologically motivated cases.<sup>401</sup>

267. One of the most emblematic cases of torture and ill-treatment is that of Juan Rafel Lanzas Maldonado, a farmer from the Cerro Colorado Community, municipality of Matiguás, department of Matagalpa. According to media reports, Mr. Lanzas was arrested, along with his cousin, on 28 December 2017 for the theft of agricultural machinery, which he allegedly did not commit. After being repeatedly beaten, he was transferred to the Matiguás prison, where he had to sleep on the floor of the common bathroom for 18 days. Due to the injuries caused by the mistreatment reportedly suffered at the hands of the police, and to the lack of hygiene, Mr. Lanzas suffered an infection, and his feet and part of his calves were amputated.<sup>402</sup> The complaint over the alleged abuses committed by the police was dismissed.<sup>403</sup>

<sup>392</sup> CAT/C/NIC/CO/1, para. 10.

<sup>393</sup> *Ibid.*

<sup>394</sup> CAT/C/NIC/CO/1, para. 11.

<sup>395</sup> *Ibid.*, para. 12.

<sup>396</sup> *Ibid.*, para. 12.

<sup>397</sup> UN Press Release, “Subcommittee on Prevention of Torture concludes first visit to Nicaragua”, 21 May 2014, available at: <https://www.ohchr.org/en/press-releases/2014/05/nicaragua-subcommittee-prevention-torture-concludes-its-first-regular-visit>.

<sup>398</sup> SPT, Visit to Nicaragua 7–16 May 2014: recommendations and observations addressed to the State party, CAT/OP/NIC/ROSP/1 (11 January 2023), paras. 53–56.

<sup>399</sup> *Ibid.*, paras. 57–59.

<sup>400</sup> *Ibid.*, paras. 63–64.

<sup>401</sup> Diario Las Américas, “El Chipote, un tenebroso sitio de tortura en Nicaragua”, 1 July 2015, available at: <https://www.diariolasamericas.com/america-latina/el-chipote-un-tenebroso-sitio-tortura-nicaragua-n3195981>

<sup>402</sup> La Prensa, “La historia real tras la amputación de Juan Lanzas”, 18 February 2018, available at: <https://www.laprensani.com/2018/02/18/suplemento/la-prensa-domingo/2378076-la-historia-real-tras-la-amputacion-de-juan-lanzas>.

<sup>403</sup> Expediente Público, “La gangrena que carcome al Poder Judicial y Policial en Nicaragua”, 7 December 2018, available at: <https://www.expedientepublico.org/la-gangrena-que-carcome-el-poder-judicial-y-policial-en-nicaragua/>

#### 4. Conditions of detention

268. Along with the patterns of torture and ill-treatment, serious shortcomings were reported regarding the conditions of detention. Despite the recommendations issued by human rights mechanisms over the past two decades, there have been no substantive improvements in these conditions.

269. Since 1999, international human rights mechanisms have been warning about the situation of overcrowding in Nicaraguan detention centres, as well as the prevailing conditions in these centres, such as lack of hygiene, lack of drinking water and adequate food, insufficient natural light and lack of physical exercise, as well as limited access to medical care. The lack of separation between accused and convicted prisoners, between adults and minors, and between women and men was reported.<sup>404</sup> Poor detention conditions for children in conflict with the law and the lack of correctional facilities for their rehabilitation were also reported.<sup>405</sup> The situation of prisons in the autonomous regions of the Caribbean was of particular concern.<sup>406</sup>

270. Conditions in Nicaragua's prisons and other detention facilities were the subject of detailed examination during the official visit of the Subcommittee on the Prevention of Torture in 2014. The Subcommittee described the conditions in most of the detention centres visited in the country as "critical".<sup>407</sup> In the Subcommittee's analysis, the situation of overcrowding in Nicaraguan prisons was linked to criminal policy guidelines in the country, and in particular to disproportionate sentences for acts under specific categories of crimes, such as drug trafficking, human trafficking, money laundering, and organized crime, with what the subcommittee considered reflected a clear bias determined by social stratum.<sup>408</sup> The lack of access to prison benefits, including parole, was another determining factor in overcrowding.<sup>409</sup>

271. According to the Subcommittee's analysis, generalized overcrowding has a series of negative impacts on the human rights of persons deprived of liberty, including the right to health, physical integrity, and life. In this regard, the Subcommittee concluded that the overcrowded conditions, together with the lack of hygiene, entailed "inhumane conditions that have a direct impact on the health of persons deprived of liberty"<sup>410</sup> At the same time, overcrowding limits the ability of personnel and facilities to allow detainees to access certain rights and benefits, such as the visiting regime or the performance of work, educational or recreational activities.<sup>411</sup>

272. The Maximum-Security Prison, located in the municipality of Tipitapa, department of Managua, represented, following its inauguration in April 2014, an improvement on the situation of overcrowding experienced in other centres in the country. However, the Subcommittee against Torture conducted a visit to the prison and criticized the "extremely severe regime" and the "cruel treatment" to which the detainees were subjected, as detainees were held with their hands and feet tied without being able to leave their cells except for one hour a week, and in extreme weather conditions.<sup>412</sup>

#### 5. Right to peaceful protest

273. International mechanisms reported the excessive use of force and violent attacks in the context of demonstrations and other forms of social protest, as well as their impacts on the enjoyment of human rights.

<sup>404</sup> Concluding observations of the Human Rights Committee: Nicaragua: CCPR/C/NIC/CO/3 (12 December 2008), para. 17; CAT/C/NIC/CO/1, paras. 21–22; CAT/OP/NIC/ROSP/1, para. 17.

<sup>405</sup> Committee on the Rights of the Child, CRC/C/15/Add.265 (21 September 2005), para. 43.

<sup>406</sup> CAT/C/NIC/CO/1, para. 21.

<sup>407</sup> CAT/OP/NIC/ROSP/1, para. 17.

<sup>408</sup> *Ibid.*, paras. 18–19.

<sup>409</sup> *Ibid.*, para. 20.

<sup>410</sup> *Ibid.*, para. 29.

<sup>411</sup> *Ibid.*, paras. 21–22.

<sup>412</sup> *Ibid.*, para. 23.

274. In 2008, the Human Rights Committee expressed concern about the excessive use of force and “abusive arrests” in the context of social protests.<sup>413</sup> In similar terms, the Committee against Torture drew attention to the violent repression against protesters, including members of the political opposition and representatives of non-governmental organizations. The Committee expressed particular concern about violent acts perpetrated by “citizen patrols”, in some cases with the consent or tacit approval of the authorities.<sup>414</sup>

275. Since 2008, attacks by mobs or clash groups against protesters, with the approval or acquiescence of the police, have been reported. For example, this pattern was observed during the protests over the results of the municipal elections in 2008, also in 2013 in the context of protests by retired persons over pensions –in the case known as *OcupalInss*– or since 2014 in the context of protests against the interoceanic canal project.<sup>415</sup>

276. A group of UN Human Rights Council mandate holders expressed concern about the attacks perpetrated against the protests by rural communities against the interoceanic canal on 27 October 2015 in Managua. On 26 and 27 October 2015, the police stopped and held several buses and trucks carrying participants in the national farmer march against the canal in Managua. During these detentions, leaders and human rights defenders were arrested, and a series of aggressions involving para-police forces allegedly took place.<sup>416</sup>

277. The UN experts also gathered information regarding aggressions reportedly perpetrated by supporters of the ruling party during the protest on 27 October 2015, who threw stones and steel sheets at the demonstrators from trucks. A group of 50 people mobilized on motorcycles allegedly broke through the police cordon and physically and verbally assaulted the demonstrators, several of whom were injured. The UN experts expressed particular concern about the restrictive impact of these acts on the right to freedom of assembly, as well as the apparent lack of police intervention to protect the protesters.<sup>417</sup>

## 6. The Situation of Human Rights Defenders

278. The reports of international and regional human rights mechanisms before April 2018 account for the progressive deterioration of the situation of human rights defenders in Nicaragua, including environmental defenders and defenders of the rights of indigenous peoples. Attacks against defenders have intensified since 2014 in the context of protests against the project for the construction of the interoceanic canal and citizen mobilizations for democracy with the so-called “Protest Wednesdays”.

279. International mechanisms began to draw attention to the situation of international human rights defenders systematically beginning in the late 2000s. In 2008, the Human Rights Committee reported the “systematic harassment and death threats” against human rights defenders. The Committee expressed particular concern about the situation of women human rights defenders.<sup>418</sup>

280. Among the cases examined by the UN special procedures are the attack and arbitrary deportation of two lawyers from the international NGO Centre for Justice and International Law (CEJIL) in May 2015, who were subjected to arbitrary deportation by immigration officials when they were about to enter the country. In a communication sent to the Government of Nicaragua by the Special Rapporteur on the situation of human rights defenders, among others, the mandate holders expressed concern that this deportation may be linked to the legal defence activity carried out by CEJIL related to the case of the interoceanic canal.<sup>419</sup>

<sup>413</sup> CCPR/C/NIC/CO/3, para. 17.

<sup>414</sup> *Ibid.*, para. 16.

<sup>415</sup> OHCHR, Report 2018, p. 37.

<sup>416</sup> UN Special Procedures, Joint Allegation Letter, Case No. NIC 6/2015 (14 January 2016).

<sup>417</sup> *Ibid.*

<sup>418</sup> CAT/C/NIC/CO/1, para. 18.

<sup>419</sup> UN Special Procedures, Joint Allegation Letter, Case No. NIC 4/2015 (29 May 2015).

281. On 18 May 2017, a group of special procedures mandate holders addressed the Government again to express their concern about acts of intimidation, defamation, and threats, including death threats, against four well-known women human rights defenders involved in defence of the territorial rights of the indigenous communities of the Caribbean Coast of Nicaragua and the protest movement against the construction of the interoceanic canal.

282. Between 2007 and 2017, the IACHR adopted nine resolutions issuing precautionary measures in relation to Nicaragua. Eighty percent of these aimed to protect individuals and organizations that were prominent for their work defending human rights. The IACHR resolutions documented a series of patterns of alleged threats and acts of violence against defenders, their families and relatives, and usurpation of property, most of which occurred in the 2016–2017 period.<sup>420</sup> On occasions, the acts were perpetrated by armed individuals who appeared to be dressed in military uniforms.<sup>421</sup> According to the IACHR, these attacks were aggravated by the stigmatization of the defenders by high-ranking State authorities through the media, exposing them to further risks.<sup>422</sup>

283. Among the emblematic cases in the Inter-American protection system is the *Acosta et al.* case, which was the subject of a condemnatory judgment of the IACtHR against the State of Nicaragua in March 2017. The facts of the case relate to the murder in Bluefields of Mr. Francisco José García Valle, husband of Ms. María Luisa Acosta, a renowned human rights defender and director of the NGO *Centro de Asistencia Legal a los Pueblos Indígenas* (CALPI). In its judgment, IACtHR concluded that Nicaragua acted negligently in the investigation of the murder of Ms. Acosta's husband, ignoring its connection to the defence of the territorial rights of indigenous peoples and ethnic communities in the Southern Caribbean.<sup>423</sup> The IACtHR considered the murder of Mr. García Valle as an attack against a human rights defender, and determined that, consequently, the State had a special obligation to explore lines of investigation to determine whether there was evidence linking the murder to Mrs. Acosta's activity.<sup>424</sup>

284. The IACtHR's judgment in the *Acosta* case referred more broadly to the situation of human rights defenders in Nicaragua, and expressed concern particularly in relation to "land conflicts of indigenous communities",<sup>425</sup> and identified the existence of "worrying situations for these persons to continue to carry out their work freely and safely".<sup>426</sup> In this context, the Court's judgment ordered the State, as a guarantee of non-repetition, to develop "protection mechanisms and investigation protocols for situations of risk, threats and aggressions against human rights defenders"<sup>427</sup> In subsequent resolutions monitoring compliance with the judgment, the Court concluded that Nicaragua had not taken sufficient measures to comply with its requirements and that, far from observing a "substantial improvement" in the situation of human rights defenders, that situation "worsen[ed] significantly" since the issuance of the Judgment, and in particular since April 2018.<sup>428</sup>

<sup>420</sup> IACHR, Resolution No. 37/15, Case No. MC 505-15; Resolution No. 44/16, Case No. MC 505-15 (2016); Resolution No. 2/16 (extension), Case No. MC 505-15; Resolution No. 17/2016, Resolution MC No. 121-16 (2016); Resolution No. 16/2017, Case No. MC 505-15 (2017); Resolution No. 33/2017, Case No. MC 331-17 (2017).

<sup>421</sup> IACHR, Resolution No. 33/2017, No. MC 331-17 (2017), para. 20.

<sup>422</sup> *Ibid.*

<sup>423</sup> IACtHR, *María Luisa Acosta et al. v. Nicaragua*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 25 March 2017, Series C No. 334, paras. 131–146, 148–169, 170–175, 181–182, 186–191 and 200.

<sup>424</sup> *Ibid.*, paras. 133–134.

<sup>425</sup> *Ibid.*, para. 222.

<sup>426</sup> *Ibid.*, para. 222.

<sup>427</sup> *Ibid.*, para. 223.

<sup>428</sup> IACtHR, Case of *Acosta et al. v. Nicaragua* (Supervision of Compliance with Judgment), Order of 22 November 2019, para. 44. See also Case of *Acosta et al. v. Nicaragua* (Supervision of Compliance with Judgment IACtHR., Order of 16 March 2021, para. 17.

## E. Timeline of significant events (18 April 2018 – 18 February 2023)

### 1. April to September 2018: outbreak of social protests and repression

285. The social discontent accumulated over the years (see Chapter II.A) erupted in a series of massive protests throughout Nicaragua starting in April 2018. On 3 April, a fire broke out in the Indio Maíz biological reserve in the southeast, burning over 500 hectares.<sup>429</sup> Environmental groups, agricultural workers, and students mobilized in various parts of the country to denounce the insufficient response to the fire by the authorities.

286. On 16 April 2018, the Government approved a presidential decree amending the National Social Security Institute (*Instituto Nacional de Seguridad Social*, INSS).<sup>430</sup> The reform provided for an increase in the salary contribution of workers to social security, as well as a reduction in pensions.<sup>431</sup> On 18 April, pro-government groups attacked a group of senior citizens who were staging a protest in front of the INSS facilities in Leon.<sup>432</sup> That same afternoon, as a form of protest, sit-ins were called for in Camino de Oriente at the main entrance of the Central American University (*Universidad Centroamericana*, UCA), in Managua, which were jointly attacked by armed pro-government groups and riot police.<sup>433</sup>

287. The repression of the 18 April protests generated great public indignation, leading to protests in several regions of the country the following day. The use of lethal force by the police resulted in the death of many protesters and numerous injuries, further unleashing social discontent.<sup>434</sup>

288. Between 20 and 22 April, the mobilizations intensified throughout the country. The student movement began to take centre stage with the takeover of several university centres in Leon and Managua.<sup>435</sup> The demonstrations and rallies were harshly repressed. At the same time, government supporters carried out counter-mobilizations in support of the reform.<sup>436</sup> There were confrontations, destruction, burning of public and private property, and looting of supermarkets.<sup>437</sup> In many regions, self-organized groups of people formed the 19 April Movement and began to erect barricades as a form of self-protection.

289. On 22 April, the Government revoked the social security reform and agreed to initiate a National Dialogue process with the mediation of the Nicaraguan Episcopal Conference. The dialogue included the participation of the Civic Alliance for Justice and Democracy, composed of civil society organizations, students, campesino organizations, and the business sector.<sup>438</sup> On 29 April, the National Assembly approved the creation of a Truth Commission to “find out, analyse and clarify the truth about the events that have

<sup>429</sup> Mongabay, “Nicaragua: fuego arrasa con bosques de la Reserva Indio Maíz”, 10 April 2018, reproduced at: <https://es.mongabay.com/2018/04/nicaragua-incendio-reserva-indio-maiz/>

<sup>430</sup> Presidential Decree No. 03-2018, dated 17 April 2018, published in *La Gaceta, Diario Oficial* No. 72, dated 19 April 2018.

<sup>431</sup> CNN en español, “¿Qué ocurre en Nicaragua? Claves para entender la reforma del Seguro Social”, 20 April 2018, available at <https://cnnespanol.cnn.com/2018/04/20/tres-muertos-por-protestas-en-nicaragua-que-ocurre-claves-para-entender-la-reforma-del-seguro-social/>

<sup>432</sup> La Prensa, “Nicolas Palacios, el primer agredido de las protestas de abril”, 7 May 2018, available at: <https://www.laprensani.com/2018/05/07/departamentales/2415161-nicolas-lopez-el-primero-agredido-de-las-protestas-de-abril>

<sup>433</sup> La Prensa, “Así te contamos el primer día de las agresiones a las protestas contra la reforma del Seguro social en Nicaragua”, 18 April 2018, available at: <https://www.laprensani.com/2021/02/15/politica/2784898-ammnistia-internacional-identifica-tres-tacticas-que-la-dictadura-aplica-para-profundizar-la-represion-en-nicaragua>

<sup>434</sup> OHCHR, Report 2018, para. 14.

<sup>435</sup> Amnesty International, Shoot to kill, pp. 7–8.

<sup>436</sup> 100% Noticias, “Juventud Sandinista realiza plantón a favor de reformas INSS”, 18 April 2018, available at <https://web.archive.org/web/20180425114437/http://100noticias.com.ni/juventud-sandinista-realiza-planton-a-favor-de-reformas-inss/>

<sup>437</sup> OHCHR, Report 2018, para. 96.

<sup>438</sup> Document on file with GHREN DDDOC070.

taken place in Nicaragua since 18 April 2018”,<sup>439</sup> without the participation of persons from the opposition.<sup>440</sup> These measures failed to quell protests throughout the country.<sup>441</sup>

290. On 30 May, on Mother’s Day, the mothers of the victims of repression in the protests called for a protest in Managua to demand justice for their children. The protest mobilized thousands of people and was replicated in other cities. In Managua, the National Police and armed pro-government groups fired on unarmed demonstrators in the National Engineering University (Universidad Nacional de Ingeniería, UNI) sector and in front of the National Stadium, where according to multiple sources, snipers were stationed. The media reported 15 dead and numerous wounded.<sup>442</sup> Protests in Chinandega, Estelí, and Masaya also reported fatalities.<sup>443</sup>

291. The “Mothers’ March” was a turning point. The population continued to set up roadblocks and barricades in large part of the national territory.<sup>444</sup> Roadblocks were erected on the main communication arteries of the country, which were opened and closed intermittently<sup>445</sup> while neighbourhoods and entire populations withdrew into themselves, organizing themselves in centres for the collection of food and medicines and improvised medical centres.<sup>446</sup>

## 2. June to September 2018: “Operation Cleanup”

292. On 15 June, the plenary of the Dialogue Roundtable, which had been suspended after the Mothers’ March, met again at the initiative of the Episcopal Conference.<sup>447</sup> As part of the agreements reached, a Verification and Security Commission was established with the objective of putting an end to all forms of violence and threats, and removing the roadblocks.<sup>448</sup> The Dialogue Roundtable also raised the urgent need for the presence of international organizations such as the IACHR, the OHCHR, and the European Union.<sup>449</sup>

293. Despite the agreements reached by the Roundtable, since mid-June, the police and pro-government armed groups acted in a coordinated manner to attack and dismantle the roadblocks and barricades in the context of the so-called Operation for Peace –popularly known as “Operation Clean-Up”–. These interventions led to clashes between security

<sup>439</sup> National Assembly of the Republic of Nicaragua, Resolution number 1/2018, approved on 29 April, 2018, published in *La Gaceta, Diario Oficial* No. 81 of 30 April 2018.

<sup>440</sup> The Commission was formed by Franciscan priest Uriel Molina Oliú, Dr. Myrna Kay Cunningham Kain, UNAN-Managua Vice Rector Jaime López Lowery, Deputy Human Rights Ombudsperson Adolfo Jarquín Ortel, and academic Cairo Amador.

<sup>441</sup> VosTV, “Zonas afectadas por tranques en Nicaragua”, 14 May 2018, available at: <https://www.vostv.com.ni/nacionales/7152-zonas-afectadas-por-tranques-en-nicaragua/>

<sup>442</sup> El País, “Al menos 15 muertos en la marcha de las madres en Nicaragua”, 31 May 2018, available at: [https://elpais.com/internacional/2018/05/31/america/1527729663\\_434755.html](https://elpais.com/internacional/2018/05/31/america/1527729663_434755.html)

<sup>443</sup> La Prensa, “Entierran a personas asesinadas en Chinandega en la masacre del día de las Madres”, 1 June 2018, available at: <https://www.laprensani.com/2018/06/01/departamentales/2428618-entierran-a-personas-asesinadas-en-chinandega-masacre-dia-de-las-madres>

<sup>444</sup> Confidencial, “Más de cien tranques en toda Nicaragua”, 9 June 2018, available at: <https://www.confidencial.digital/nacion/87-tranques-empieza-cerco-sobre-managua/>

<sup>445</sup> Youtube, “Reporte especial: los tranques in el interior de Nicaragua”, available at: <https://www.youtube.com/watch?v=WhwGv-cdeVQ>; BBC, “Crisis en Nicaragua: “Si el gobierno mata, la Panamericana se cierra”, 4 July 2018, available at <https://www.bbc.com/mundo/noticias-america-latina-44711577>

<sup>446</sup> Confidencial, “La Managua bloqueada entre tranques y barricadas”, 10 June 2018, available at: <https://www.confidencial.digital/nacion/la-managua-bloqueada-entre-tranques-y-barricadas/>

<sup>447</sup> See:

[https://twitter.com/de\\_mediacion/status/1007001463200124930?cxt=HHwWhMC85dqfy\\_kbAAAA](https://twitter.com/de_mediacion/status/1007001463200124930?cxt=HHwWhMC85dqfy_kbAAAA)

<sup>448</sup> Document on file with GHREN DDDOC063.

<sup>449</sup> Nodal, “Nicaragua: Llega un equipo de la CIDH para colaborar en el reinicio del diálogo nacional”, 24 June 2018, available at: <https://www.nodal.am/2018/06/nicaragua-llega-un-equipo-de-la-cidh-para-colaborar-en-el-reinicio-del-dialogo-nacional/>

forces, pro-government armed groups, and protesters, which escalated the levels of violence.<sup>450</sup>

294. Most roadblocks were forcibly dismantled by joint police and pro-government armed group operations between 15 and 17 July, which were particularly violent in Carazo, Chinandega, Granada, Managua, and Masaya. Clashes between riot police, armed pro-government groups, and protesters left many dead and wounded.<sup>451</sup>

295. During the rest of July, the National Police and pro-government armed groups carried out new attacks against the roadblocks and barricades that remained in place, ignoring the mediation efforts of the Verification and Security Commission.

### 3. August to December 2018: persecution of civil society

296. After the end of the roadblocks and road closures, the Government accelerated the criminal prosecution of social leaders and those associated with the protests. High levels of violence during arrests, forced disappearances, torture, and sexual violence against detainees, as well as serious violations of due process, were reported (see Chapter III.B).

297. On 16 July, the National Assembly adopted a Law Against Money Laundering, Financing of Terrorism, and Proliferation of Weapons of Mass Destruction. The new law amended the typification of the crimes of terrorism and financing of terrorism, broadening their definition and the associated penalties.

298. On 28 September, the National Police issued a communiqué banning protests against the Government and threatening individuals and organizations that called for “illegal mobilizations”.<sup>452</sup> Despite this ban, protests continued to be organised, albeit with less intensity, such as pickets, sit-ins and other types of demonstrations, which continued to be repressed.<sup>453</sup>

299. Between October and December 2018, an increase in harassment, surveillance, attacks, and arrests of journalists and social leaders, the expulsion of naturalized or resident persons who had participated in the protests, as well as the closure of NGOs and media outlets, were reported.

### 4. February 2019 to February 2020: a new phase of dialogue and first releases from prison

300. On 27 February 2019, a new phase of the national dialogue between the Government of President Daniel Ortega and the Civic Alliance began, which led to an agreement regarding the release of political prisoners and respect for the constitutional rights of the citizenry.<sup>454</sup> Coinciding with the beginning of the dialogue, the Government promoted the unilateral release of hundreds of prisoners. On 11 June, the National Assembly approved an Amnesty Law, resulting in new releases.

301. However, as of July, new arrests and recaptures of previously released persons took place. On 31 December 2019, the Government announced the release of 91 opposition prisoners under the house arrest regime. Among them was the so called “band of the water carriers” (*banda de los aguadores*), comprised of 16 activists arrested in November when

<sup>450</sup> See Chapter. III.

<sup>451</sup> IACHR, Press Release No. 128/18, “IACHR condemns increased violence in Nicaragua” 13 June 2018, available at: <https://www.oas.org/es/cidh/prensa/comunicados/2018/128.asp>

<sup>452</sup> El País, “Ortega declara ilegales las protestas en Nicaragua”, 29 September 2018, available at: [https://elpais.com/internacional/2018/09/29/america/1538186460\\_718736.html](https://elpais.com/internacional/2018/09/29/america/1538186460_718736.html)

<sup>453</sup> La Prensa, “Las siete marchas azul y blanco que la Policía Orteguista ha prohibido” 24 July 2019, available at: <https://www.laprensani.com/2019/07/24/nacionales/2571737-las-siete-marchas-azul-y-blanco-que-la-policia-orteguista-ha-prohibido>

<sup>454</sup> Vatican News, “Avanza el diálogo nacional de Nicaragua: acuerdos en favor de la ciudadanía”, 30 March 2019, available at <https://www.vaticannews.va/es/iglesia/news/2019-03/dialogo-nacional-nicaragua-un-paso-adelante-firma-de-acuerdos.html>



they tried to give water to a group of women on hunger strike in a church besieged by the National Police.<sup>455</sup>

302. Between January and February 2020, after a new round of dialogue with the Government, the movements of the political opposition began a process of rapprochement to establish a common front for the 2021 elections.<sup>456</sup>

##### **5. March 2020 to April 2021: COVID-19 outbreak and passage of repressive laws**

303. In March 2020, the COVID-19 pandemic broke out. The Government ignored international recommendations, refusing to close its borders and suspend public education classes. As of 5 May, the Ministry of Health (MINSa) stopped publishing daily reports on COVID-19, contributing to the lack of transparency on the prevalence of the disease.<sup>457</sup> Meanwhile, the Government continued to organise mass events.<sup>458</sup>

304. At the end of 2020, the National Assembly adopted a series of legislative instruments with restrictive impacts on civic and democratic space (see Chapter III.B). On 15 October, the National Assembly adopted the Foreign Agents Regulation Law, limiting the ability of NGOs and other entities to access foreign funding. On the 27 of the same month, the National Assembly adopted the Special Law on Cybercrimes, introducing penalties for publishing news that could produce “alarm, fear or anxiety”. In December 2020, the National Assembly passed the Law on the Defence of the People’s Rights to Independence, Sovereignty, and Self-Determination for Peace, declaring as “traitors to the homeland” persons responsible for a long list of actions that “injure the supreme interests of the nation”. On 18 January 2021, a reform of Article 37 of the Constitution of Nicaragua was approved. It limited prison sentences to a maximum of 30 years to allow the figure of life imprisonment for “serious crimes, when hateful, cruel, degrading, humiliating and inhuman circumstances concur, which due to their impact cause a commotion, rejection, indignation, repugnance in the national community”.

##### **6. May to December 2021: presidential elections and criminalization of the political opposition**

305. As of May 2021, the most intense period of criminalization of civil society organizations and opposition individuals began, which preceded the presidential and legislative elections announced for 7 November of the same year.

306. On 2 June, presidential pre-candidate Cristina Chamorro was detained and placed under house arrest, accused of an alleged crime of money laundering during her time as president of the Violeta Barrios de Chamorro Foundation.<sup>459</sup> On 13 August, the facilities of the newspaper *La Prensa*, one of the last independent newspapers with a large circulation, were occupied and *de facto* confiscated by the National Police.<sup>460</sup>

307. Authorities detained six other presidential candidates for the November elections between June and November. During the same period, numerous people belonging to

<sup>455</sup> BBC News World, “Crisis en Nicaragua: el gobierno libera a 91 presos opositores, incluida “la banda de los aguadores”, 31 December 2019, available at: <https://www.bbc.com/mundo/noticias-50950560>.

<sup>456</sup> Confidencial, “Alianza y Unab llaman a Coalición “sin exclusiones””, 18 January 2020, available at: <https://www.confidencial.digital/politica/alianza-y-unab-llaman-a-coalicion-sin-exclusiones/>.

<sup>457</sup> *Otras Miradas*, “La negligencia de Daniel Ortega propaga la COVID-19 en Nicaragua”, 26 May 2020, available at: <https://www.agenciaocote.com/blog/2020/05/26/la-negligencia-de-daniel-ortega-propaga-la-covid-19-en-nicaragua/>.

<sup>458</sup> El 19 Digital, “Nicaragüenses caminan con la Fuerza de la Fe y la Esperanza, en Amor en tiempos del Covid-19”, 14 March 2020, available at: <https://www.el19digital.com/articulos/ver/titulo:101259-nicaraguenses-caminan-con-la-fuerza-de-la-fe-y-la-esperanza-en-amor-en-tiempos-del-covid-19>

<sup>459</sup> BBC Mundo, “Cristiana Chamorro: la aspirante presidencial opositora queda bajo arresto domiciliario en Nicaragua después de que se ordenara su detención”, 2 June 2021, available at: <https://www.bbc.com/mundo/noticias-america-latina-57338515>

<sup>460</sup> France 24, “Policía allana el diario ‘La Prensa’ de Nicaragua después de que este salió de circulación”, 13 August 2021, available at: <https://www.france24.com/es/am%C3%A9rica-latina/20210812-nicaragua-laprensa-cierra-version-impresa>

opposition political movements, social movements, and the private sector were detained. The CSE cancelled the legal status of three opposition political parties.<sup>461</sup>

308. The November elections resulted in the victory of President Daniel Ortega and Vice President Rosario Murillo with 75 percent of the votes, while the FSLN won 75 of the 90 available seats of the National Assembly.<sup>462</sup> The election results were rejected by a large part of the international community.<sup>463</sup> According to non-governmental sources, the national average turnout was only 18.5 per cent.<sup>464</sup>

309. On 18 November, the Government of Nicaragua initiated the formal withdrawal of the country from the OAS by denouncing the Charter of the organization.<sup>465</sup>

## **7. January 2022 – the date of writing this report: total closure of the civic and democratic space**

310. The year 2022 represented the total closure of civic space with the massive closure of non-profit organizations (NPOs), including universities and NGOs. Between December 2021 and February 2022, six national and international private universities were closed.<sup>466</sup>

311. During the first half of 2022, several key figures of the Catholic Church suffered acts of repression by the authorities. In March, the Government withdrew its acceptance of the Apostolic Nuncio of the Holy See, forcing him to leave the country.<sup>467</sup> In July, a group of nuns of the Mother Teresa of Calcutta order who were expelled from the country in July.<sup>468</sup>

312. On 24 April, Nicaraguan authorities expelled the OAS from the country and withdrew its diplomatic representation to this organization. On the same day, the National Police occupied the organization's facilities in Managua and seized its assets.<sup>469</sup>

313. From July 2022 onwards, the mass cancellation of non-profit organizations took place.

314. Also in July, the National Police, together with members of the FSLN, took five municipalities in the country by force (El Almendro, El Cuá, Murra, San Sebastián de Yalí, and Santa María de Pantasma), and deposed their mayors. All of the mayors belonged to the

<sup>461</sup> See Chapter III.B.

<sup>462</sup> France24, "Nicaragua: Daniel Ortega es reelegido con 75% de los votos tras unos comicios sin oposición", 8 November 2021, available at: <https://www.france24.com/es/am%C3%A9rica-latina/20211108-nicaragua-ortega-reeleccion-abstencion-oposicion-detenciones>.

<sup>463</sup> France24, "La OEA y la comunidad internacional descalifican las elecciones de Nicaragua", 14 November 2021, available at: <https://www.france24.com/es/am%C3%A9rica-latina/20211114-la-oea-y-la-comunidad-internacional-descalifican-las-elecciones-de-nicaragua>.

<sup>464</sup> Urnas Abiertas, "Radiografía de la farsa electoral", November 2022, p. 4, available at: <https://urnasabiertas.com/wp-content/uploads/2021/11/Informe-9-Urnas-Abiertas-7N.pdf>.

<sup>465</sup> IACHR, Press Release, "The IACHR stresses its competent jurisdiction concerning Nicaragua and laments Nicaragua's decision to denounce the charter of the OAS in a Context of Serious Human Rights Violations", 20 November 2021.

<sup>466</sup> Confidential, "Más de 18 000 estudiantes afectados por confiscación de seis universidades" 9 February 2022, available at: <https://www.confidencial.digital/nacion/mas-de-18-000-estudiantes-afectados-por-confiscacion-de-seis-universidades/>.

<sup>467</sup> Holy See, "Comunicato della Santa Sede, 12.03.2022", available at: <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2022/03/12/0170/00365.html>.

<sup>468</sup> BBC News World, "Nicaragua expulsa del país a las monjas de la orden de la Madre Teresa", 7 July 2022, available at: <https://www.bbc.com/mundo/noticias-america-latina-62078505>.

<sup>469</sup> El País, "Daniel Ortega expulsa a la OEA de Nicaragua", 25 April 2022, available at: <https://elpais.com/internacional/2022-04-25/daniel-ortega-expulsa-a-la-oea-de-nicaragua.html>.

Ciudadanos por la Libertad (CxL) party.<sup>470</sup> With the seizure of these mayors' offices, the FSLN controlled 92 percent of the country's municipalities.<sup>471</sup>

315. Since the beginning of August, a new escalation of persecution against the Catholic Church materialized through the arrest of religious figures, the raid and siege of some temples, the closing of Church media, the expulsion of religious persons, and the prohibition of religious celebrations such as processions and other Catholic traditions.<sup>472</sup>

316. On 6 November, municipal elections for the election of local authorities took place in Nicaragua's 153 municipalities, in a climate marked by demobilization, arbitrary detentions, and electoral violence.<sup>473</sup> The elections gave the victory to the FSLN in all of the country's municipalities.<sup>474</sup>

317. Between August 2022 and January 2023, new arbitrary detentions and convictions were carried out against real or perceived Government opponents, including members of the Catholic Church and relatives of political leaders.

318. On 9 February, the Managua Court of Appeals decreed the "immediate deportation" of 222 political prisoners, who were transferred to the United States.<sup>475</sup> The following day, the Government declared the released persons "traitors to the homeland" and deprived them of their Nicaraguan nationality.<sup>476</sup> On 15 February, another 94 people were deprived of their nationality.<sup>477</sup>

<sup>470</sup> France 24, "Nicaragua: Daniel Ortega "toma" cinco alcaldías controladas por la oposición", 4 July 2022, available at: <https://www.france24.com/es/minuto-a-minuto/20220704-partido-de-ortega-toma-cinco-municipios-opositores-en-nicaragua-y-reemplaza-alcaldes>.

<sup>471</sup> Confidencial, "Las 11 alcaldías de Nicaragua en las que aún no ondea la bandera del FSLN", 5 November 2022, available at: <https://www.confidencial.digital/politica/las-ultimas-alcaldias-de-nicaragua-en-las-que-aun-no-ondea-la-bandera-del-fsln/>.

<sup>472</sup> Christian Solidarity Network (CSW), "Civil society under siege", 13 December 2022, available at: <https://www.csw.org.uk/2022/12/13/report/5885/article.html>; Confidencial, "'Iglesia por cárcel', la embestida orteguista contra las procesiones" 8 February 2023, available at: <https://www.confidencial.digital/nacion/iglesia-por-carcel-la-embestida-orteguista-contra-las-procesiones/>.

<sup>473</sup> Urnas Abiertas, "Coacción del voto y desinterés ciudadano marca previa de las elecciones municipales", 4 November 2022, available at: <https://urnasabiertas.com/coaccion-del-voto-y-desinteres-ciudadano-marca-previa-de-las-elecciones-municipales/>.

<sup>474</sup> Urnas Abiertas, "Nicaragua observa", 6 November 2022, available at: [https://urnasabiertas.com/wp-content/uploads/2022/12/UA\\_Nicaragua-Observa\\_6N.pdf](https://urnasabiertas.com/wp-content/uploads/2022/12/UA_Nicaragua-Observa_6N.pdf).

<sup>475</sup> Resolution of the Court of Appeals, Managua District, Criminal Chamber One, 8 February 2022, document on file with GHREN BBD0C307.

<sup>476</sup> Statement by the Presiding Magistrate of the First Chamber of the Court of Appeals of Managua, reproduced in El 19 Digital, "Nicaragua ordena la deportación de 222 traidores a la patria", 9 February 2023, available at: <https://www.el19digital.com/articulos/ver/titulo:136779-nicaragua-ordena-la-deportacion-de-222-traidores-a-la-patria->.

<sup>477</sup> Resolution of the Presiding Judge of the Court of Appeals of the Managua District, 15 February 2023; documents on file with GHREN BBD0C332, BBD0C333, BBD0C334, BBD0C335, BBD0C336.

## Part II Findings

### III. Human rights violations

#### A. Extrajudicial executions

##### 1. Legal framework

319. The right to life is essential to every human being and, as such, cannot be derogated, except in cases of absolute necessity. It is recognized as a norm of *jus cogens* and is enshrined in regional and international treaties to which Nicaragua is a party.<sup>478</sup> The International Covenant on Civil and Political Rights (hereinafter “ICCPR”) stipulates that “every human being has the inherent right to life” and that no one “shall be arbitrarily deprived of his life”.<sup>479</sup> In turn, the American Convention recognizes that every person has the right to have his or her life respected and not to be arbitrarily deprived of it.<sup>480</sup> Additionally, the Political Constitution of Nicaragua establishes that: “[t]he right to life is inviolable and inherent to the human person”.<sup>481</sup>

320. The State has the obligation to protect the right to life, and therefore to ensure that no one is arbitrarily<sup>482</sup> deprived of his or her life. This obligation extends at all times and in all circumstances, including during internal conflict or other public emergency.<sup>483</sup> The use of potentially lethal force for the purpose of law enforcement is an extreme measure that should only be resorted to when strictly necessary to protect life or prevent serious injury in the face of an imminent threat.<sup>484</sup>

321. Accordingly, law enforcement officials (including the police, the military, other state security forces, or any other person or group acting in any other public capacity) are only authorized to use firearms under limited conditions and circumstances. The use of firearms with a deliberately lethal intent is only permitted when strictly necessary to protect a life.<sup>485</sup> In any other case, this would amount to an arbitrary use of force and, in certain circumstances, could constitute an extrajudicial execution.<sup>486</sup> The State is also responsible

<sup>478</sup> Universal Declaration, art. 3; ICCPR, arts. 4 and 6, para. 1; American Convention, art. 27.

<sup>479</sup> ICCPR, art. 6, para. 1. Article 26 of the ICCPR guarantees all persons the right to equal protection of the law “without discrimination”.

<sup>480</sup> American Convention, art. 4.

<sup>481</sup> Political Constitution of Nicaragua, art. 23.

<sup>482</sup> Arbitrary deprivation of life is impermissible under international law and there is no requirement to prove ‘intent’ on the part of the State for a death or deprivation of life to be considered ‘arbitrary’. See Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on adopting a gender-sensitive approach to arbitrary executions, A/HRC/35/23, 6 June 2017, paras. 29 and 34.

<sup>483</sup> ICCPR, art. 4; American Convention, art. 27. See OHCHR and Inter-Parliamentary Union, Human Rights - Handbook for Parliamentarians No. 26, 2016, pp. 53, 55.

<sup>484</sup> See UN, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1989 (hereinafter “Basic Principles”), Principle 9; UN, General Assembly, Code of Conduct for Law Enforcement Officials, A/RES/34/169 (17 December 1979) (hereinafter “Code of Conduct for Law Enforcement Officials”), commentary to art. 3. See also Human Rights Council, The Promotion and Protection of Human Rights in the Context of Peaceful Demonstrations, A/HRC/RES/38/11 (16 July 2018), para. 11.

<sup>485</sup> Basic Principles, Principle 9. Intent on the part of the State or agent of the State is not required for a deprivation of life to be considered arbitrary, as it is sufficient that there has been an unnecessary or disproportionate use of force. Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on adopting a gender-sensitive approach to arbitrary executions, A/HRC/35/23 (6 June 2017), para. 34.

<sup>486</sup> Extrajudicial executions constitute a specific form of arbitrary deprivation of life, carried out through the deliberate use of lethal force by agents of the State, at their behest or with their consent and/or

for violations of the right to life committed by non-State actors acting on the behalf of the government or with its knowledge or consent. States must protect and guarantee the right to life, *inter alia*, by exercising due diligence to prevent arbitrary deprivations of life by private actors.<sup>487</sup>

322. International law requires States to ensure that their public agents and/or those acting with their express or tacit consent take all reasonable precautions to protect life.<sup>488</sup> International human rights standards establish the criteria and strategies that should guide public authority in the use of force during public demonstrations, even when these turn violent.<sup>489</sup> The public authority, or whoever holds it with its express or tacit consent, should use nonviolent means insofar as possible before resorting to the use of force. Firearms are not an appropriate tactical tool for the policing of assemblies.<sup>490</sup>

323. In addition, States have a positive obligation to actively protect peaceful assemblies. This obligation encompasses the protection of persons participating in peaceful assemblies from acts of violence perpetrated by individuals or groups of persons –including against demonstrators, agents provocateurs, agents of the State or individuals operating on behalf of the State– for the purpose of disrupting, dispersing or suppressing such assemblies.<sup>491</sup>

324. Nicaraguan law, echoing its international obligations, establishes a series of regulations prohibiting the carrying or use of firearms, ammunition, explosives and other related materials that put human life at risk, during popular demonstrations, public acts and/or assemblies, shows, political meetings, during protests of a social nature or in the case of confrontations with groups of demonstrators in situations of public disorder or civil disturbance.<sup>492</sup>

325. The obligation to protect the right to life also includes the obligation of States to investigate, exhaustively, immediately and impartially, all cases in which there may have been suspected extra-legal, arbitrary or summary executions. This includes investigating independently and impartially with a view to identifying, prosecuting and, where appropriate, convicting those responsible for these crimes.<sup>493</sup> Investigations and resulting

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acquiescence, against a person. See, Human Rights Committee, General Comment No. 6 (art. 6 - right to life), 30 April 1982, para. 3.

<sup>487</sup> See Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/14/24 (20 May 2010), para. 46(a), (b) and (d).

<sup>488</sup> These measures include the adoption of legislation regulating the use of lethal force; the implementation of procedures to ensure that law enforcement actions conform to international standards; and reporting and mandatory reporting, review and investigation of incidents resulting in fatalities. See Basic Principles, Principle 1; Economic and Social Council, United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Res. 1989/65 (24 May 1989) (hereinafter “Principles on Prevention and Investigation”), Principle 8.

<sup>489</sup> See Basic Principles, Principles 9, 12-14; Code of Conduct for Law Enforcement Officials, commentary to art. 3; Human Rights Council, The Promotion and Protection of Human Rights in the Context of Peaceful Demonstrations, A/HRC/RES/38/11, 16 July 2018, paras. 10, 11 and 13; Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/17/28 (23 May 2011), para. 75. See also IACHR, Office of the Special Rapporteur for Freedom of Expression, Protest and Human Rights, 2019, paras. 101-117.

<sup>490</sup> See Human Rights Committee, General Comment No. 37 (2020), on the right to peaceful assembly (article 21), 17 September 2020 (hereinafter “General Comment No. 37”), paras. 78-79, 81, 87-88, 92. See also, “United Nations. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Report Prepared by the United Nations Secretariat, A/CONF.144/28/Rev.1 (27 August-7 September 1990), chapter 2, pp. 117-124.

<sup>491</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27 (21 May 2012), para. 33.

<sup>492</sup> Presidential Decree No. 26-96, Regulations of the National Police Law, approved 25 October 1996, published in *La Gaceta, Diario Oficial* No. 32 of 14 February 1997, arts. 175-200.

<sup>493</sup> Basic Principles, Principle 7; Principles on Prevention and Investigation, Principles 8–10; Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/17/28 (23 May 2011), para. 119(7). See General Comment No. 37, para. 90; Human Rights Council, The Promotion and Protection of Human Rights in the Context of Peaceful

prosecutions should be carried out in accordance with international standards and should aim to ensure that those responsible are brought to justice, including by considering the possible responsibility of superiors for violations of the right to life committed by their subordinates.<sup>494</sup>

## 2. Context of the arbitrary deprivations of life

326. The first stage of the repression of the large-scale social protests in 2018 was characterized by a high number of fatalities and injuries. During this period, spanning from 18 April to 23 September 2018, a high number of violations and abuses of the right to life and physical integrity were reported in almost all regions of the country, as a result of the repression of demonstrations and roadblocks, and clashes between members of the National Police and/or pro-government armed groups and protesters.

327. In the absence of reliable official data,<sup>495</sup> international human rights agencies and civil society organizations have developed their own records and lists of people killed and injured in the framework of the social protests that broke out in 2018. The following are the figures of fatalities and injured persons reported by different agencies, organizations, and Government entities. The differences between the figures reported by the sources are due to the different timeframes covered by each registry, as well as the different criteria adopted by each source to include or exclude cases depending on their connection to the context.

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Demonstrations, A/HRC/RES/38/11 (16 July 2018), para. 13. See also the revised version of the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol on the Investigation of Potentially Unlawful Deaths), 2016 (hereinafter “Minnesota Protocol”).

<sup>494</sup> See Principles on Prevention and Investigation, Principles 9–10, 18–19; Human Rights Committee, General Comment No. 31, 26 May 2004, para. 18. See also the principles developed in the Minnesota Protocol.

<sup>495</sup> The GHREN stresses that there have been no credible investigations by the State, of the violent deaths in the context of the 2018 protests. The data provided by the Government of Nicaragua in the various communiqués and reports to international human rights mechanisms reproduces the data presented by the National Police, which has been denounced as the main institution that perpetrated extrajudicial killings. Regarding the Truth, Justice and Peace Commission (CVJP), it should be noted that it was created by Resolution No. 01-2018 of the National Assembly. The National Assembly also appointed its five members, all with ties to the ruling party. The findings of the CVJP have been strongly questioned by civil society, for presenting versions of the facts that reproduce the pro-government discourse and blame the protesters for the deaths. On the other hand, the official information available regarding injured persons is partial, due to the refusal of many health centres to provide medical assistance to protesters, and people’s fear to be identified for having been treated in health centres and of being subjected to other forms of repression.

Table 1  
**Figures of people killed, according to sources**

Source	Period	Persons			Police		
		deceased	Civilians deceased	deceased	deceased	Civilians deceased	deceased
Government of Nicaragua <sup>496</sup>	19 April–13 September 2018	198	176	22	1240	839	401
GIEI Nicaragua <sup>497</sup>	18 April–30 May 2018	109	106	3	1400		
IACHR <sup>498</sup>	18 April–1 October 2018	350	332	23	more than 2000 <sup>499</sup>		
CVJP <sup>500</sup>	18 April 2018–15 July 2019 <sup>501</sup>	251	229	22	2264	1846	418
CEJIL <sup>502</sup>	18 April–1 October 2018	342	319	23	1457		

328. The GHREN investigated 40 cases, for which it gathered and analysed a wide range of evidence, including: eyewitness testimony and other direct sources of information; death certificates issued by the Nicaraguan authorities;<sup>503</sup> abundant photographic and audiovisual evidence; documentation provided by various civil society organizations that provide support to victims, such as the April Mothers' Association (*Asociación Madres de Abril*, AMA), the Nicaraguan Centre of Human Rights (*Centro Nicaragüense de Derechos Humanos*, CENIDH) and the Permanent Human Rights Commission (*Comisión Permanente de Derechos Humanos*, CPDH); reports by human rights and civil society organizations; cross analysis of official lists of victims published by the Truth, Justice and

<sup>496</sup> Republic of Nicaragua, "Informe del Estado de Nicaragua respecto a la comunicación conjunta de los procedimientos especiales de la Oficina del Alto Comisionado de los Derechos Humanos de las Naciones Unidas", 16 November 2018, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34426>.

<sup>497</sup> GIEI Nicaragua, "Informe sobre los hechos de violencia ocurridos entre el 18 de abril y el 30 de mayo de 2018", December 2018 (hereinafter "GIEI Nicaragua Report"), p. 178, available at: [https://gieinicaragua.org/giei-content/uploads/2019/02/GIEI\\_INFORME\\_DIGITAL\\_07\\_02\\_2019\\_VF.pdf](https://gieinicaragua.org/giei-content/uploads/2019/02/GIEI_INFORME_DIGITAL_07_02_2019_VF.pdf).

<sup>498</sup> MESENI database of fatalities, shared by the IACHR with the GHREN. The public version of this registry is available at: <https://www.oas.org/es/cidh/jsform/?File=/es/cidh/MESENI/registro.asp>.

<sup>499</sup> IACHR, Press Release, "A cuatro años del Mecanismo Especial de Seguimiento para Nicaragua: CIDH presenta balance de actividades y resultados", 29 August 2022, available at: <https://www.oas.org/pt/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/189.asp>.

<sup>500</sup> Comisión de la Verdad Justicia y Paz (CVJP), Fourth Preliminary Report of 15 July 2019, Annex II (hereinafter "Fourth Report"), on file with GHREN FFDOC045. The CVJP modified the number of persons killed in the context of social protest throughout its work, in accordance with the exposure of each victim to a verification route specific to the methodology of said Commission, reflecting these variations as follows: (i) 209 deceased persons (197 men and 12 women) reported in the First Preliminary Report of 10 July 2018; (ii) 269 deceased persons (258 men and 11 women) and 2035 injured persons (1842 men and 193 women) reported in the Second Preliminary Report (hereinafter "Second Report"), document on file with GHREN FFDOC034, covering the period from 18 April to 30 September 2018; (iii) 253 deceased persons (243 males and 10 females, 1 LGBTI person) reported in the Third Preliminary Report of 5 February 2019 (hereinafter "Third Report"), document on file with GHREN FFDOC038; and (iv) 251 deceased persons and 2035 injured persons (1842 males and 193 females) according to the Fourth Report.

<sup>501</sup> Between 23 September 2018 and 15 July 2019, the CVJP recorded only one death, corresponding to the death in custody of Eddy Antonio Montes Praslin on 16 May 2019.

<sup>502</sup> Record provided by CEJIL to the GHREN; document on file with GHREN DDDOC607. CEJIL was able to verify the connection of 281 deaths to the context of the violations. In 81 cases it was not possible to confirm the link definitively.

<sup>503</sup> Documents on file with GHREN. The GHREN had access to: death certificates issued by the Ministry of Health, which allowed to corroborate the cause of death; epicrisis or medical discharge documents issued by medical centres; and death certificates issued by various municipalities (in many cases these certificates also included the cause of death).

Peace Commission (*Comisión de la Verdad Justicia y Paz*, CVJP) and the National Police; official information published by the National Police and the Forensic Medicine Institute; the databases provided by the IACHR and CEJIL; and open sources, including journalistic coverage of the events, as well as reports made through social networks. In order to corroborate the patterns identified in the cases investigated, the GHREN examined another 75 cases of deaths in the context of the 2018 protests, based on direct and secondary information.

329. The GHREN has reasonable grounds to believe that, in the 40 cases investigated, the National Police and/or pro-government armed groups committed extrajudicial executions. Based on the body of evidence gathered, the GHREN has reasonable grounds to believe that the cases investigated are representative of broader patterns of conduct, which were replicated in a systematic and widespread manner over several months and throughout the country.

330. It is important to emphasize that the repression of protests in Nicaragua in 2018 is not a new or isolated phenomenon, but rather there are precedents that make it possible to understand these events as a quantitative and qualitative escalation of the violence that had been exercised by the State for years. As detailed in Chapter II.C of this report, there are important precedents in which the joint action of agents of the National Police and clash groups to impede or suppress demonstrations, was reported. Likewise, there were reports of aggressions against demonstrators by clash groups and excessive use of force by the National Police, as well as killings of persons considered to be opponents by FSLN supporters and/or National Police agents. In most cases, the responsibility for such acts was never established; this contributed to generating a perception of impunity that allowed violence against protesters to spread on a large scale in 2018. Moreover, as also discussed in Chapter II.B, by 2018 a process of politicization of the National Police, which by then was already under the full control of the Presidency of the Republic, had been completed.

331. The GHREN highlights the difficulties faced in obtaining official information, both publicly and through information requests made to the State, regarding the investigations into the deaths that occurred during the 2018 protests.<sup>504</sup> Moreover, the Group documented several cases in which the authorities prevented the victims' families from accessing information on the circumstances of the deaths, refusing to provide records of the deaths or manipulating their content, omitting to perform the relevant autopsies,<sup>505</sup> and/or conditioning the transfer of the bodies of the victims to the signing of statements by the families in which they had to waive their right to denounce the facts and to request the performance of an autopsy. Further, the adoption of the Amnesty Law did not contribute to the clarification of the facts in relation to the deaths in the framework of the 2018 protests, nor to accountability.<sup>506</sup>

332. Due to time and resource constraints, and taking into account the scale of the violations, their impact and the centrality of the 2018 events to understanding the human rights situation in Nicaragua, the Group of Experts decided to concentrate its investigations, during the first cycle of its mandate, on violations of the right to life on deaths in the context of the 2018 protests. Therefore, this report focuses on the cases registered during the period between 18 April and 28 September 2018, which concentrates the majority of the deaths reported during the temporal scope of the GHREN's mandate. Said period coincides with the months in which large-scale mobilizations took place, and ends with the ban on protests, announced by the National Police on 28 September 2018.<sup>507</sup>

333. The GHREN received information regarding the alleged killings of 32 persons belonging to the Mayangna and Miskitu peoples, in the Autonomous Region of the

<sup>504</sup> The GHREN sent letters to the Government of Nicaragua requesting information on the deaths in the context of the 2018 protests and the corresponding investigations. However, it did not receive a response to its communications.

<sup>505</sup> GHREN interviews DDIV026, CCIV022.

<sup>506</sup> For more information, see Chapter III.

<sup>507</sup> National Police of the Republic of Nicaragua, Press Release No. 115 (Managua, 28 September 2018), available at: <https://www.policia.gob.ni/?p=23327>, on file with GHREN DDDOC073.



Northern Caribbean Coast from 20 September 2018 to 22 May 2022.<sup>508</sup> These deaths, and the allegations received regarding the State's purported negligence of its obligations to protect the victims, as well as to investigate and prosecute those responsible, are of great concern to the GHREN and merit a thorough investigation.<sup>509</sup>

334. The GHREN also had access to information regarding alleged killings of agricultural workers ("campesinos"), many of whom were involved in movements opposing the policies of the Government of President Daniel Ortega and Vice President Rosario Murillo, prior to April 2018.<sup>510</sup> Since the social outburst, the violence allegedly exercised by the Government against agricultural communities increased. This is illustrated by the arrest of the leader of the Campesino Movement Medardo Mairena and the death of Ernesto Jarquín, who was allegedly shot to death in the town of Mulukukú at the end of March 2021 by a public official.<sup>511</sup> Due to time and resource constraints, at the close of this first report the GHREN had not been able to advance in depth the investigation into these allegations nor the State's alleged negligence of its obligations to protect the victims and to investigate and prosecute those responsible. These areas are of great concern to the GHREN and warrant further investigation.

### 3. Victims' profiles

335. The casualties of State violence during the period under review died in the context of demonstrations or protest actions in 2018. The GHREN has reasonable grounds to believe that most of the deceased persons were demonstrators. However, people who were in the vicinity of the sites of protest also died, as well as FSLN supporters and/or members of pro-government armed groups, and at least 22 members of the National Police.<sup>512</sup>

336. Due to the time constraints faced by the Group, it was not possible to verify the identity of each of the persons killed in 2018 in the context of protests. In 115 cases of deaths in the context of protests verified by the GHREN, the Group was able to establish that 78 of the victims were people who were demonstrating or participating in roadblocks and barricades; 24 were people who were in the vicinity of the protest scene, but were not participating in the protest (often reported as "collateral victims"); two people were reportedly killed for providing assistance to protesters; four were police officers; and one was a journalist. It was not possible to establish the victim's profile in six cases.<sup>513</sup>

<sup>508</sup> Confidential report on file with GHREN GGDOC051.

<sup>509</sup> In 2022, the IACHR extended the precautionary measures granted in 2013 in favour of three communities in the Mayangna Sauni As Territory of Nicaragua, on the grounds that they were at risk. See IACHR, Resolution 9/2022, "Indigenous of the Musawas, Suniwas and Wilú Communities of the Mayangna Sauni As Territory in the Autonomous Region of the Northern Caribbean Coast with respect to Nicaragua" (13 February 2022).

<sup>510</sup> See, in this regard, the statements of the *campesino* leader and former presidential candidate in the 2021 elections, Medardo Mairena, who refers to the claims of agricultural workers, as a prelude to the protests of April 2018 and the attacks suffered by agricultural workers by the Government of President Daniel Ortega and Vice President Rosario Murillo, in response. Confidential, Medardo Mairena: "Ortega quiere mantenerse en el poder sin importar cuál sea el costo", 13 February 2023, available at: <https://www.youtube.com/watch?v=YEqGTgCsv28>.

<sup>511</sup> See, DW, Latin America, "Destacado líder campesino opositor es asesinado a tiros en Nicaragua", 30 March 2021, available at: <https://www.dw.com/es/destacado-l%C3%ADder-campesino-opositor-es-asesinado-a-tiros-en-nicaragua/a-57055368>.

<sup>512</sup> Nicaraguan National Police, "Policía Nacional presenta cifras de fallecidos en intento de golpe suave" (7 August 2018), available at: <https://www.policia.gob.ni/?p=20995>, on file with GHREN DDDOC608.

<sup>513</sup> On 16 June 2018, six members of a family, including two young children, died as a result of an arson attack on a house in the Carlos Marx neighbourhood in the city of Managua. According to OHCHR, the house was allegedly set on fire because the owners did not allow police officers and snipers to use the roof as a privileged point to shoot at demonstrators. OHCHR, 2018 Report, para. 23, available at: [https://www.ACNUDH.org/wp-content/uploads/2021/12/Nicaragua-Report-FINAL\\_SP.pdf](https://www.ACNUDH.org/wp-content/uploads/2021/12/Nicaragua-Report-FINAL_SP.pdf). See also: <https://www.laprensani.com/2018/06/16/nacionales/2436445-al-menos-dos-ninos-heridos-en-un-incendio-en-el-barrio-carlos-marx-managua>.

337. Due to the lack of cooperation from the Government of Nicaragua, it was not possible to establish how many FSLN sympathizers and/or members of pro-government armed groups died during the 2018 mobilizations. However, the Group noted with alarm that, in several cases, the authorities claimed that deceased persons were sympathizers of the Government party and that they had been killed by the demonstrators. Witnesses and relatives of the victims later denied this information, and explained that the deceased were not Government sympathizers or members of pro-government armed groups, but were instead participating in the demonstrations.<sup>514</sup> Similarly, the lack of official information has prevented the Group from investigating the deaths and injuries allegedly suffered by members of the National Police.<sup>515</sup> The GHREN requested information in this regard from the State of Nicaragua but received no response.<sup>516</sup>

338. With reference to the profile of the victims, young men were the population group that was most affected by the violations and abuses of the right to life in the context of the protests and suffered disproportionate physical and psychological violence and impacts. The age range of the victims is consistent with the profile of the people who participated in the protests: initially led by the student body and, after the first acts of repression, with a growing involvement of people of all ages and belonging to all sectors of Nicaraguan society (see Table 2).

339. According to a report prepared by a coalition of Nicaraguan human rights organizations and victims' and relatives of victims' associations, at least 37 young people were reportedly injured in one eye during the protests, 15 of whom required ocular prostheses. Another young man reportedly lost his sight in both eyes as a result of a gunshot to the head.<sup>517</sup> However, it should be noted that there were victims of all ages, including the deaths of children, among them a four-month-old baby, a 14-month-old baby, and a three-year-old girl.<sup>518</sup>

<sup>514</sup> For example, with respect to the events that occurred in the framework of the Mothers' March in Managua on 30 May, the National Police Press Release 33-2018 attributed the death of six people to an attack by a group of criminals with firearms and mortars against people participating in the official event which involved a *Cantata* in homage to the Nicaraguan Mothers and to police forces carrying out security and public order tasks. The information reported, in particular regarding the place and time of the events, was refuted by the investigations of the GIEI Nicaragua. Nicaragua National Police, Press Release No. 33-2018 (Managua, 31 May 2018), available at: <https://www.policia.gob.ni/?p=19356>, on file with GHREN DDDOC080; GIEI Nicaragua Report, pp. 171–172. According to a press release of the National Police, Richard Edmundo Pavón, the victim killed in Tipitapa on 19 April 2018, was a Sandinista sympathizer, and the perpetrators were groups of vandals who wanted to attack the Tipitapa Mayor's Office. However, the family denied this information and clarified that "he had not participated in the Sandinista Youth for some time and had joined the youth who were against the reform". See National Police of Nicaragua, Press Release No. 12-2018 (Managua, 19 April 2018), available at: <https://www.policia.gob.ni/?p=18784>, on file with GHREN DDDOC094.

<sup>515</sup> Nicaraguan National Police, "Policía Nacional presenta cifras de fallecidos en intento de golpe suave" (Managua, 7 August 2018), available at: <https://www.policia.gob.ni/?p=20995>, on file with GHREN DDDOC608.

<sup>516</sup> Information request letter sent to President Daniel Ortega on 21 November 2022, reference: GHREN/C/2022-011.

<sup>517</sup> Report: "Informe de la verdad dictadura y represión en Nicaragua: lucha contra la impunidad", 18 November 2021 (hereinafter "Informe de la Verdad 2021"), p. 68, available at: [https://www.cenidh.org/media/documents/docfile/Informe-de-la-Verdad\\_\\_Dictadura-y-Represion-en-Nicaragua.pdf](https://www.cenidh.org/media/documents/docfile/Informe-de-la-Verdad__Dictadura-y-Represion-en-Nicaragua.pdf).

<sup>518</sup> According to the Coordinadora de la Niñez - Nicaragua (CODENI), at least 29 children and adolescents were killed in the context of the 2018 protests. CODENI, Pronunciamiento No. 8 (Managua, 23 November 2018), available at: <https://www.facebook.com/codeni.nicaragua/photos/a.1923270994563870/2750121308545497/?type=3>.

Table 2  
Deceased persons by age, according to source

Source	0-17	18-25	26-35	36-40	41-50	51+
GIEI						
Nicaragua <sup>519</sup>	8	50		43		16
CIDH <sup>520</sup>	27	107	98	27		66
CVJP <sup>521</sup>	19	84	72			78
CEJIL <sup>522</sup>	27	105			159	38

340. There is also a notable difference between the numbers in male and female fatalities (see table 3).<sup>523</sup> As mentioned above, similar data regarding injured persons is not available, in order to confirm the same trend.<sup>524</sup> In this regard, it should be noted that the testimonies and other information gathered by the Group of Experts evidenced that the protest movement involved a broad sector of the population. Like men, women had a strong participation in the social protest and, on several occasions, occupied leadership and organizational roles.

Table 3  
Deceased persons according to sex, according to different sources

Source	Period	Men	Women
GIEI Nicaragua <sup>525</sup>	18 April – 30 May 2018	107	2
CIDH <sup>526</sup>	18 April – 1 October 2018	334	15
CVJP <sup>527</sup>	18 April 2018 – 5 February 2019 <sup>528</sup>	243	10
CEJIL <sup>529</sup>	18 April – 1 October 2018	326	16

341. The gender analysis carried out by this Group made it possible to identify some initial elements that would explain the difference in the gender identity of the deceased:

- Male protesters were more likely to occupy the front-line during demonstrations, and to directly confront law enforcement, which placed them in a more vulnerable situation.<sup>530</sup>

<sup>519</sup> GIEI Nicaragua Report, p. 74.

<sup>520</sup> MESENI database of fatalities, shared by the IACHR with the GHREN. The IACHR does not have data regarding the age of 13 victims, and in 4 cases it considers the information to be “inaccurate”.

<sup>521</sup> The data refers to the third report of the CVJP, since the fourth and last report did not provide figures broken down by age. CVJP, Third Report, p. 4.

<sup>522</sup> Record provided by CEJIL to the GHREN, on file in GHREN DDDOC607.

<sup>523</sup> It should be noted that the Group of Experts has found a shortage of information and documentation on cases of female fatalities, which contrasts with existing data on cases involving male victims.

<sup>524</sup> As of the date of writing this report, the Group of Experts has not had access to a list of injured persons disaggregated by sex, which would allow for a more in-depth gender analysis. The only figures of injured persons disaggregated by sex have been found in the Second Report of the CVJP and refer to a figure of 2035 injured persons: 1842 men and 193 women. CVJP, Second Report, p. 52.

<sup>525</sup> GIEI Nicaragua Report, p. 178.

<sup>526</sup> MESENI database of fatalities, shared by the IACHR with the GHREN.

<sup>527</sup> The data refers to the third report of the CVJP, since the fourth and last report did not provide figures broken down by age. CVJP, Third Report, p. 4.

<sup>528</sup> The CVJP report did not record any fatalities between 23 September 2018 and 5 February 2019.

<sup>529</sup> Record provided by CEJIL to the GHREN, on file in GHREN DDDOC607.

<sup>530</sup> For example, GHREN interviews DDIV015, DDIV036.

- Men and, at times, women protesters, channelled women's participation in the roadblocks and barricades into roles and activities that reproduced gender stereotypes linked to care.<sup>531</sup> This resulted in a greater involvement of women in activities such as providing assistance at health posts, and food and medicine collection, or in the preparation and distribution of food. In general, these activities were less visible and, therefore, women were less present at the points where abuses and violations took place.
- In some incidents, male protesters reportedly pushed women away at times when attacks and/or confrontations were taking place.<sup>532</sup>
- Some women's testimonies collected by the GHREN indicate that security forces and pro-government armed groups would have been less likely to shoot at female protesters.<sup>533</sup>

342. The GHREN received information regarding the death of LGBTI people; however the information related to these events, including the information regarding the sexual orientation or gender identity of the deceased, could not be confirmed.

343. Regarding the geographic distribution of the deaths, the available data shows that, in 2018, violent deaths linked to protests were recorded in almost all regions of the country.<sup>534</sup> The highest number of victims was concentrated in the department of Managua, followed by the regions of Masaya, Carazo, Matagalpa, León, Estelí and Jinotega. The cases investigated by the GHREN covered the regions of Managua, Masaya, Carazo, León, Estelí and Jinotega (see Table 4).

Table 4

**Geographical distribution of deaths, by source**

<i>Source</i>	<i>Locations of the events, according to different sources</i>
GIEI Nicaragua <sup>535</sup>	Managua (73), Estelí (10), Masaya (8), Matagalpa (6), León (5), Chinandega (4), Boaco (2) and RACCS (1).
IACHR <sup>536</sup>	Managua (142), Masaya (48) Matagalpa (29), Carazo (29), León (25), Jinotega (19), Estelí (16), RACCN (11), Río San Juan (10), Chinandega (8), Chontales (7), Boaco (4), Granada (3), Madriz (3), RACCS (1).
CVJP <sup>537</sup>	Managua (96), Masaya (35), Carazo (28), Matagalpa (20), León (16), Estelí (13), RACCN (9), Río San Juan (9), Chinandega (7), Jinotega (6), Chontales (4), Boaco (4), Granada (3), RACCS (1).
CEJIL <sup>538</sup>	Managua (132), Masaya (49), Carazo (29), Matagalpa (25), León (24), Estelí (18), RACCN (15), Jinotega (13), Río San Juan (10), Chinandega (7), Chontales (7), Boaco (6), Granada (83), Madriz (3) and RACCS (1).

<sup>531</sup> For example, GHREN interviews DDIV015, DDIV036.

<sup>532</sup> For example, GHREN interview DDIV015.

<sup>533</sup> For example, GHREN interviews DDIV004, DDIV013.

<sup>534</sup> According to the GIEI Nicaragua, deaths were recorded in eight of the country's 17 regions; according to the CVJP in 14 of 16; according to the IACHR and CEJIL in 15 of 17.

<sup>535</sup> GIEI Nicaragua Report, p. 76.

<sup>536</sup> MESENI database of fatalities, shared by the IACHR with the GHREN. The public version of this registry is available at: <https://www.oas.org/es/cidh/jsform/?File=/es/cidh/MESENI/registro.asp>.

<sup>537</sup> CVJP, Fourth Report.

<sup>538</sup> Record provided by CEJIL to the GHREN, on file in GHREN DDDOC607.

#### 4. Patterns

##### (a) *Arbitrary use of force to prevent or repress acts of public protest*

344. The information collected and analysed by the GHREN confirms that the deprivations of the right to life and to physical integrity recorded between 18 April and 23 September 2018 occurred overwhelmingly in the context of public demonstrations.

345. The GHREN found that, faced with the outbreak of social protest, President Daniel Ortega and Vice President Rosario Murillo used the National Police, clash groups and pro-government armed groups to violently repress the protests. Thus, officers of the National Police made use of widespread, arbitrary and excessive force, which in numerous cases caused serious injuries and resulted in the commission of extrajudicial executions. As described below, the joint actions of police forces and pro-government armed groups also resulted in a high number of deaths and serious injuries. These actions were accompanied by massive arbitrary or unlawful detentions, torture and ill-treatment, and constituted violations of the freedoms of peaceful assembly and expression. The expected result of the excessive and lethal use of force in a systematic and widespread manner, that is, the suppression or inhibition of public protest, materialized as of July 2018 and was consolidated with the banning of protests by the National Police in September of that year.

346. The GHREN shares the view of other international human rights bodies and national and international organizations in concluding that the overall response of the Nicaraguan authorities to the 2018 protests violated applicable standards on the proper management of demonstrations, as well as international human rights law.<sup>539</sup>

347. The GHREN has reasonable grounds to believe that most of the individuals who took part in the protests did so peacefully. However, from April onwards, the violent repression of the protests by the National Police and pro-government armed groups, caused clashes with protesters and exacerbated tensions and polarization throughout the country. Although the protest movement remained generally peaceful, as acts of repression of the movement continued, some protesters responded in increasingly violent ways to repel attacks by the National Police and pro-government armed groups, or to dissuade them from acting.

348. The GHREN received information about acts of violence perpetrated by some demonstrators in the context of the protests, including stone throwing, the use of homemade weapons –principally mortars and some “contact bombs”<sup>540</sup> as well as Molotov bombs.<sup>541</sup>

<sup>539</sup> OHCHR 2018 Report, p. 7 and paras. 48, 52 and 62; GIEI Nicaragua Report, para. 358; IACHR Report on Grave Breaches, para. 88, available at: <http://www.oas.org/es/cidh/informes/pdfs/Nicaragua2018-es.pdf>; OHCHR Press Release “Nicaragua: UN Experts Express Dismay at Government’s Violent Response to Peaceful Protests”, 27 April 2018.

<sup>540</sup> The GHREN considered the forensic analysis presented in the framework of the investigation conducted by the GIEI Nicaragua: Dr. Rodolfo G. Pregliasco, Analysis of the capacity of the damage of 2½” homemade mortars used by protestors in Nicaragua, 22 March 2019. Mortars are homemade artifacts, usually used in celebrations of a religious nature. They consist of a brown paper package containing gunpowder projected through a metal tube (mortar launcher) with two handles. As the events developed, some people also inserted fragments of glass and stones. Their range is approximately 60 meters. Contact bombs were manufactured mainly in Masaya and consisted of a brown paper package which contained gunpowder and other objects (such as stones and glass) and was covered with adhesive tape. They were launched manually. The Firearms Control Act “prohibits the use of mortars and pyrotechnic devices, with the objective of provoking or causing injury, endangering human life or causing damage to property”. Special Act for the Control and Regulation of Firearms, Ammunition, Explosives and other Related Materials, Law No. 510, published in *La Gaceta, Diario Oficial* No. 40 of February 25, 2005 (hereinafter “Firearms Control Act”), art. 148. See also GIEI Nicaragua Report, p. 215; La Prensa, “Las armas militares usadas contra el pueblo en Nicaragua”, 9 July 2018, available at: <https://www.laprensani.com/magazine/reportaje/las-armas-militares-usadas-contra-el-pueblo/>, on file with GHREN DDDOC390; photographic material in the GHREN’s archive IIDOC066, DDDOC174; Vice en Español, “Crisis política en Nicaragua”, 18 June 2019, available at: <https://www.youtube.com/watch?v=cxhuds8gx6I>, on file with GHREN IIDOC042.

The GHREN also documented the use of conventional weapons in some cases.<sup>542</sup> These acts allegedly resulted in the death of 22 police officers and injuries to a large number of police officers, as well as the death of an unknown number of supporters of the ruling party, including members of pro-government armed groups. It should be noted that the Government has not provided any data on the latter figure.

349. OHCHR referred to instances of abuses and crimes committed by anti-Government individuals during the peak months of the social protest (April to August 2018), including episodes of violence between different sides, reprisals, score-settling, as well as attacks against members of the FSLN, Government officials, members of the security forces – particularly the National Police –, public buildings and private property.<sup>543</sup> For its part, the CVJP stated that “the protests turned into expressions of hatred, vandalism, looting, torture and death” and referred to “damage to public and private property, the national economy, health, human rights, cultural heritage, among others”.<sup>544</sup> The GHREN also identified that, in some cases, criminal practices developed in the context of the roadblocks, including improper toll collection, acts of harassment, robbery, and even unlawful detentions or kidnappings.<sup>545</sup> The GHREN was unable to investigate these events further due to the lack of available information and the lack of cooperation of the Nicaraguan State.

350. In any event, the GHREN found no evidence that the acts of the individuals who demonstrated against the Government, including the violent acts committed by some individuals who participated in the protests, were coordinated or responded to a pre-existing plan that could be characterized as an “attempted coup d’état”, as the Government of Nicaragua claimed.

351. The GHREN emphasizes that the instances of violence and criminal acts mentioned above in no way justify the disproportionate and excessive use of force, including lethal force, against demonstrators, in violation of international human rights law. The analysis of the information gathered by the GHREN, including the type of weaponry used during the operations, the positioning of the agents facing the demonstrators, and the areas of the victims’ bodies hit by firearm projectiles, indicates that the members of the National Police and the pro-government armed groups used lethal force in an arbitrary, deliberate and systematic manner, with the intention to kill the demonstrators or, at least, to inflict upon them injuries or cause them serious bodily harm.

352. In this regard, the GHREN emphasizes that, under international human rights law, the commission of sporadic acts of violence or other criminal acts by some individuals does not nullify the right to freedom of peaceful assembly of others in social protests.<sup>546</sup> The

<sup>541</sup> According to the GIEI Nicaragua, while mortars are used for festive purposes in cultural and religious celebrations in Nicaragua, they can also be loaded with marbles, small stones, nails, broken glass, etc. In some cases, the injuries caused by this type of artifact can be serious if used at close range. GIEI Nicaragua Report, p. 215. The CVJP reported that 107 of the 418 cases of injuries to members of the National Police during the protests were caused by mortars. The CVJP reported no police fatalities because of mortar impact. CJVP, Fourth Report, p. 27.

<sup>542</sup> For example, the GHREN is aware of the case of La Trinidad roadblock, located on km 124 of the Pan-American Highway where, on 30 May 2018, clashes occurred between protesters and government supporters and members of the National Police forming a caravan in the direction of the city of Managua. Sources interviewed by the GHREN referred that these were armed demonstrators coming from the regions of Nueva Segovia, Madriz and Estelí. As a result of this confrontation, three people died, two of them government sympathizers. GHREN interviews DDIV024, BBIV019; National Police of Nicaragua, Press Release No. 32-2018 (30 May 2018), available at: <https://www.policia.gob.ni/?p=19354>, on file with GHREN DDDOC079.

<sup>543</sup> OHCHR 2018 Report, para. 104.

<sup>544</sup> CJVP, Fourth Report, p. 25.

<sup>545</sup> For example, the GHREN received information regarding the illegal detention by protesters of National Police officers and members of pro-government armed groups in Carazo and Masaya. GHREN interviews DDIV015, DDIV019, DDIV022, DDIV020. See also OHCHR 2018 Report, para. 104; CJVP, Fourth Report, p. 26.

<sup>546</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 8, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/135/89/PDF/G1213589.pdf?OpenElement>.

State of Nicaragua has a duty to protect persons participating in peaceful demonstrations from acts perpetrated by individuals or groups of individuals, including by demonstrators, as well as by counter-demonstrators and pro-government armed groups.<sup>547</sup> Furthermore, the use of lethal force by State agents may only be directed against the individual person or group of persons who represent an imminent risk to life, and at no time may be directed against the general population taking part in the demonstration.<sup>548</sup>

353. The body of information collected and examined by the GHREN provides reasonable grounds to believe that the National Police and pro-government armed groups used lethal force against peaceful demonstrators, as well as against demonstrators who carried out acts of violence against things or persons but did not pose lethal threats.

(i) Scenarios of the repression

354. The violations and abuses investigated by the GHREN were committed in three main scenarios linked to social protest:

- (a) marches, demonstrations and rallies in public spaces, such as streets, squares and parks or in their vicinities;<sup>549</sup>
- (b) seizure of public spaces as a form of protest and social vindication, including the seizure of university facilities;<sup>550</sup>
- (c) “tranques” or roadblocks and barricades.<sup>551</sup>

355. The word “tranque” is used in Nicaragua to refer to road and street blockades, which are a common form of protest in the country. In the first days of the protests, several of the tranques began as intermittent blockades. As the days went by, and as the violence increased, protesters fortified the roadblocks and erected barricades in the streets of towns and cities, built with stones, logs and cobblestones. Starting in May 2018, there was an entrenchment of the protest, as a protection or defence mechanism against the violence perpetrated against protesters by pro-government armed groups and National Police officials.<sup>552</sup> Many of the roadblocks became total blockades of important transportation routes and key commercial routes, constituting a point of pressure against the Government. According to OHCHR, “by mid-May the roadblocks and barricades erected by protesters had spread to neighbourhoods in Managua and to all 15 regions of the country, reaching an estimated 180 barricades and roadblocks throughout the country”.<sup>553</sup>

(ii) Temporal analysis of violations

356. Violent deaths in the context of the demonstrations were spread both in space and time. The first deaths occurred on 19 April 2018, and the last victim in the context of the protests died on 23 September 2018.

357. According to the breakdown of the information collected by CEJIL, the month that reported the most victims was June, a month in which a total of 134 deaths were recorded, that is, 39 per cent of the total number of deaths recorded by CEJIL in the framework of the 2018 social protests.<sup>554</sup> The record kept by the IACHR reported 129 deaths for the same period, i.e. almost 37 per cent of the total number of victims recorded by that body, yielding

<sup>547</sup> On the positive obligation to facilitate peaceful assemblies, see Report of the Special Rapporteur on the rights to freedom of peaceful assembly and peaceful association, A/HRC/20/27, 21 May 2012, para. 33.

<sup>548</sup> See Basic Principles, Principle 9.

<sup>549</sup> This is the case, for example, of the repression of marches and demonstrations in Estelí on 30 May 2018 and in Managua on 23 September 2018.

<sup>550</sup> For example, the GHREN received information on the takeover of the Polytechnic University (UPOLD), the National University of Nicaragua (UNAN) and the National University of Engineering (UNI). GHREN interviews DDIV011, DDIV033, DDIV036, DDIV042.

<sup>551</sup> According to the CVJP, 50 percent of the deaths occurred in proximity to the tranques.

<sup>552</sup> GHREN interviews BBIV013, DDIV009, CCIV010, DDIV014, DDIV048.

<sup>553</sup> OHCHR 2018 Report, para. 60.

<sup>554</sup> Record provided by CEJIL to the GHREN, on file with GHREN DDDOC607.

the same conclusion.<sup>555</sup> The CVJP data differs substantially, but coincides in pointing out June as the deadliest month of the period, with 89 deaths (35 percent of the total number of victims recognized by the CVJP).<sup>556</sup>

358. The days in which the most deaths were reported are, in chronological order: 20 April (27 people died in the cities of Managua, León, Estelí and Sébaco, according to both CEJIL and IACHR records); 30 May (22 people died in Managua, Estelí, Chinandega and Masaya according to CEJIL, and 20 according to the IACHR); and 8 July.<sup>557</sup> The dates indicated correspond to milestone days for social mobilization, namely:

- **20–22 April:** during the initial days of the outbreak of social protest there were high numbers of casualties, with 27 people killed on 20 April, 15 people killed on 21 April and 11 people killed on 22 April.
- **30 May:** as part of the Mother's Day celebration in Nicaragua, marches were called in solidarity with the mothers of those deceased as a result of the repression of the protests. These marches reached massive levels of attendance.
- **8 July:** the first large-scale operation with the objective of eliminating or dismantling the roadblocks and barricades was carried out in Carazo. The operations to suppress the roadblocks and barricades intensified in anticipation of the national celebration of 19 July (the anniversary of the triumph of the Sandinista Revolution of 1979).<sup>558</sup>

359. According to CEJIL, in June and July 2018, events where individuals lost their lives almost occurred on a daily basis: there were only 13 days out of 61 in which no deaths were recorded. According to the record of the IACHR, the days with no deaths for the same period were only 10. According to the data recorded by CEJIL, the longest periods between 18 April and 23 September 2018, during which no deaths were recorded, were between 24 April and 6 May, between 28 July and 4 August, and between 19 August and 15 September. The IACHR data differs slightly, conforming the same pattern.

360. The first period during which no deaths were recorded (24 April to 6 May) corresponds to the first attempt to lay the groundwork for a National Dialogue and to the establishment of the Truth, Justice and Peace Commission (CVJP). During this period, protesters held marches; however, the actions of the State security forces were not lethal. From the last days of July onwards, there was a significant decrease in the number of fatalities, with a total of five victims between the months of August and September. This decrease in the number of deaths coincided with the abrupt cessation of the protest movement, which resulted from the demolition of the roadblocks and barricades through highly violent operations and the subsequent mobilization of hundreds of National Police officials and members of pro-government armed groups to patrol and monitor the streets on a constant basis.<sup>559</sup>

361. Thus, the data examined confirms that the highest numbers of violent deaths coincides with the periods of the protests, as well as with the operations ordered by the Government to forcibly remove the roadblocks and barricades that had spread throughout the country.<sup>560</sup> A continuity in time of the violations and abuses of the right to life of the

<sup>555</sup> MESENI database of fatalities.

<sup>556</sup> CVJP, Third Report, pp. 2–3.

<sup>557</sup> The CVJP registry coincides in indicating 30 May (15 deaths) and 8 July (19 deaths) as the dates with the highest mortality rates. However, it only records one death on 21 April, and none on 20 and 22 April.

<sup>558</sup> According to OHCHR, during this period, roadblocks were forcibly lifted in Boaco, Carazo, Granada, Jinotepe, La Trinidad, León, Managua, Masaya, Matagalpa, RACCS and Rivas, among others. OHCHR 2018 Report, p. 17.

<sup>559</sup> It should be noted that at no time during the period under observation did the President of Nicaragua declare a state of emergency, as the State itself recalled in its Fourth Periodic Report to the Human Rights Committee. Nicaragua, Fourth periodic report due in 2012 under article 40 of the Covenant, CCPR/C/NIC/4 (27 September 2019), para. 34.

<sup>560</sup> OHCHR 2018 Report, para. 58.



Nicaraguan population is observed during the period under review (18 April to 28 September 2018), with alarming spikes around key dates, which points to the systematicity of such violations.

(b) *Use of lethal weapons*

362. The GHREN recalls that the use of force is regulated in international human rights law and that the State has the obligation to guarantee the enjoyment of other rights that must be protected through the structuring of a safe context. This allows for the exercise of the rights guaranteed in the Constitution and in international norms. The rights to freedom of expression and freedom of assembly must be preceded by adequate safeguards for the State's monopoly of force and, therefore, the risk cannot be increased, nor can actions outside the permitted risk be allowed, as is evident in the case that occurred in Nicaragua where there was unlawful use of force.

363. The large-scale and indiscriminate use of force, even with non-lethal weapons, in the midst of a demonstration, can never be justified. The existence of protocols for the use of force limits the use of weapons in this type of police operation. In this sense, States must ensure that there are expeditious and adequate remedies to determine whether violations have been committed and to identify those responsible. Article 2 of the Nicaraguan Code of Conduct for Law Enforcement Officials states that "in the performance of their duties, law enforcement officials shall respect and protect human dignity and uphold and defend the human rights of all".<sup>561</sup>

364. The use of firearms by the National Police to repress the protests took place as of 19 April 2018, the second day of the protests. That same day the first fatalities of the repression of social protest were recorded: a policeman and a demonstrator died during demonstrations at the Polytechnic University of Nicaragua (*Universidad Politécnica de Nicaragua*, UPOLI),<sup>562</sup> and one person died in Tipitapa.<sup>563</sup>

365. In this regard, it should be recalled that national legislation prohibits the carrying or use by the police or by any group affiliated with the police of firearms, ammunition, explosives and other related materials that may endanger human life, during public demonstrations, including during social protests and in the case of confrontations with groups of demonstrators in situations of disturbance of public order.<sup>564</sup>

366. At different times, the highest authorities of the Government and the police justified the actions of non-uniformed armed persons, identifying them as volunteer police officials, a figure recognized in the Organic Law of the Police.<sup>565</sup> However, the same Law establishes that volunteer police officials can only perform auxiliary tasks to the National Police in prevention tasks (and therefore not in law enforcement tasks), and that "for the fulfilment of their tasks they will be duly identified with their own uniforms and badges".<sup>566</sup> In addition to the above, the Law does not provide for the use of firearms by members of the voluntary police.<sup>567</sup>

<sup>561</sup> Code of Conduct for Law Enforcement Officials, art. 2.

<sup>562</sup> National Police of Nicaragua, Press Release No. 13-2018 (Managua, 19 April 2018), available at: <https://www.policia.gob.ni/?p=18784>, on file with GHREN DDDOC095. The note reports the death of the National Police official. There is no mention of the protester killed.

<sup>563</sup> National Police of Nicaragua, Press Release No. 12-2018 (Managua, 19 April 2018), available at: <https://www.policia.gob.ni/?p=18784>, on file with GHREN DDDOC094. It should be noted that the version of events as reported in the press release was later refuted.

<sup>564</sup> Regulation of the National Police Act, arts. 175–200; Firearms Control Act, art. 148, section xi.

<sup>565</sup> Law No. 872, arts. 23–26.

<sup>566</sup> Interview with Daniel Ortega in EURONEWS, 30 July 2018, available at: <https://www.youtube.com/watch?v=NiROR4hYCuA> (from min 7.28); interview with Francisco Díaz, Chief of the National Police, conducted by Norwegian journalist Halldor Hustadnes on 30 November 2018, available at: [https://youtu.be/zB\\_VD2JuGG0](https://youtu.be/zB_VD2JuGG0) (from min 0.33).

<sup>567</sup> Possessing, transporting and using a firearm without having the respective license is criminalized under arts. 120 and 121 of the Firearms Control Act.

367. From the early days of the April 2018 protests, members of clash groups attacked demonstrators with violence, using blunt objects, including sticks and stones. The GHREN also received information regarding the use of mortars by clash groups. As the days went by, pro-government armed groups joined the repression of the protests, using firearms, and members of these groups were the perpetrators of the death of several demonstrators.<sup>568</sup>

368. An aggravating element pointed out by several sources interviewed by the GHREN, is the presence of armed individuals positioned on the rooftops of houses and buildings or out of the sight of demonstrators, which the witnesses identified as “snipers”.<sup>569</sup> The use of snipers<sup>570</sup> in the operations would indicate an intention to kill the protesters, since their training is aimed at shooting down the target.<sup>571</sup> Regardless of the level of training of the persons who fired the shots from high positions during the operations to repel and/or dissolve the demonstrations and barricades, their positioning *per se* denotes the intention to employ combat techniques, rather than other crowd control techniques or police tactics appropriate to de-escalate violent situations.

369. The GHREN considers that, in any situation where a Government agent uses a firearm, he or she must be considered to have the intent to kill or inflict serious harm, as these agents are rarely trained in the non-lethal use of these weapons. Additionally, and possibly more importantly, the Group believes that the authorities authorizing the use of this type of force and of these weapons must be aware of the likely outcome of such use.

(i) Deaths by firearms

370. The records elaborated by different sources evidence a high number of deaths by firearm in the context of the 2018 demonstrations (see table 5). The Group utilized the data collected by different sources, and presented below, to estimate that between 70 and 80 percent of the deaths were caused by injuries caused by bullet wounds.

Table 5

**Firearm deaths and analysis of the injuries, according to source**

Cause of death	GIEI Nicaragua (18 April- 30 May 2018)	IACHR (18 April- 30 July 2018)	CEJIL (18 April- 1 October 2018)	CVJP <sup>572</sup> (18 April- 21 September 2018)	
				MS	IML
Deaths due to impacts in vital zones					
Chest	57	30%	127	32	37
Skull	31	23.1%	106	27	40
Collar	7	23%		6	7
Abdomen				15	17
Deaths by firearm	95	248	263	106	109
Percentage	(87%)	(70%)	(77%)	(39%)	(40%)
<b>Total deaths</b>	<b>109</b>	<b>355</b>	<b>342</b>		<b>269</b>

<sup>568</sup> Photographic material on file with GHREN CCDOC096, IIDOC010, DDDOC298, DDDOC377, DDDOC378.

<sup>569</sup> GHREN interviews DDIV016, DDIV009, DDIV019, DDDOC020, DDIV025, DDIV027, DDIV028, DDIV048; photographic material on file with GHREN DDDOC391. See GIEI Nicaragua Report, pp. 162 and 163.

<sup>570</sup> GHREN interview BBIV015.

<sup>571</sup> GHREN interviews DDIV016, DDIV050, DDIV051.

<sup>572</sup> CVJP, Second Report pp. 7–8. The CVJP gathers different data provided by the Ministry of Health, based on 120 death certificates (MS) and by the National Institute of Legal Medicine, based on 116 autopsies (IML).

371. In addition, the high number of victims who were wounded in vital parts of the body is notorious, showing that the objective was not to detain or wound people, but to neutralize them.

372. The GHREN analysed 68 death certificates that record deaths by firearm between 19 April and 23 September 2018. Likewise, the cases investigated by the GHREN confirm the patterns noted here. Of the 40 cases investigated by the GHREN, 39 victims died as a result of injuries caused by firearms; all of them presented bullet wounds in vital parts of the body.

373. Information gathered through testimonies,<sup>573</sup> crossed with photographic evidence<sup>574</sup> and investigations carried out by national and international organizations and agencies,<sup>575</sup> confirm that weapons were pointed directly at the demonstrators during the repression of the protest.

(ii) Type of weapons used

374. The Group has not had access to information on the criminalistic treatment that the competent authorities have given to the evidence and, in particular, to the 116 autopsies performed by the IML and referred to in the CVJP's Second Report.<sup>576</sup> Thus, the Group has not had access to ballistic reports and to the results of autopsies that would allow it to determine with certainty the type of bullets and weapons used, and the probable location of those who fired the weapons in each individual case.<sup>577</sup>

375. Nevertheless, based on the analysis of photographic and audiovisual evidence verified by the GHREN with the support of a security and weapons expert,<sup>578</sup> the Group of Experts was able to identify various weapons used by members of pro-government armed groups and by members of the National Police in the exact places and in the vicinity where the victims' deaths occurred:

- 12-gauge shotguns, including Remington, Maverick 88 and Mossberg (guns whose power varies depending on the cartridge used. They have high power; however, they have a short range of accuracy);
- AK-47, AK-74, 7.62 calibre assault rifles (weapons with great power, high performance, range and accuracy and susceptible to cause greater damage on impact);
- Galil, assault rifle, 5.56 calibre;
- M16 and M16-A1, assault rifles that use 5.56 ammunition (they have great accuracy and range, even at a long distance);
- Dragunov, Soviet-made 7.62 calibre sniper rifle (long range and high accuracy);

<sup>573</sup> GHREN interviews DDIV028, DDIV042.

<sup>574</sup> Audiovisual and photographic material on file with GHREN DDDOC060, DDDOC411, DDDOC412, DDDOC413, DDDOC414, IIDOC031.

<sup>575</sup> GIEI Nicaragua Report, p. 180; Amnesty International, Shoot to kill.

<sup>576</sup> Although there is a precise regulation for the forensic procedure of projectile extraction, chain of custody and delivery to the National Police for ballistic expertise, a reliable source told the GHREN how the relevant competent authorities systematically violated it. GHREN interview BBIV015. See "Norma Técnica para la realización de Autopsias Médico Legales NT/IML-008/02/16", second version, February 2016, available at: <https://www.poderjudicial.gob.ni/pjupload/iml/pdf/norma-008-02-16.pdf>, on file with GHREN DDDOC604.

<sup>577</sup> CVJP, Second Report, pp. 7–8.

<sup>578</sup> GHREN interview DDIV050; photographic material on file with GHREN DDDOC055, DDDOC056, IIDOC003, IIDOC004, IIDOC005, IIDOC009, IIDOC011, IIDOC012, IIDOC013, IIDOC015, IIDOC023, IIDOC025, IIDOC027, IIDOC056, IIDOC057, IIDOC058, IIDOC061, IIDOC062, IIDOC063, IIDOC064, IIDOC068, IIDOC069, IIDOC069, IIDOC074, DDDOC064, DDDOC148, DDDOC322; audiovisual material on file with GHREN IIDOC006, IIDOC029, IIDOC031, IIDOC033, IIDOC034, DDDOC117, DDDOC605, DDDOC245, DDDOC341.

- PKM, Soviet-made machine guns, 7.62 calibre (this is a general-purpose machine gun with a long range but light at the same time, which makes it easy to carry); and
- RPG, a rocket launcher, or high explosive anti-tank and anti-aircraft tracer weapon.

376. The weaponry identified by the Group coincides for the most part with that analysed and identified by the GIEI Nicaragua in its report.<sup>579</sup> The GHREN identified agents of the DOEP of the National Police carrying Dragunov sniper rifles, assault rifles, PKM machine guns and RPG anti-tank guns.<sup>580</sup> All these weapons have been designed for war purposes; thus they are disproportionate for use against civilian groups in the context of demonstrations and civil unrest.<sup>581</sup>

377. Security and weapons experts consulted by the GHREN agreed that the weapons identified are not suitable for use in a context of civil unrest or crowd control, as all of them are likely to cause disproportionate harm.<sup>582</sup> Taking into account the nature of the social protest and the people involved, the GHREN considers that the use of these weapons was disproportionate to the risk faced by members of the National Police and pro-government armed groups.

378. The GHREN has reasonable grounds to believe that the use of high-powered weapons by agents of the National Police, as well as their complicity and acquiescence towards pro-government armed groups in the possession and use of these weapons, demonstrates the unlawful use of force and the intent to kill protesters.

(c) *Coordination between the National Police and pro-government armed groups*

379. The GHREN has reasonable grounds to believe that the National Police acted jointly and in coordination with pro-government armed groups with the objective of repressing social protest, confirming patterns already evidenced by different organizations.<sup>583</sup> The GHREN analysed the coordinated actions of the National Police and of pro-government armed groups in different protest scenarios, and during different phases of the repression of the 2018 demonstrations.<sup>584</sup>

380. During the first days of social mobilization, the protests took the form of marches that spread throughout the country. These took place during the day and generally had the INSS delegations in the different localities, as their final destination. On several occasions, the FSLN, through groups such as the Sandinista Youth or unions linked to the FSLN, organized parallel events or counter-marches.<sup>585</sup> During the course of the marches, groups

<sup>579</sup> GIEI Nicaragua Report, p. 181.

<sup>580</sup> Photographic material on file with GHREN DDDO056. During the last operation carried out in the department of Carazo, the protesters recovered a PKM. Photographic material in the GHREN's archive DDDOC064.

<sup>581</sup> GHREN interviews DDIV050, DDIV051; photographic material on file with GHREN IIDOC023.

<sup>582</sup> GHREN interviews DDIV051 ("even if one is a trained military or police officer, the power of those calibres can pierce more than one body or go through walls, causing collateral damage none of which would be acceptable in an urban context to cause the least damage"), DDIV050 (this applies especially in the case of 7.62 calibre weapons (AK-47, Dragunov and PKM), which are weapons of greater range and power than those commonly used by special forces security corps, and which are 5.56 calibre).

<sup>583</sup> GIEI Nicaragua Report, pp. 177–178; IACHR Report on Grave Breaches, para. 58; OHCHR 2018 Report, para. 102; Amnesty International, *Shoot to Kill*, pp. 10–15; Amnesty International, *Instilling Terror: from lethal force to persecution in Nicaragua*, 18 October 2018 (hereinafter "Instilling Terror"), pp. 13–18, 42, 67 and 69, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/05/AMR4392132018ENGLISH.pdf>.

<sup>584</sup> Photographic material on file with GHREN DDDOC157, DDDOC374, DDDOC150, DDDOC375. See Confidencial, "Esta Noche 19 de abril 2018 (COMPLETO) – Represión y censura ante protestas por reformas al INSS", 19 April 2018 (min. 2:24 to 7:55), available at: <https://www.youtube.com/watch?v=BQhtByCDcqY>; Canal 10 Nicaragua, "Grupos paramilitares desmontaron tranques en la entrada a Ticuantepe", 19 June 2018, available at: <https://www.youtube.com/watch?v=GM2iI3pvlq>; Euronews en Español, "Nicaragua: ¿hacia una guerra civil?", 18 July 2018, available at: <https://youtu.be/emVAqGb3Sw>.

<sup>585</sup> GHREN interviews DDIV02, BBIV013; GIEI Nicaragua Report, pp. 142 and 156.

of civilians, identified by witnesses as clash groups, appeared next to members of the National Police, and insulted and assaulted demonstrators, attempting to divert or disperse the march. The aggressions by members of clash groups usually began as verbal and physical aggressions, through pushing and shoving, and intensified towards the end of the marches, often at night, leading to more severe physical assault with the use of blunt objects such as sticks, pipes, stones and, in some occasions, firearms.<sup>586</sup>

381. The analysis of incidents carried out by the GHREN identified that, in some cases, the National Police remained passive in the face of attacks on demonstrators by members of pro-government armed groups, failing to comply with their duty to protect the population and to guarantee the exercise of freedom of assembly; this put into evidence their acquiescence towards such attacks. In other cases, the National Police facilitated the actions of pro-government armed groups by providing them with resources that they used during operations to repress marches. It also provided protection for their members. Finally, in numerous of the cases investigated there was direct intervention by the police, simultaneously and in coordination with the pro-government armed groups.

(i) Illustrative examples

382. On 18 April 2018, the National Police allowed pro-government clash groups to act in León. These groups attacked elderly persons who were demonstrating against social security reforms, and stole the cameras and cell phones of journalists covering the demonstration.<sup>587</sup> These aggressions provoked the indignation of citizens, and pushed thousands of Nicaraguans to demonstrate in the following days.

383. The GIEI Nicaragua documented how in Managua, on 18 April, groups of persons wearing Sandinista Youth t-shirts and groups of motorized persons assaulted a group of people gathered at a peaceful protest in the area of Camino de Oriente.<sup>588</sup> The demonstrators, as well as journalists who were covering the event, were beaten with sticks, bats, pipes, chains, and other blunt objects, so they dispersed.<sup>589</sup> Approximately half an hour later, the protesters gathered again with the aim to starting marching. However, riot police launched tear gas canisters against the people gathered, despite the fact that they were demonstrating peacefully.<sup>590</sup>

384. Images published by the GIEI Nicaragua show how, on 19 April, a member of a clash group fired a gun at demonstrators in the Plaza Domingo Gadea in Estelí, in the presence of members of the National Police, including riot police, who did not intervene to stop the assailant.<sup>591</sup> The following day, on the afternoon of 20 April, also in Estelí, demonstrators began to disperse after concluding a march in the Plaza Domingo Gadea. Images verified by the GIEI Nicaragua and analysed by this Group show an agent of the riot police throwing a tear gas bomb or a small explosive device towards the persons

<sup>586</sup> GHREN interviews DDIV011, DDIV015, DDIV024.

<sup>587</sup> Confidencial, “18 de abril: El estallido. Crónica del primer día de la protesta cívica”, 18 April 2019, available at: <https://www.youtube.com/watch?v=uy8ELjr1EBM>; Trinchera de la Noticia TV, “Marcha de protesta atacada por sandinistas en León”, 18 April 2018, available at: <https://www.youtube.com/watch?v=yx086a1YmhY>. See also GIEI Nicaragua Report, p. 66.

<sup>588</sup> GIEI Nicaragua Report, p. 82. Video evidence of the incident verified by GIEI Nicaragua available at: <https://www.youtube.com/watch?v=mMO3CeAkZW4>.

<sup>589</sup> Agencia EFE, “Disturbios y heridos deja protesta por reforma a Seguro Social en Nicaragua”, 18 April 2018, available at: <https://www.youtube.com/watch?v=ErFL7xhLBC4> (at min. 1:00 police and riot patrols made presence on site minutes after the aggressions had concluded, escorting the aggressors and withdrawing the demonstrators to dissipate the concentration); La Prensa Nicaragua, “Así comenzó la rebelión cívica en Nicaragua el 18 de abril de 2018”, 18 April 2019, available at: <https://www.youtube.com/watch?v=fOLsqKIX3IU>; Confidencial, “Esta Noche 19 de abril 2018 (COMPLETO) | Represión y censura ante protestas por reformas al INSS”, 19 April 2018 (from min. 2:42).

<sup>590</sup> GIEI Nicaragua Report, pp. 83–85. GIEI Nicaragua gathered videographic material in connection to this event: <https://www.youtube.com/watch?v=7QXmk2jxt4g>.

<sup>591</sup> GIEI Nicaragua “Grupos Armados”, 23 December 2018 (min. 1:13–1:22), available at: [https://vimeo.com/307975997?embedded=true&source=vimeo\\_logo&owner=93011450](https://vimeo.com/307975997?embedded=true&source=vimeo_logo&owner=93011450).

gathered on the square. Afterwards, riot police began firing rubber bullets and tear gas at the group of people as they retreated. The video shows people in civilian clothes wearing motorcycle helmets and carrying stones, standing behind the police and acting in their support.<sup>592</sup> *“It was the police who started the confrontation. One of them took out a tear gas bomb, there was nothing to do, the march was already dissolving and everyone was going home. When they threw the bomb, the same policemen began to attack with other bombs, and the Sandinistas were behind them throwing stones and any object, and there were very well-known people attacking the demonstrators”*.<sup>593</sup> According to eyewitnesses, the protesters responded by throwing stones to push back the police and the pro-government armed groups.<sup>594</sup>

385. Images recorded in Estelí in the evening of the same day show a group of individuals dressed in white T-shirts picking up stones from a van with National Police insignia and throwing the stones at another group of people, all in the presence of police officers.<sup>595</sup> Another witness told the GHREN: *“police vans arrived with loads of stones and began to give them to Government fanatics, employees of the municipality, to throw at us. We managed to get to the municipality, I was in front of the mayor’s office when (members of the police and pro-government armed groups) started shooting again, I saw a person fall next to me, when I tried to pick him up to see if he was okay, what I saw was that he was bleeding a lot, that he had a hole in his head because he had been shot”*.<sup>596</sup> A third video shows police handing a person over to members of a pro-government armed group, who proceeded to physically assault the victim.<sup>597</sup> That night, clashes between protesters, police and pro-government armed groups resulted in the death of three people.<sup>598</sup>

386. According to testimonies gathered by the GHREN, the marches led by students in Masaya on 19 and 20 April were repelled by clash groups made up of Government sympathizers and employees of the municipality, who acted jointly with National Police agents from Masaya.<sup>599</sup> A witness described the incidents of 19 April as follows: *“the motorized group set the tone and the police gave them cover, and they acted jointly. They acted jointly, but in a very orderly manner”*.<sup>600</sup> The witness referred that the march was intercepted by police and clash forces: *“on Limón Street, about 150 meters before reaching the Masaya-Managua highway, there is a bridge where there was already police presence and public officials and government supporters and followers carrying handmade mortars that were fired against the demonstrators who were trying to follow the march. It was not possible to move forwards because it was abundant, we were shot with pellets by the anti-riot police”*.<sup>601</sup> The demonstrators retreated and were followed by police patrols and motorized persons. When they tried to regroup to close the march, the demonstrators were attacked again: *“they chased us until we reached the neighbourhood of Monimbó behind them came the police, officials with mortars, throwing stones at us, uttering insults”*.<sup>602</sup>

387. Coordination between the National Police and pro-government armed groups was also observed during the operations carried out to evict the students who had taken over the facilities of several universities.

<sup>592</sup> GIEI Nicaragua, “Inicio de represión a protesta pacífica”, 21 December 2018 (min. 0:28), available at: <https://www.youtube.com/watch?v=d-4ZQnUxcB0>; GHREN interview DDIV024.

<sup>593</sup> GHREN interview DDIV024.

<sup>594</sup> GHREN interviews DDIV011, DDIV024.

<sup>595</sup> GIEI Nicaragua, “Policía Nacional abastece de piedras” (21 December 2018), available at: <https://www.youtube.com/watch?v=8e4O2ocD2XY>; GIEI Nicaragua Report, p. 97.

<sup>596</sup> GHREN interview DDIV011.

<sup>597</sup> GIEI Nicaragua, “Policía Nacional entrega detenidos a grupos de choque” (21 December 2018), available at: <https://www.youtube.com/watch?v=jIT0D3DvOR8>.

<sup>598</sup> GIEI Nicaragua Report, p. 98.

<sup>599</sup> GHREN interviews DDIV040, DDIV009, DDIV028. See Confidencial, “Esta Noche 19 de abril 2018 (COMPLETO) | Represión y censura ante protestas por reformas al INSS”, 19 April 2018 (min. 12:06 to 12:18).

<sup>600</sup> GHREN interview DDIV009.

<sup>601</sup> GHREN interview DDIV027.

<sup>602</sup> GHREN interview DDIV027.

388. According to the GIEI Nicaragua report, on 18 April 2018, clash groups attacked people who were at the entrance of the UCA in Managua with stones and sticks.<sup>603</sup> According to Amnesty International, two National Police vehicles arrived at the scene and supplied members of the clash groups with stones to attack the demonstrators. After committing these assaults, the clash forces withdrew and their members boarded buses guarded by the police.<sup>604</sup>

389. According to the GIEI Nicaragua, on 19 and 20 April, the National Police acted alone in their failed attempt to evict students from the UNI in Managua. Throughout the day on 20 April, police used lethal ammunition against the students, resulting in the death of three people and in many individuals injured.<sup>605</sup> That afternoon, the police facilitated the forcible entry of pro-government armed groups into the UNI facilities; these stormed in, shooting students and killing a fourth victim.<sup>606</sup> A witness confirmed the presence of agents of the National Police on 20 April at the front of UNI “dressed in black and hooded” and in the back wearing “short-sleeved light blue shirts, with fluorescent vests and motorcycle helmets”, as well as the presence of a group of “motorized men wearing white T-shirts, not hooded, with sticks and helmets” who tried to break down the wire fence to break into the university.<sup>607</sup> According to the witness, when he was trying to leave the UNI, he heard a shot and saw a person fall. Protesters grabbed the victim by his hands and feet and took him inside. This person subsequently died.<sup>608</sup>

(d) *Escalation of violence and consolidation of repressive strategies*

(i) Before and after the Mothers’ March

390. The repression of the Mothers’ Marches, particularly in the cities of Managua and Estelí on 30 May 2018 constitutes a turning point in the Nicaraguan human rights situation. The GHREN identified a strong escalation of the repressive capacity and lethal use of force by the National Police and pro-government armed groups to suppress these events.

391. In Managua, thousands of people marched peacefully to accompany the mothers of the victims killed during the protests and to denounce the grave human rights situation in the country. According to the GIEI Nicaragua, snipers were reportedly stationed at the National Stadium and on the slopes of Lomas de Tiscapa in Managua, from where they fired indiscriminately into the crowd, wounding several people and killing at least two.<sup>609</sup> Police officers and pro-government armed groups reportedly made incursions towards the stadium sector, moving in motorcycles and pick-up trucks from which they fired at the demonstrators with firearms. In the UNI sector, members of pro-government armed groups used firearms to shoot at demonstrators who were sheltering behind barricades, wounding several people and killing at least three. Protesters responded with stones and mortars but continued to come under attack even as they attempted to retreat.<sup>610</sup>

392. In Estelí, the repressive dynamics of the 19 and 20 April marches were replicated. Audiovisual and photographic material analysed by the GHREN shows the presence of

<sup>603</sup> GIEI Nicaragua Report, p. 85. See Confidencial, “Esta Noche 19 de abril 2018 (COMPLETO) | Represión y censura ante protestas por reformas al INSS”, 19 April 2018 (from min. 7:32).

<sup>604</sup> Amnesty International, *Shoot to Kill*, p. 11.

<sup>605</sup> A recording obtained and verified by the GIEI Nicaragua shows members of the National Police firing from their location in Paseo Tiscapa at students who were inside the UNI campus in Managua. See: [https://www.youtube.com/watch?v=bP-M-o\\_OS2Q](https://www.youtube.com/watch?v=bP-M-o_OS2Q). See also Confidencial, “Esta Noche 19 de abril 2018 (COMPLETO) | Represión y censura ante protestas por reformas al INSS”, 19 April 2018 (from min. 2:42).

<sup>606</sup> GIEI Nicaragua Report, pp. 188–189.

<sup>607</sup> GHREN interview DDIV042.

<sup>608</sup> *Ibid.*

<sup>609</sup> GIEI Nicaragua Report, pp. 158–163; Confidencial, “El recuento #EnCaliente del ataque a la “madre de todas las marchas” en Nicaragua”, 30 May 2019 (min. 14:48 to 17:00), available at: <https://www.youtube.com/watch?v=ywLKpaXq2kE>.

<sup>610</sup> GIEI Nicaragua Report, p. 167; EEAF, SITU, “Nicaragua: Marcha de las Madres Reconstrucción”, available at: <https://marchadelasmadres.com/#/es>.

armed individuals outside the headquarters of the General Revenue Directorate (*Dirección General de Impuestos*, DGI)<sup>611</sup> and in the vicinity of the central park.<sup>612</sup> A witness told the GHREN that “*there were armed paramilitaries from the DGI to Plaza Gadea. In these cases the police were like guards for them*”.<sup>613</sup> Among them, members of the CPCs and workers from the Mayor’s Office of Estelí, the DGI and the Nicaraguan Water and Sewage Company (*Empresa Nicaragüense de Acueductos y Alcantarillados Sanitarios*, ENACAL), were identified.<sup>614</sup> The Group analysed a video in which a person is seen shooting with a short firearm in the vicinity of Plaza Gadea.<sup>615</sup> In other videos, demonstrators can be observed moving wounded people:<sup>616</sup> in one of them a person can be heard saying “*they already killed one*”;<sup>617</sup> while, in another one, a person can be heard saying, “*what they are doing is shooting*”.<sup>618</sup>

393. As of 30 May, the social protest transformed itself in response to the repression of the Mothers’ Marches. Although the demonstrators had begun to erect barricades since the first days of the protests, from that critical moment on, the phenomenon of the barricades took hold and increased significantly. From June onwards, although marches continued to take place, they were carried out in more sheltered environments, within areas where roadblocks and barricades erected by protesters provided protection against possible attacks.<sup>619</sup> In this context, the roadblocks and barricades became the very form of protest. From this moment on, the scenario where repression was exercised also changed.

(ii) Operations by police and highly organized armed groups

394. Starting in June, the National Police and pro-government armed groups also changed their strategy and *modus operandi*, adapting to the new context. From mid-June to the end of July, a series of police and pro-government armed group operations were carried out throughout the country, popularly known as “operation clean-up”. Their objective was to tear down the barricades and roadblocks that had paralyzed the country in protest of the human rights situation in the country. The operations were carried out jointly by agents of the National Police, including anti-riot forces and militarized pro-government armed groups, and developed in an increasingly organized and coordinated tactical and operational manner, with an increasing use of material, logistical and arms resources, and highly specialized tactics.

395. In an interview with a media outlet, a former member of one of these groups said that he participated in operations in different cities and regions: “*in Jinotepe, Masaya, Monimbó, Las Esquinas, in Diriamba [...] we were involved in practically everything*”.<sup>620</sup> He mentioned that the members of the pro-government armed groups “*went around in coordination with the National Police, working*” and that “*everything was well coordinated, in conjunction with the police*”.

<sup>611</sup> Audiovisual and photographic material on file with GHREN DDDOC114, DDDOC115, DDDOC136; documents on file with GHREN DDDOC121, DDDOC127, DDDOC129.

<sup>612</sup> Audiovisual and photographic material on file with GHREN DDDOC037.

<sup>613</sup> GHREN interview DDIV024.

<sup>614</sup> Documents on file with GHREN DDDOC035, DDDOC136, DDDOC129, DDDOC122.

<sup>615</sup> Audiovisual material on file with GHREN DDDOC117.

<sup>616</sup> Audiovisual material on file with GHREN DDDOC039, DDDOC040, DDDOC041, DDDOC042, DDDOC131.

<sup>617</sup> Audiovisual material on file with GHREN DDDOC039.

<sup>618</sup> Audiovisual material on file with GHREN DDDOC042.

<sup>619</sup> Demonstrators who had participated in this march and who came from the department of Carazo told the GHREN that the level of repression perpetrated and the fear that similar attacks could occur throughout the country, determined the lifting of roadblocks and barricades in the department as protection. In particular, the “tranque San José”, which demonstrators had previously closed intermittently for two hours a day as a form of protest, was reportedly closed permanently as of this date. GHREN interviews DDIV015, DDIV016, DDIV018.

<sup>620</sup> La Prensa Nicaragua, “Las confesiones de un paramilitar del régimen de Daniel Ortega”, 24 October 2018, available at: <https://www.youtube.com/watch?v=duXnIeOdKtE&t=9s>.



396. The source said that the pro-government armed groups in Carazo received weapons and were coordinated by the FSLN Political Secretary in San Marcos and by a retired ex-military officer: “they gave us all weapons, shotguns, so that we would go to clean the roadblocks and we have proof of that”.<sup>621</sup> This testimony coincides with what was expressed by witnesses interviewed by the GHREN, and with interviews with other members of pro-government groups, indicating that the delivery of weapons took place in the FSLN’s regional house in San Marcos, Carazo; this place functioned as the headquarters of the pro-government armed groups in the area and, from there, the operations in Diriamba, Dolores, Jinotepe, La Concepción, Masatepe and Niquinohomo, among others, were launched.<sup>622</sup>

397. When asked about the type of weapons they were given, the source specified: “they were all carrying shotguns and some M16s”. He explained that they were also given different coloured T-shirts to identify themselves: gray to operate in Jinotepe and blue for Masaya.<sup>623</sup> This information coincides with the photographic and audiovisual evidence collected by the GHREN.<sup>624</sup>

398. Most of the attacks on barricades took place in the evening or early morning hours, and in some cases were preceded by cuts in electricity and other services.<sup>625</sup> Thus, many of the operations took place in the dark, limiting the protesters’ ability to react, as well as their ability to document the events. Also, the power outages hindered communication between the protesters and the taking of photographs and videos, as their phones often ran out of battery. In most cases, the existence of the barricades also implied the absence of journalists during the offensives against the roadblocks. In several of these events, the presence of snipers on the rooftops was alleged.<sup>626</sup>

399. Between 8 and 24 July 2018, massive operations were carried out in different regions, with a significantly greater deployment of resources, both in terms of the number of agents that participated, as well as the level of specialization of the troops, and the quantity and lethal capacity of the weaponry used. These operations were carried out with the objective of definitively disarming the roadblocks and barricades erected by the population that was protesting, and to regain control of the university facilities that remained occupied by students.

400. The Group determined that the first operation occurred simultaneously in Jinotepe, Diriamba and Dolores, in the department of Carazo, on 8 July. Other operations followed, including the attack on the National Autonomous University of Nicaragua (*Universidad Nacional Autónoma de Nicaragua*, UNAN) and the adjacent “Divina Misericordia” Church on July 13 in the city of Managua, the operation in the neighbourhood of Monimbó, Masaya, on 17 July, and the operation in the city of Jinotega on 23 July.

401. Most of the roadblock dismantling operations investigated by the GHREN involved joint and coordinated action by the National Police, including special forces, and militarized pro-government groups. The number of agents involved and the level of

<sup>621</sup> *Ibid.*

<sup>622</sup> GHREN interview DDIV017; La Prensa, “Anduvimos apoyando quitando tranques: las confesiones de los tomatierros desalojados que fueron paramilitares”, 21 October 2018, available at: <https://www.laprensani.com/2018/10/21/departamentales/2487188-las-confesiones-de-los-tomatierros-desalojados-que-fueron-paramilitares>.

<sup>623</sup> La Prensa Nicaragua, “Las confesiones de un paramilitar del régimen de Daniel Ortega”, 24 October 2018.

<sup>624</sup> Photographic material on file with GHREN DDDOC055, DDDOC102, DDDOC103, DDDOC104, DDDOC147, DDDOC14; audiovisual material on file with GHREN DDDOC057, DDDOC058, DDDOC144, DDDOC145, DDOC151.

<sup>625</sup> For example, on the afternoon/evening of 22 June 2018, there was a blackout in an area of the *Barrios Orientales* in Managua, caused by a shot to a light transformer, prior to the operation carried out in the early morning of 23 June in that area. GHREN interviews DDIV001, DDIV010. During the 8 July operation in Carazo, *Claro*’s telephone signal was suspended as of 06:00. Water services and electricity were also cut off at some point. GHREN interview DDIV015; original testimony collected by FIDH/CENIDH on file with GHREN DDDOC270.

<sup>626</sup> GHREN interviews DIV016, DDIV019, DDDOC020, DDIV027, DDIV028, DDIV048.

coordination between the groups that participated in the operations varied according to the area and complexity of the structures of the barricades or roadblocks to be cleared, as well as the capacity of the demonstrators to repel the attack. This puts into evidence the significant level of planning of such operations and how the information was being handled.

402. According to the testimonies gathered, during the operations carried out in Jinotepe (Diriamba and Dolores) and Monimbó, the security forces moved simultaneously, proceeding in columns from different access points to the objective, creating an encirclement.<sup>627</sup> In Carazo, the columns maintained a precise order. Members of pro-government armed groups advanced in the first place; they headed the offensive and could be identified because they wore white t-shirts and used balaclavas, military boots and long weapons. Following these forces there were agents of the special forces of the National Police, using highly specialized intervention tactics.<sup>628</sup>

403. According to residents of *Barrio Camilo Ortega* in Jinotega, around 15:00 on 23 July 2018, numerous members of the National Police and pro-government armed groups were deployed at the entrance of the sector in order to dismantle the last two remaining barricades in the area.<sup>629</sup> Around 18:00, members of “Movimiento Azul y Blanco” made a public appeal for support in preventing the police from entering the neighbourhood, through a live broadcast.<sup>630</sup> Following the appeal, numerous people began to enter the neighbourhood through *Calle Centenario*.<sup>631</sup> Around 21:00-21:30, members of the National Police and pro-government armed groups began to shoot at the demonstrators.<sup>632</sup> Agents of the National Police also began to dismantle the barricades.

404. When the shooting began, the self-organized youths (“autoconvocados”) had to flee crouching down, crawling to avoid being hit by the bullets.<sup>633</sup> According to an eyewitness to the events, “*when they saw a lot of people coming to the neighbourhood, the police started shooting. I was even in that march, I remember that I jumped over this barricade and I was almost shot. Even one of the kids, one of the ones next to me, was grazed by a bullet*”.<sup>634</sup> The attack continued all night; a witness reported that they could not sleep that night because they heard gunshots “all the time” until 04:00 and added: “*the last thing they heard was: surrender, you son of a bitches, we have you surrounded*”.<sup>635</sup>

<sup>627</sup> GHREN interviews DDIV018, DDIV019, DDIV045, DDIV027.

<sup>628</sup> GHREN interviews DDIV018, DDIV019.

<sup>629</sup> Original testimonies collected by FIDH/CENIDH on file with GHREN BBD0C061, BBD0C030, BBD0C029; La Prensa, “Policías y paramilitares desmontan barricadas del barrio sandino, en Jinotega”, 23 July 2023, available at: <https://www.laprensani.com/2018/07/23/departamentales/2452411-policias-y-paramilitares-desmontan-barricadas-del-barrio-sandino-en-jinotega>; El Confidencial, “Barrio Sandino fue acechado durante horas”, 27 July 2018, available at: <https://www.confidencial.digital/reporte-ciudadano/barrio-sandino-fue-acechado-durante-horas/>. See La Prensa, “Al menos tres muertos y 25 heridos tras ataque en el barrio Sandino en Jinotega”, 24 July 2018, available at: <https://www.youtube.com/watch?v=PWTRSsjCQJk> (min. 1:16).

<sup>630</sup> “¡Viva Nicaragua Libre!”, Live recording of 24 July 2018, available at: <https://www.youtube.com/watch?v=Vj9SQ0dqj8> (the video shows five protesters who have their faces covered; two of them are armed with mortars); original testimonies collected by FIDH/CENIDH on file with GHREN BBD0C029, BBD0C061; Onda Local, “Jinotega: ¡Auxilio, están disparando a matar!”, 24 July 2018, available at: <https://ondalocalni.com/noticias/467-jinotega-auxilio-est-an-disparando-a-matar/>.

<sup>631</sup> Original testimony collected by FIDH/CENIDH on file with GHREN BBD0C029; La Prensa, “Al menos tres muertos y 25 heridos tras ataque en el barrio Sandino en Jinotega”, 24 July 2018.

<sup>632</sup> 100% Noticias, “Barrio Sandino, en Jinotega es atacado por paramilitares y policías”, 23 July 2018, available at: <https://100noticias.com.ni/nacionales/91786-barrio-sandino-es-atacado-por-paramilitares-y-poli/>.

<sup>633</sup> Original testimony collected by FIDH/CENIDH, on file with GHREN BBD0C030.

<sup>634</sup> Original testimony collected by FIDH/CENIDH, on file with GHREN BBD0C029.

<sup>635</sup> Original testimony collected by FIDH/CENIDH, on file with GHREN BBD0C030.

## (iii) Repression of attempted protests following the dismantling of roadblocks and barricades

405. Coordination between the National Police and the pro-government armed groups continued during the weeks following the execution of operations to remove the roadblocks and barricades.<sup>636</sup> Once these were disarmed, police and members of militarized pro-government groups maintained a strong presence in the areas where the roadblocks and barricades had been erected, in order to maintain control over these areas.<sup>637</sup> Photographic material analysed by the GHREN shows a consistent presence of heavily armed agents of the National Police in the marches, behind which members of pro-government armed groups can be seen, many of them motorized, carrying FSLN flags, and having their faces covered with red and black bandanas and/or helmets.<sup>638</sup>

406. One protester told the GHREN that, during one of the last marches, he saw, upon reaching a corner, about 20 members of a pro-government armed group “with [FSLN] flags, armed and motorized”, who threatened the protesters with death.<sup>639</sup> The demonstrators were intercepted by police and pro-government armed groups; they tried to retreat, but two mortars were thrown at them followed by a “third mortar which was like a signal and they started shooting at point-blank range”.<sup>640</sup>

407. A journalist source interviewed by the GHREN who was covering the march reported that, at one point, riot police threw tear gas canisters at the demonstrators and then started shooting.<sup>641</sup> The source and the rest of the journalists covering the march also had to flee because of the gunfire. The journalists, identifying themselves as such, ran across an iron bridge; as they did so, they could feel the bullets hitting the bridge, which made them think that they were being shot at directly.<sup>642</sup>

## (e) Refusal of medical assistance

408. The GHREN has reasonable grounds to believe that, following orders from the Minister of Health, Sonia Castro, instructions were given to the directors of health centres and hospitals throughout the country to deny entry and medical attention to demonstrators, and to report to the police any demonstrators who arrived at the hospitals requiring medical assistance. According to witnesses interviewed by the GHREN, this instruction was transmitted by Minister Castro verbally and confirmed by e-mail.<sup>643</sup>

409. Some of the medical centres identified by witnesses and organizations as having denied medical attention to protesters include: Cruz Azul Hospital, which is part of the INSS; Ciudad Belen Health Centre in Managua; España Hospital in Chinandega;<sup>644</sup> and Alejandro Calero Health Centre in Masaya.<sup>645</sup> Other hospitals under the Ministry of Health<sup>646</sup> that denied attention are: Antonio Lenin Fonseca Hospital, Alemán Nicaragüense Hospital,<sup>647</sup> Manolo Morales Hospital, Roberto Calderón Hospital, Hospital Escuela Oscar Danilo Rosales Argüello -HEODRA-, and San Juan de Dios de Estelí Hospital.<sup>648</sup>

<sup>636</sup> See “Nicaragua Carazo Diriamba 9 de julio 2018”, 10 July 2018, available at: <https://www.youtube.com/watch?v=8ftFudU8XUE>.

<sup>637</sup> This pattern was observed in the cities of Managua in June and July, and in Diriamba, Jinotepe and Masaya in July.

<sup>638</sup> Photographic material on file with GHREN CCDOC084, CCDOC085, CCDOC088, CCDOC089, CCDOC090, CCDOC091.

<sup>639</sup> GHREN interview BBIV017; photographic material on file with GHREN CCDOC088.

<sup>640</sup> GHREN interview BBIV017.

<sup>641</sup> GHREN interview CCIV055.

<sup>642</sup> GHREN interview BBIV020.

<sup>643</sup> GHREN interviews IIIV001, IIIV002, IIIV003.

<sup>644</sup> GIEI Nicaragua Report, p. 207.

<sup>645</sup> GHREN interview DDIV017.

<sup>646</sup> IACHR Report on Grave Breaches, p. 50.

<sup>647</sup> GHREN interview DDIV003.

<sup>648</sup> GHREN interview DDIV032.

410. The GHREN was able to document three cases in which the death of the victims allegedly occurred due to lack of medical attention.<sup>649</sup> According to a witness interviewed by the Group, at the “El Retén” barricade in downtown Concepción, one person was shot in the thorax and taken to the Alejandro Calero Health Centre, one kilometre from the barricade. However, by order of the health centre’s head nurse, the gates of the centre were closed, denying him medical attention. The witness was able to identify members of pro-government armed groups guarding the centre and surrounding the entrance.<sup>650</sup>

411. A 15-year-old victim died on 20 April 2018, at Bautista Hospital, from a gunshot wound to the neck. The minor was denied access to the Cruz Azul Hospital.<sup>651</sup> According to the GIEI Nicaragua, the victim died as a result of the delays in getting medical assistance.<sup>652</sup>

412. According to the testimony of a Carazo doctor interviewed by Human Rights Watch, “his superior in the Ministry of Health had told him that the health centre he was in charge of, should only treat ‘our people’, presumably referring to the pro-government armed gangs”. The doctor added that, on 8 July 2018, “about 20 armed members of these gangs arrived at the health centre and did not allow anyone else to enter [...] According to his testimony, eight members of these gangs received medical attention, but no protesters were cared for”.<sup>653</sup>

(i) Discrimination and stigmatization

413. A variety of sources, victims, and witnesses, including medical professionals who witnessed the events, stated that injured persons and their families suffered discrimination and stigmatization at medical centres because they were protesters, and that some injured persons were subjected to intentional medical malpractice.<sup>654</sup> The behaviours described to the GHREN by several witnesses include the lack of specialized care and medical treatment to individuals in accordance with the severity of their injuries, and physical mistreatment of seriously injured persons.<sup>655</sup>

414. The GIEI Nicaragua documented, among others, the cases of four victims who died allegedly due to lack of due diligence and medical negligence.<sup>656</sup>

415. A witness interviewed by the GHREN recounted the humiliations suffered by his relative in a public hospital in Managua. The victim had suffered an injury to a vital organ, did not receive proper medical attention, and died.<sup>657</sup>

(ii) Surveillance and presence of pro-government armed groups in health centres

416. Witnesses interviewed by the Group reported that members of the National Police and pro-government armed groups maintained a presence outside and inside hospitals and, on occasions, requested information about patients and medical personnel in health centres.<sup>658</sup> Members of the National Police and pro-government armed groups also obstructed first responders who were trying to reach injured demonstrators and provide

<sup>649</sup> The GHREN does not include a cite to the relevant evidence for confidentiality and security reasons.

<sup>650</sup> GHREN interview DDIV017.

<sup>651</sup> GIEI Nicaragua, “Hospital Cruz Azul niega atención a Álvaro Conrado” (21 December 2018), available at: <https://www.youtube.com/watch?v=XgEGkr97ISk>; Amnesty International, Shoot to kill, p. 27.

<sup>652</sup> GIEI Nicaragua Report, p. 206.

<sup>653</sup> Human Rights Watch, “Nicaragua, “Despido arbitrario de médicos y trabajadores de la salud””, 7 August 2018, available at: <https://www.hrw.org/es/news/2018/08/07/nicaragua-despido-arbitrario-de-medicos-y-trabajadores-de-la-salud>.

<sup>654</sup> GHREN interviews IIV003, IIV002, DDIV007, IIV008, DDIV014.

<sup>655</sup> GHREN interviews IIV003, IIV002; original testimony collected by CPDH on file with GHREN DDDOC571.

<sup>656</sup> GIEI Nicaragua Report, p. 208. The GHREN was able to document one of these deaths directly, but does not cite the evidence for reasons of confidentiality.

<sup>657</sup> GHREN DDIV007 interview.

<sup>658</sup> GHREN interviews DDIV010, DDIV007.

them with medical assistance, as is the case of the attack on the UNAN and the Divina Misericordia church on 13 July.

417. According to testimonies, the attendance of medical personnel at health centres decreased drastically due to the directive of the Ministry of Health not to treat demonstrators, as well as the permanent presence of members of pro-government armed groups in the vicinity of the centres, and the surveillance by members of the health sector unions, who harassed and intimidated health professionals.<sup>659</sup>

(iii) Use of ambulances and health system personnel in support of the police and pro-government armed groups

418. It is also worth noting the cooperation of the Ministry of Health during the operations to repress the protest. Testimonies and photographic analysis confirm the presence of ambulances and health system personnel to provide treatment to the police and members of the pro-government armed groups.<sup>660</sup> However, witnesses denounced that during these operations, health system personnel did not provide assistance to the demonstrators.<sup>661</sup>

419. A witness told the GHREN that “we could hear terrible gunshots, very loud detonations and I was very struck by the fact that the last bursts of machine gunfire were heard at approximately 5:30 in the morning, and in all that period of time no ambulance sounded to bring the wounded or transfer the dead, or anything, but at dawn the bodies of the people were found and it had to be their relatives who had to come to bring the deceased”.<sup>662</sup>

420. According to Amnesty International, images taken on 9 July 2018 show a caravan of at least 23 pickup trucks of pro-government group members, armed with a variety of shotguns, pistols, improvised mortars, *slam guns*, and AK-style rifles and carrying the FSLN flag. The caravan also included three Ministry of Health ambulances.<sup>663</sup>

(iv) Retaliation against health professionals and medical students

421. The Ministry of Health claims to have provided medical attention to 1921 injured persons<sup>664</sup> and performed 109 autopsies.<sup>665</sup> However, a large number of injured and deceased victims were treated in improvised medical posts, private clinics, and by the Nicaraguan Red Cross, without the support of the Government.<sup>666</sup> Doctors, professors and medical students, among others, provided volunteer labour and supplies at the improvised medical posts.

422. These and other health professionals who defied the instruction to refuse medical assistance to injured protesters suffered reprisals. Individuals interviewed by the Group reported that health workers were under constant surveillance by members of trade unions sympathetic to the ruling party, and that those who provided assistance during the protests

<sup>659</sup> GHREN interviews DDIV010, DDIV032.

<sup>660</sup> GHREN interview DDIV007; see 100% Noticias, “Paramilitares atacan Masaya”, 17 July 2018, available at: <https://100noticias.com.ni/videos/171-paramilitares-atacan-masaya/>; Amnesty International, *Instilling Terror*, p. 15.

<sup>661</sup> GHREN interviews DDIV0017, IIV001.

<sup>662</sup> The GHREN does not cite the relevant evidence for security reasons.

<sup>663</sup> Amnesty International, *Instilling Terror*, p. 15.

<sup>664</sup> CVJP, Third Report, p. 3.

<sup>665</sup> CVJP, Third Report, p. 4.

<sup>666</sup> A medical professor who was treating injured persons at the UNI medical post during the protests called on the entire population and the medical profession to support them. In this call, he stated that they had treated seriously wounded people with traumatic pneumothorax and cranioencephalic trauma due to a bullet: “*the police are scourging us directly, they are scourging us all, shooting us to kill us with rubber bullets, AK shots, even shotgun shots, tear gas bombs and stun bombs*”. Available at: <https://www.facebook.com/watch/?v=10155843625619790>; GHREN interviews DDIV007, DDIV015.

were arbitrarily detained, harassed and threatened with death, and their houses were defaced.<sup>667</sup>

423. Many doctors, paramedics and health personnel were forced to resign and/or pressured to leave the country.<sup>668</sup> The IACHR stated that at least 300 cases of dismissed health professionals were reported.<sup>669</sup> According to a lawyer who represented several doctors who had been dismissed, most of the dismissals were made under art. 45 of the Labor Code, by termination of the employment contract for an indefinite period of time and without just cause.<sup>670</sup>

424. One witness reported that pharmacies that provided supplies for the improvised medical posts had been closed, and health workers' organizations had been shut down, including the Nicaraguan Medical Association.<sup>671</sup> Additionally, the GHREN received information regarding the cancellation of the enrolment of medical students who provided medical assistance during the protests (See Chapter III.B). The IACHR adopted precautionary measures in favour of those who provided medical assistance and aid to injured persons as a result of the acts of violence during the 2018 social protest, through Medical Brigades, considering that these persons would be at risk as a result of such participation.<sup>672</sup>

(f) *Impunity and obstacles to the establishment of the facts, and access to justice*

425. The Government of President Daniel Ortega has attributed responsibility for all acts of violence, including responsibility for the 198 deaths officially recognized by the Government, to the individuals who participated in the protests, which the Government characterized as a “*coup d'état* attempt”. The Government has not recognized any instance of disproportionate use of force by National Police agents, nor the commission of any criminal acts by pro-government armed groups. In fact, the Government denies the existence of such groups.

426. On 30 April 2018, the National Assembly established the CVJP with the mandate to gather information on the events that took place in Nicaragua as of 18 April 2018, to analyse such information and to establish the facts.<sup>673</sup> However, the findings of said commission presented versions of the events that reproduced the “officialist” rhetoric and blamed the protesters themselves for the deaths.

427. On the other hand, Nicaraguan authorities have used the discourse of the alleged *coup d'état* to stigmatize and criminally prosecute human rights defenders, leaders,

<sup>667</sup> GHREN interviews DDIV024, DDIV017, IIIV002.

<sup>668</sup> GHREN interviews DDIV024, IIIV001. See also: IACHR, Forced Migration of Nicaraguan Persons to Costa Rica, OEA/Ser.L/V/II. Doc.150/19 (8 September 2019), p.41.

<sup>669</sup> The Special Rapporteurship on Economic, Social and Cultural Rights of the IACHR expressed its concern regarding the arbitrary dismissals and harassment against medical personnel, university professors and students, as well as the negative effects of these actions on patients' health. Press release, 10 September 2018, available at: <https://www.oas.org/es/cidh/prensa/comunicados/2018/203.asp>.

<sup>670</sup> Labour Code, Law No. 185 of 1996, art. 45. When the employer terminates the employment contract for an indefinite period of time and without just cause, the employer will pay the worker an indemnity equivalent to 1) one month's salary for each of the first three years of work and 2) twenty days' salary for each year of work as of the fourth year. In no case shall the indemnity be less than one month nor more than five months. Fractions between the years worked will be liquidated proportionally.

<sup>671</sup> GHREN interview IIIV002. See National Assembly, Decree No. 8757, “Decreto de Cancelación de Personalidades Jurídicas”, 2021, available at: [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/A78C33D100A85E64062587270072ACAB?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/A78C33D100A85E64062587270072ACAB?OpenDocument).

<sup>672</sup> See IACHR, Resolution 94/2018, Precautionary Measures No. 1051-18, Erick Juriel Murillo Pavón regarding Nicaragua, 28 December 2018, available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/94-18MC1051-18-NI.pdf>.

<sup>673</sup> See National Assembly, Resolution No. 01-2018, approved on 29 April 2018, published in *La Gaceta, Diario Oficial* No. 81 of 30 April 2018.

members of opposition political parties, independent media professionals, and other persons who are Government opponents or perceived as such, for their role in the 2018 protests.

428. The GHREN is not aware of any criminal proceedings against agents of the State security forces, or against individuals who are members of pro-government armed groups for human rights violations and abuses committed since the beginning of the crackdown on social protest in 2018.<sup>674</sup>

429. Numerous witnesses interviewed by the Group of Experts reported practices on the part of the competent authorities that hindered and obstructed the processes to establish the circumstances surrounding the deaths and to obtain justice in cases of extrajudicial executions.<sup>675</sup> In several cases documented by the GHREN, medical or police personnel demanded that the victims' relatives sign withdrawal letters ("actas de desistimiento") as a condition to be able to remove their relative's body from the Government facility or to obtain the corresponding death certificate.<sup>676</sup> In these documents, the victims' relatives were required to expressly renounce to their right to denounce the death of their relative and to request an autopsy. These findings confirm a pattern already evidenced by other international agencies and human rights organizations.<sup>677</sup> The GHREN also documented cases in which authorities attempted to manipulate the content of death certificates, and to issue certificates indicating other causes of death, when the death had been caused by firearm wounds.<sup>678</sup>

430. National regulations establish that the IML must perform an autopsy in the investigation of cases of violent, sudden or unexpected death, death suspected of criminality, death in custody and death in which professional responsibility is being investigated, in order to assist the competent authorities.<sup>679</sup> To this end, the IML must follow a procedure regulated in the Technical Standard for the performance of autopsies; this procedure covers the removal of the corpse, and the chain of custody and preservation of evidence.<sup>680</sup> In particular, in the case of deaths due to injuries caused by firearm projectiles, the procedure requires the forensic physician to recover the projectiles if they remain inside the corpse and to deliver them to the National Police, in addition to providing information on the type of weapon involved and the distance of the shot, among other things; all of this is aimed at establishing the facts that led to the death.<sup>681</sup>

431. A source told GHREN that, during the acts of repression of social protest, this procedure was not followed: *"Hilux arrived at night, they threw the corpses at the first gate. The security guards had to pick up the corpses and run and take them to the morgue, there you violate the whole chain of custody. After that you start to see in all the hospitals what was going on. Many people died in the hospital and when the cause of death is a firearm, you have to send the bodies for an autopsy. But what is sent to forensic medicine is only the epicrisis, the death certificate. With the death certificate the autopsy was made. Without a corpse you cannot do an autopsy, you cannot reach any conclusions if you only have a death certificate. There are several of the autopsies that were done without a*

<sup>674</sup> The GHREN requested information from the State in this regard through a communication. As of the date of writing this report, no response has been received.

<sup>675</sup> GHREN interviews DDIV026, DDIV031, CCIV022; document on file with GHREN DDDOC603.

<sup>676</sup> The GHREN learned that, in at least three cases, health personnel required the family to go to the National Police station in order to obtain the death certificate necessary for burial.

<sup>677</sup> GIEI Nicaragua Report, p. 247; Amnesty International, Shoot to kill, pp. 22 and 32; IACHR, Grave Violations, p. 54.

<sup>678</sup> GHREN interviews DDIV013, DDIV029; GIEI Nicaragua Report, p. 138.

<sup>679</sup> "Norma técnica para la realización de autopsias médico legales", NT/IML-008/02/16, Second version, February 2016, pp. 9–10, available at: <https://www.poderjudicial.gob.ni/pjupload/iml/pdf/norma-008-02-16.pdf>, on file with GHREN DDDOC604.

<sup>680</sup> *Ibid.*

<sup>681</sup> *Ibidem*, Annex 2, p. 105.

*corpse*".<sup>682</sup> This practice was also documented by the GIEI Nicaragua who defined it as the practice of "confected autopsies" (*autopsias confeccionadas*).<sup>683</sup>

432. According to victims' families, organizations accompanying victims, and other sources interviewed by the GHREN, in many cases of violent death, the IML tried to refuse to perform or did not perform an autopsy. While in some cases this is linked to the withdrawal letters, in other cases this was done in contempt of their obligations and in others due to opposition from the families of the victims, who reported not having confidence in the institution.<sup>684</sup> In at least three cases documented by the GHREN, the family had to insist that the autopsy be performed.<sup>685</sup>

433. On the other hand, several testimonies gathered by the Group indicate that some offices of the Public Prosecutor's Office refused to receive complaints from family members of the deceased.<sup>686</sup> In the cases in which the offices received the complaint, the personnel of the Public Prosecutor's Office did not take the necessary steps to properly carry out the investigation, such as conducting autopsies and ballistics examinations, and ensuring the preservation of the crime scene and the chain of custody of the evidence. On the contrary, the complainants were asked to gather evidence on the cases, placing the burden of proof on the victims' relatives; when they did as asked no record of the evidence handed over to the Public Prosecutor's office was kept.<sup>687</sup> In several cases, hours after the incidents, individuals dressed as civilians proceeded to clean the streets of shell casings, blood and other elements that would have been useful for the investigation; camera images from businesses that had been able to record the events were at times confiscated.<sup>688</sup>

434. Relatives went on multiple times to the Public Prosecutor's Office to obtain information on the progress of the investigations only to receive evasive answers in the best of cases and, in the worst, be subjected to acts of intimidation. In some cases, family members were told to request information about the investigation from the National Police, whom the family members held responsible for the victim's death by action, omission or acquiescence.<sup>689</sup> Victims' relatives interviewed by the GHREN reported acts of surveillance, intimidation and threats by public officials, in particular by members of the National Police who patrolled or stationed themselves outside their homes.<sup>690</sup> In other cases, they received visits from State officials who offered them sums of money, help, medical attention, and/or work in exchange for changing their version of events.<sup>691</sup>

<sup>682</sup> GHREN interview BBIV015.

<sup>683</sup> GIEI Nicaragua Report, p. 247. The GIEI Nicaragua found that, in eight cases, the forensic doctors made the report weeks after the deaths occurred, based only on the medical file sent by the hospitals, without having examined the corpses.

<sup>684</sup> The GHREN identified at least six cases in which family members refused to perform an autopsy due to lack of confidence in the institutions in charge of the investigation. In one case it was expressed that there was confidence that, in this way, at least the bullet could be saved as evidence for future investigations. GHREN interview DDIV012. See GIEI Nicaragua Report, p. 246.

<sup>685</sup> GHREN interview CCIV022; original testimony collected by CPDH on file with GHREN DDDOC631. See also Amnesty International, *Shoot to Kill*, p. 22.

<sup>686</sup> GHREN interview DDIV012; on file with GHREN DDDOC601, DDDOC521.

<sup>687</sup> GHREN interviews DDIV026, DDIV031; on file with GHREN DDDOC127; document collected by CPDH in the GHREN's archive DDDIC656.

<sup>688</sup> GHREN interview DDIV041; on file with GHREN DDDOC603. See also Amnesty International, *Shoot to Kill*, p. 23.

<sup>689</sup> GHREN interview DDIV026; original testimony collected by CPDH on file with GHREN DDDOC129.

<sup>690</sup> GHREN interviews DDIV001, DDIV003, DDIV005, DDIV041, DDIV013, DDIV014, BBIV018; original testimony collected by CPDH in the GHREN's archive DDDOC129; documents in the GHREN's archive DDDOC26, DDDOC271, DDDOC603, DDDOC631, DDDOC691, DDDOC692.

<sup>691</sup> GHREN interviews, CCIV022, DDDOC029; interviews with family members conducted by CPDH, on file with GHREN DDDOC012, DDDOC397, DDDOC651.



435. Likewise, the adoption of the Amnesty Law on 8 June 2019,<sup>692</sup> left charges against all persons involved in the commission of crimes in the context of the social protests, including those persons linked to the State and members of pro-government groups who acted with the blessing of the State, without effect.<sup>693</sup> Article 1 of said Law establishes that “the competent authorities shall not initiate investigation processes, shall close the administrative processes initiated and the criminal processes to determine responsibility, as well as the execution of sentences”.

436. The former UN High Commissioner for Human Rights, Michelle Bachelet, warned that the adoption of the Amnesty Law “could hinder the prosecution of persons potentially responsible for serious human rights violations committed during the context of the anti-government protests”.<sup>694</sup> Indeed, the victims’ relatives interviewed by the GHREN, and the lawyers and organizations that accompany them, stated that, even before the adoption of the Law, there was no progress in the investigation of the deaths of their relatives, which was even more accentuated after the adoption of the Law. In some cases, the staff of the Public Prosecutor’s Office explained to them that the investigation should be closed by virtue of the Amnesty Law.<sup>695</sup>

437. The GHREN has reasonable grounds to believe that the adoption of said Law was aimed at protecting pro-government institutions, structures, police entities and armed groups that committed violations, abuses and crimes in 2018, and in particular at enabling impunity and the closure of investigations on the deaths of civilians in the context of the acts of repression of social protest.

(g) *Case studies*

438. Following the analysis of the historical background of the different phases of the repression since April 2018 and the most recent actions undertaken by the Nicaraguan Government against the civilian population, the GHREN considered it prudent not to include in this report information that could lead to the identity of the sources, as this could in turn expose victims, witnesses and relatives to further risks. Therefore, the events and cases that had been selected by the GHREN as case studies representative of the patterns presented above, and which described the circumstances of the extrajudicial execution of 15 victims, will not be part of this report. The corresponding information remains in the GHREN’s archive for the purpose of contributing to future accountability efforts.

439. The following is a historical account of events that occurred in the city of Masaya between 19 April and 17 July, which exemplifies the continuity and systematicity of the attacks against demonstrators and the civilian population in general; as well as in the UNAN and the Divina Misericordia Church between 13 and 14 July 2018, which exemplifies the arbitrariness and disproportionality of the use of force against

<sup>692</sup> Amnesty Act, Law No. 996, approved on 8 June 2019, published in *La Gaceta, Diario Oficial* No. 108 of 10 June 2019. It was approved by the National Assembly through an expedited process, in 24 hours. Neither the civil society nor the victims of serious human rights violations were consulted.

<sup>693</sup> Art. 1 of the Amnesty Act mandates, “Broad amnesty is granted to all persons who have participated in the events that occurred throughout the national territory as of 18 April 2018 until the date of entry into force of this Act. The amnesty extends to persons who have not been investigated, who are under investigation processes, in criminal proceedings to determine responsibility and in compliance with execution of sentences. Therefore, the competent authorities shall not initiate investigation processes, shall close the administrative processes initiated and the criminal processes to determine responsibility, as well as the execution of sentences, at the time of entry into force of this Act. Likewise, persons who are deprived of their liberty at the time of entry into force of this Law shall be released immediately. By provision of this Act, the competent authorities shall cancel the criminal records of all persons benefited by the amnesty”. Document on file with GHREN FFD0C059.

<sup>694</sup> OHCHR, press release, “Nicaragua: Bachelet warns against amnesty law and lack of reparations for victims”, 8 June 2019, available at <https://www.ohchr.org/es/2019/06/nicaragua-bachelet-warns-against-amnesty-law-and-lack-reparations-victims?LangID=S&NewsID=24684>.

<sup>695</sup> Original testimony collected by CPDH, on file with GHREN DDD0C420; documents on file with GHREN DDD0C601, DDD0C579, DDD0C580, DDD0C581, DDD0C622.

demonstrators. Both cases demonstrate an intention to cause harm and a plan that could not do without precise orders given by the highest State hierarchy.

### Case 1 Continuum of violence: Masaya, 19 April- 17 July 2018

The city of Masaya is considered a bastion of “Sandinismo”, particularly the neighbourhood of Monimbó, which was the epicentre of the first uprising against Somoza on 26 February 1978. This historical link gave the protest in Masaya a symbolic importance for both positions, that of the inhabitants who, after the repression of the social protest, barricaded themselves and gained control of the city, and that of the State security forces who, acting jointly with pro-government armed groups, committed multiple attacks to regain control of the city.

The case of the city of Masaya is exemplary of the constant repression against the civilian population in a disproportionate manner, causing the death of numerous civilian victims over 89 days, from 20 April until 17 July, the day on which members of the National Police and pro-government armed groups carried out a massive operation that ended up violently in the dismantling of the social protest in the city.

The IACHR registry reports 40 people killed (4 National Police agents and 37 civilians) in the city of Masaya from 20 April to 17 July, whose deaths are linked to social protest.<sup>696</sup> Another civilian died on 17 September 2018 from gunshot wounds received on 19 June 2018.<sup>697</sup> In 30 of these cases, the death would have derived from firearm wounds; in the remaining 10 cases, the IACHR had no data in this regard. In its Fourth Report, the CVJP identifies 35 victims who died in the city of Masaya during this time.<sup>698</sup> Following its investigation, the GHREN was able to verify the death of at least 29 people, including one victim not reported in those records and the person who died on 17 September 2018, as a result of wounds sustained on June 19.

As in the rest of the country, the population of Masaya mobilized on 19 April, in protest against the INSS reform. On that day, a march was organized through social media and its destination was the regional delegation of the INSS, on *Calle Panamericana*. According to the investigation conducted by the GIEI Nicaragua, the 19 April march was predominantly peaceful. However, it was first obstructed and then repressed by agents of the National Police and clash groups. According to information in possession of the GHREN, confirmed by official data, the National Police used rubber bullets and tear gas to repress the protest,<sup>699</sup> resulting in three people injured by impacts of such bullets.<sup>700</sup>

An eyewitness to the events<sup>701</sup> told the GHREN that riot and regular police, and clash groups, including motorized vehicles, attacked the march as it was passing through the “Parque Central” (central park), with rubber bullets, mortars and shots in the air. According to the testimony, the National Police agents acted jointly and in an orderly manner with those not wearing uniforms: the motorized vehicles set the tone of the attack while the

<sup>696</sup> The GHREN filtered the IACHR database by “city of the event”, obtaining 40 records of victims under Masaya and one under Monimbó. One unidentified person whose place of death is San Juan de la Concepción was not included. According to the database, six other persons reportedly died in other localities of the Department.

<sup>697</sup> This victim is found in the Fourth Report of the CVJP in the “List of names of 2,264 injured citizens throughout the country of which 418 correspond to members of the national police”, CVJP, Fourth Report, p. 207.

<sup>698</sup> The CVJP stated that it found no record in the electoral pattern of two additional fatalities. CVJP, Fourth Report, p. 15.

<sup>699</sup> GIEI Nicaragua Report, p. 102.

<sup>700</sup> Ministry of Health, “Informe de personas lesionadas, atendidas en Unidades de Salud, 18 de abril al 5 de junio 2018”. Document provided to GHREN by the IACHR, on file with GHREN DDDOC363. Cases 1060, 1062, 1063. It should be noted that in these three cases the bullets hit, respectively, face, scalp and lips, which could lead to the assumption that the shots were aimed at the head in order to cause greater damage.

<sup>701</sup> GHREN interview DDIV009.

police provided cover.<sup>702</sup> The evidence analysed by the GHREN points to the coordinator of the motorcycle brigade of the city of Masaya and former FSLN councilman as the leader of the pro-government armed group who allegedly participated in the operation.<sup>703</sup>

Information gathered by the GHREN from different sources coincides with the fact that some demonstrators in the city of Masaya made use of stones, as well as homemade weapons including slingshots, mortars<sup>704</sup> and contact bombs,<sup>705</sup> whose manufacture was perfected throughout the protest. Testimonies indicate that in later phases of the protest, few people were in possession of firearms, including hunting shotguns and revolvers.<sup>706</sup> On 12 May, protesters reportedly recovered an M16 A1 assault rifle during clashes with militarized pro-government armed groups.<sup>707</sup>

On the other hand, as described below, the evidence analysed by the GHREN and the testimonies collected coincide in that the National Police agents, at times in conjunction and coordination with pro-government armed groups, made consistent use of firearms, without resorting, as of 20 April, to other less harmful means. The lack of use of means that could cause less harm to the demonstrators gives the Group of Experts reasonable grounds to believe that the security forces used arbitrary, disproportionate and unlawful force against the civilian population of Masaya continuously from 20 April to 17 July 2018, causing a high number of arbitrary deprivations of life.

On the morning of 20 April, a group of demonstrators destroyed and set fire to the facilities of the “Comandito” in the Monimbó neighbourhood.<sup>708</sup> According to testimonies gathered by the GIEI Nicaragua, this act was in reaction to the repression of the previous day’s protest.<sup>709</sup> In the afternoon of the same day, a peaceful march proceeded from the avenue Real de Monimbó towards the square of the Parque Central of Masaya, while another group of demonstrators was already in this same square. Also in this place were agents of the National Police, including of the anti-riot unit, as well as members of clash groups dressed in civilian clothes, carrying mortars, and positioned next to National Police agents.<sup>710</sup>

According to the GIEI Nicaragua, “at approximately 3:30 p.m., the riot police division began its advance down the street that leads to the Monimbó neighbourhood. Simultaneously, the police began to repress by firing rubber bullets at the other group of demonstrators who were inside the Parque Central”.<sup>711</sup> During the night, confrontations took place between the demonstrators and members of the National Police and pro-government armed groups in the Parque Central and around the handicrafts market, and the use of firearms by the security forces against the demonstrators was reported. According to the GIEI Nicaragua<sup>712</sup> and the IACHR’s registry of victims, four people died as a result of gunshot wounds.<sup>713</sup>

<sup>702</sup> See also GIEI Nicaragua Report, p. 103.

<sup>703</sup> GHREN interview DDIV009. See <https://twitter.com/latrincheranic/status/1083768542476918784>; El Informe Nicaragua, “Muere Enrique Luna de la Juventud Sandinista que lideró paramilitares para atacar Masaya”, 5 November 2018, available at: <https://elinformeni.com/muere-enrique-luna-de-la-juventud-sandinista-que-lidero-paramilitares-para-atacar-masaya/#.Y5NCambMKUk>, on file with GHREN DDDOC309.

<sup>704</sup> GHREN interview DDIV028; photographic material on file with GHREN DDDOC319, DDDOC317, DDDOC320.

<sup>705</sup> GHREN interviews DDIV004, DDIV009, DDIV013, DDIV028; photographic material on file with GHREN DDDOC174.

<sup>706</sup> GHREN interviews DDIV013, DDIV027.

<sup>707</sup> Photographic material on file with GHREN DDDOC318.

<sup>708</sup> GIEI Nicaragua Report, pp. 104–105; audiovisual material in the GHREN’s archive DDDOC156.

<sup>709</sup> GIEI Nicaragua Report, p. 105.

<sup>710</sup> El Nuevo Diario, “Protestas en Monimbó contra reformas al INSS”, available at: <https://www.youtube.com/watch?v=xzcgV3SzYuY> (minute 30.43); photographic material on file with GHREN DDDOC157, DDDOC310.

<sup>711</sup> GIEI Nicaragua Report, p. 105.

<sup>712</sup> GIEI Nicaragua Report, p. 106.

<sup>713</sup> The CVJP only recognized three of them. In at least one case, the hospital did not provide a *post mortem* report to the family, as reported on the Asociación Madres de Abril website.

On 21 April 2018, the Movement of Masaya was formed.<sup>714</sup> On that day, a fifth person died from a penetrating gunshot wound to the thorax, as reported in the death certificate issued by the Masaya Mayor's Office on 25 April 2018.<sup>715</sup> According to information disclosed by the family, the victim was not even participating in the protest.<sup>716</sup> In addition, according to information from the Ministry of Health, between 20 and 21 April 2018, 13 people were admitted to health centres for injuries; two of those people were injured by firearm projectiles.<sup>717</sup>

Although the protesters reportedly began to erect barricades after the repression of the protests of 19 April, the practice increased exponentially after the confrontations of 20 April that resulted in the first fatalities. The inhabitants of Masaya erected barricades throughout the city as a form of protest against the repression suffered and, according to testimonies and press reports, as a form of protection and self-defence.<sup>718</sup> Analysis of satellite images of 14 July 2018 conducted by UNOSAT<sup>719</sup> identify 178 possible barricades located in different locations of the city in Masaya, with significant concentration in the southern area of the city. It should be noted that prior to this date, after a large-scale operation carried out on 19 June, the National Police had already retaken control of the northern part of the city and disarmed the barricades in that area. By the date in the image, the demonstrators had retreated to the Monimbó neighbourhood.



**Photo 1: Map of barricades in Masaya, 14 July 2018**  
(Source: UNOSAT)

A witness told the Group of Experts that, due to the fear generated by the presence of members of pro-government armed groups in public hospitals, medical and nursing students organized medical posts in different parts of the city to attend to injured demonstrators.<sup>720</sup>

The marches continued on a daily basis, particularly in the neighbourhood of Monimbó.<sup>721</sup> In line with the temporal analysis of deaths, in the 20 days following 21 April, no fatalities connected with the social protest were recorded in the city of Masaya.

In May, the confrontations intensified. According to information gathered by open sources, on 12 May, workers of the Masaya Mayor's Office reportedly tried to remove the

<sup>714</sup> GHREN interview CCIV010.

<sup>715</sup> Document on file with GHREN DDDOC050.

<sup>716</sup> The GHREN does not cite evidence for security reasons.

<sup>717</sup> Injured persons report from the Ministry of Health, on file with GHREN DDDOC363.

<sup>718</sup> GHREN interviews DDIV009, CCIV010, DDIV045. See also: Confidential, "Masaya resiste con 200 barricadas: el símbolo de la protesta nacional", 11 June 2018 (min. 2.00–2.23 and 2.45–3.07), available at: <https://www.youtube.com/watch?v=PzZXLNKSksw>.

<sup>719</sup> Document on file with GHREN DDDOC558. UNOSAT identified 178 possible barricades in different locations in Masaya, Nicaragua. The overview map shows the location of the identified barricades.

<sup>720</sup> GHREN interview CCIV010.

<sup>721</sup> See El Nuevo Diario, "Continúan protestas en Masaya", 6 May 2018, available at: <https://www.youtube.com/watch?v=BRm5CXuOF00>.

barricades in the San Miguel neighbourhood and clashes took place between members of the National Police and pro-government armed groups, and demonstrators, mainly in the area of the handicrafts market.<sup>722</sup> According to the GIEI Nicaragua and the IACHR victims' registry, two people were hit by firearm projectiles, both in the skull; one died the same day and the second in the early morning of the following day, 13 May.<sup>723</sup>

Another fatality took place on 30 May as a result of a bullet wound to the thorax. According to an eyewitness, the shot was fired from a two-story building next to the National Police station, on top of which a sniper was stationed.<sup>724</sup> The place from where the shot was fired, according to this source, would be equivalent to a shooting distance of 100 meters.<sup>725</sup>

There was an upsurge in violence in Masaya between 2 and 3 June. According to the IACHR registry, four people died on 2 June and five on 3 June. The CVJP acknowledged eight people killed during these days: seven on 2 June and one on 3 June.<sup>726</sup> Two of the victims were minors. Seven of the nine victims were hit by firearm projectiles: five in the thorax, one in the skull and one in the eye. The GHREN found no information regarding two of the deceased. The deaths took place in the area around the Parque Central and the Parque San Miguel, which includes the handicrafts market and the National Police barracks. Testimonies reported the presence of riot police and snipers in the area.<sup>727</sup>

An eyewitness told the GHREN that he was half a block away from San Miguel Park at 1 or 2 o'clock in the afternoon of 2 June, when he witnessed the death of a demonstrator: *"the young man had run out of mortar, he was standing, with a hood, he had the mortar tube in his hand and raised his arms surrendering. I thought they were going to capture him, but the policewoman shot him in the chest, at a distance of 20 meters. The guy fell and the cops left, they didn't even call an ambulance. There were about 10-20 policemen"*.

According to information received by the GHREN, in the afternoon of 2 June, a group of demonstrators was inside the handicrafts market. Around 5 p.m. several National Police patrol cars arrived to surround the market. Police began to shoot at the demonstrators, who began to run away from the place.<sup>728</sup> Some protesters were unable to leave the market and tried to hide. Upon being discovered by the police, one of the protesters knelt in front of a policeman, while the policeman pointed his gun at him. The victim reportedly begged not to be shot before being shot in the chest at point-blank range by the policeman.<sup>729</sup>

In a press release dated 3 June 2018, the National Police reported that, on the morning of 2 June, *"hooded criminal groups, with firearms, mortars and Molotov cocktails, continued to carry out terrorist acts against the Masaya National Police station, creating terror and panic among the neighbours of the sector. Police forces repelled these terrorist and criminal acts, injuring 8 police colleagues. Nineteen criminals and two teenagers were captured. They were later released through the intermediation of the Catholic Church"*. According to the press release, all the individuals detained had a criminal record of robbery with intimidation, force and violence. At the end of the note, the death of one of the victims is reported, *"as a result of terrorist acts carried out by criminal groups, hooded, with*

<sup>722</sup> Confidencial, "Masaya: tensa tregua tras 24 horas de terror", 13 May 2018, available at: <https://www.confidencial.digital/nacion/masaya-tensa-tregua-tras-24-horas-de-terror/>, on file with GHREN DDDOC330; La Prensa, "Antimotines atacan sorpresivamente a jóvenes manifestantes en el centro de Masaya", 12 May 2018, available at: <https://www.laprensani.com/2018/05/12/departamentales/2418585-antimotines-atacan-sorpresivamente-a-jovenes-manifestantes-en-el-centro-de-masaya>, on file with GHREN DDDOC364.

<sup>723</sup> The GHREN does not cite the relevant evidence for security reasons.

<sup>724</sup> GHREN interview DDIV045; photographic material on file with GHREN DDDOC352.

<sup>725</sup> According to the witness, the victim was located at the following coordinates: 11.9733022569691047-86.0950496968966503 and the shooter at: 11.973540022384828-86.09425025839393.

<sup>726</sup> CVJP, Fourth Report.

<sup>727</sup> GHREN interviews DDIV027, DDIV028, DDIV045.

<sup>728</sup> Original testimony collected by CPDH, on file with GHREN DDDOC159.

<sup>729</sup> Original testimony collected by CPDH, on file with GHREN DDDOC159; photographic material on file with GHREN DDDOC152, DDDOC160.

*firearms, handmade weapons, mortars and Molotov bombs*". There was no mention of the other three fatalities of 2 June registered by the IACHR.

Among the victims on 3 June, a member of the DOEP of the National Police was identified. The National Police press release of 4 June reports that "*Hooded criminal groups, with firearms, mortars and Molotov cocktails, continued looting the handicrafts market and homes, creating terror and panic among the neighbours of the sector. The National Police reestablished public order. Later they attacked the National Police station in Masaya, repelled and dispersed by police forces, being killed by these terrorist groups, with bullet wounds to fellow policeman José Abrahán Martínez, 21 years old, and one injured policeman*". Regarding this death, the press release issued by the General Directorate of Communication of the Judiciary on 5 June 2018 reported that the IML determined that the victim's death "*was violent and from the forensic point of view, the manner of death is homicidal*". The IML does not report the cause of death.

The GHREN found information about the death of another policeman, presumably belonging to an intelligence agency, information that could not be corroborated. The lack of response to the requests for information sent by the Group of Experts to the State of Nicaragua did not allow for clarification of the specific circumstances that caused these deaths.

According to a person who was in Masaya at the time, at the beginning of June the demonstrators were controlling the city on all four sides, while a group of between 20 and 30 members of the National Police remained in the police headquarters in Masaya and within a perimeter marked on one side by the old handicrafts market and on the other side by the Humberto Alvarado school.<sup>730</sup>

On 6, 9 and 17 June, three people lost their lives in Masaya, one per day, all three by firearm projectiles, respectively, in the skull,<sup>731</sup> thorax<sup>732</sup> and eye.<sup>733</sup> The deaths occurred in the context of attacks by police and pro-government armed groups against barricades that had been erected in the area of the Parque Central and the sector controlled by the National Police.<sup>734</sup> Two sources interviewed by the GHREN claimed to have witnessed the events that led to the death of the 9 June victim.<sup>735</sup> One of them said that the victim was looking for his son, who was participating in the protest. He went to look for him "*he peeked around the corner thinking to see his son and the sniper saw him and shot him in the chest*".<sup>736</sup>

In the 10 June 2018 press release of the National Police, it was reported that on the afternoon of 9 June, on the west side of Masaya's Parque Central, a "*criminal group of hooded men, with firearms, mortars and Molotov bombs, set fire to the Nicafé Restaurant*" which resulted in the death of a person by a bullet shot to the thorax.<sup>737</sup> The victim's place of death, according to the statement, does not coincide with the testimonies of the eyewitnesses interviewed by the GHREN. In addition, the eyewitnesses confirmed that the death was not related to vandalism.<sup>738</sup> The same press release reported that in the South and North sector of the Departmental Police Delegation of Masaya, a "*group of hooded subjects, with firearms, mortars and Molotov bombs, who maintain roadblocks in the city, besieged and attacked throughout the day and night, the facilities, injuring three police colleagues*".<sup>739</sup>

In the early morning of 19 June, agents of the National Police's DOEP carried out an

<sup>730</sup> GHREN interview DDIV027.

<sup>731</sup> Document on file with GHREN DDDOC043.

<sup>732</sup> GHREN interview DDIV028.

<sup>733</sup> Document on file with GHREN DDDOC044.

<sup>734</sup> See Confidencial, "Masaya resiste con 200 barricadas: el símbolo de la protesta nacional", 11 June 2018 (mins. 6:13–7:35), available at: <https://www.youtube.com/watch?v=PzZXLNKSksSw>.

<sup>735</sup> GHREN interviews DDIV028; DDIV045.

<sup>736</sup> GHREN interview DDIV028.

<sup>737</sup> National Police, Press Release No. 49-2018, 10 June 2018.

<sup>738</sup> GHREN interview DDIV043.

<sup>739</sup> National Police of Nicaragua, Press Release No. 49-2018 (Managua, 10 June 2018) on file with GHREN DDDOC161.

operation to extract Commissioner Avellán, who had remained in the National Police barracks in Masaya since 2 June.<sup>740</sup> In order to enter Masaya, it was first necessary to disarm the *Ticuanetepe* blockade, at km 14 of the Managua-Masaya highway. According to audiovisual evidence, the blockade was attacked by members of the National Police and pro-government armed groups dressed in white shirts, around 5:00 am.<sup>741</sup>

Audiovisual evidence shows agents of the Rapid Intervention Group (GIR) of the National Police shooting with AK47 weapons in the streets of Masaya.<sup>742</sup> At least three people died during this operation<sup>743</sup> and a fourth one was wounded in the skull and died on 16 September 2018, as a result of injuries sustained during the operation.<sup>744</sup> In a press release on that day, the National Police made no mention of the facts and reported instead that “*Criminal groups, with firearms, handmade weapons and mortars*” would have been looting the facilities of the headquarters of the Departmental Electoral Council of the municipality of Masaya.<sup>745</sup>

After the 19 June operation, the National Police regained control of the northern zone of Masaya, dismantling the barricades with the use of mechanical shovels. As a result of this, the demonstrators concentrated in Monimbó. By then, the National Police maintained patrols on the stretch of the road from Nindirí to the Las Flores junction.<sup>746</sup> Also, a *de facto* curfew was imposed at 6 p.m. in the northern part of the city. People dressed in jeans, boots, blue or light blue shirts, wearing balaclavas and carrying long guns, made rounds in pick-up trucks. If they saw a person on the street, they would take him or her into custody.<sup>747</sup>

According to the IACHR list, on 21 June three other deaths were reported in the department of Masaya, while the CVJP only recognized two. The two victims that coincide in the two records died of gunshot wounds in the sector of *Tranques de Mebasa*. The GHREN received information that one of the victims was not involved in the protest; however, the Group of Experts could not verify whether these deaths occurred in the city or in the roadblocks outside the city, nor the level of linkage with the context of the repression.

On 23 June 2018, a female worker of the Mayor’s Office was hit by a bullet in the neck while leaving the cemetery, an area where a confrontation was taking place between demonstrators and police agents. The incident was reported in a press release of the National Police, where it was alleged that the victim died from a bullet wound after an attack by a group of hooded subjects with firearms, while performing cleaning work in

<sup>740</sup> GHREN interview DDIV013. See 100% Noticias, “La operación de extracción del comisionado Avellán en Masaya”, 22 June 2018, available at: <https://www.facebook.com/NOTICIAS-12-NICARAGUA-200823376627607/videos/la-operaci%C3%B3n-de-extracci%C3%B3n-del-comisionado-avell%C3%A1n-en-masaya-quien-llevaba-m%C3%A1s-d/1836978309678764/>; La Prensa, “Operativo de la Policía para sacar al comisionado Ramón Avellán deja seis muertos en Masaya”, 19 June 2018, available at: <https://www.laprensani.com/2018/06/19/nacionales/2437705-operacion-sangrienta-ramon-avellan-de-masaya>.

<sup>741</sup> Canal 10 Nicaragua, “Grupos paramilitares desmontaron tranques en la entrada a Ticuanetepe”, 19 June 2018, available at: <https://www.youtube.com/watch?v=GM2iI3pvlg>; Artículo 66, “Después de atacar el tranque de Ticuanetepe, los paramilitares armados mantienen control de ese sitio”, 19 June 2018, available at: <https://www.facebook.com/Articulo66/videos/despu%C3%A9s-de-atacar-el-tranque-de-ticuanetepe-los-paramilitares-armados-mantienen-c/1759291907473315/>.

<sup>742</sup> See <https://twitter.com/LoboMY/status/1141218399764328448>; <https://twitter.com/LoboMY/status/1141233159130030080>. According to eyewitnesses interviewed by the GHREN, there was no presence of non-uniformed individuals in the execution of this operation in the city of Masaya. GHREN interviews DDIV027, DDIV013.

<sup>743</sup> Documents on file with GHREN DDDOC334, DDDOC047, DDDOC049.

<sup>744</sup> Original testimony collected by CPDH on file with GHREN DDDOC308; documents on file with GHREN DDDOC305, DDDOC307.

<sup>745</sup> National Police of Nicaragua, Press Release No. 69-2018 (Managua, 19 June 2018), available at: <https://www.policia.gob.ni/?p=19566>, on file with GHREN DDDOC164.

<sup>746</sup> GHREN interview DDIV027.

<sup>747</sup> GHREN interview DDIV013.

*Barrio Ulises Tapia Roa.*<sup>748</sup>

According to testimonies and journalistic sources,<sup>749</sup> on 15 July, a lieutenant of the Anti-Narcotics Inspection Unit of the National Police died, according to official sources, at the Las Flores junction, on the road to Catarina.<sup>750</sup> For this day both the CVJP and the CIDH registered four deaths in the department; this information still needs to be corroborated.

On 17 July 2018, an operation took place in the neighbourhood of Monimbó, putting an end to the barricades and the social protest in the city of Masaya. Testimonies and open sources coincide in the presence of a very high number of troops from special forces of the National Police and militarized pro-government groups. The latter were hooded, wore blue shirts, and some carried a red and black bandanna.<sup>751</sup> A video recorded by a citizen from the window of a house shows the transit of seven vans transporting individuals dressed in blue shirts and carrying long guns. The voice on the recording indicates that this was occurring at 6:00 a.m. and that the vehicles were heading towards *Las 7 Esquinas*, an intersection two blocks north of Masaya's central square.<sup>752</sup> Another video shows several pickup trucks transporting subjects dressed in blue and a MINSA ambulance entering Masaya.<sup>753</sup>

The attack began in the early hours of the morning and from all sides of the entrance to the neighbourhood of Monimbó. Social media reported at 6:44 am “*strong paramilitary presence in Tranques of Membasa, el Rúnel, Nindirí and police station and in Camino Viejo to Niquinomo. The 4 cardinal points of Monimbó surrounded. Today the colour of the paramilitaries is blue*”.<sup>754</sup> At 6:57 “militarized groups” in blue shirts were reported on Camino Viejo to Santa Catarina.<sup>755</sup> One witness told the GHREN that: “the boys told us on 17 July that they were attacking Monimbó from different sides [...] they surrounded Monimbó [...] totally that day”.<sup>756</sup> Another witness reported that he woke up at 5 a.m. at the sound of gunshots and that when he tried to identify the direction the shots were coming from, he understood that they were surrounded.<sup>757</sup>

DOEP agents and militarized pro-government armed groups participated in the operation in a joint and coordinated manner.<sup>758</sup> Photographic material shows members of the pro-government groups pointing guns at civilians and making arrests.<sup>759</sup> One photo from that day shows Commissioner Ramón Avellán next to two people dressed in blue shirts, one of them carrying a 12-gauge shotgun.<sup>760</sup> Behind the police and pro-government elements there were shovels dismantling the barricades.<sup>761</sup> A witness told the GHREN that the operation ended at around 1 p.m. when the security forces had taken control of the area.<sup>762</sup> Photographic and audiovisual material evidenced the use of assault rifles such as: AK47

<sup>748</sup> National Police of Nicaragua, Press Release No.72-2018 (Managua, 23 June 2018), available at: <https://www.policia.gob.ni/?p=19653>, on file with GHREN DDDOC067.

<sup>749</sup> Confidencial, “La resistencia de Masaya y la Operación Limpieza que masacró a Monimbó”, 24 July 2019, available at: <https://www.youtube.com/watch?v=NtjEg3jcefg>.

<sup>750</sup> National Police of Nicaragua, “Teniente Gabriel de Jesús Vado, ¡presente, presente, presente!”, 15 July 2019, available at: <https://www.policia.gob.ni/?p=35160>.

<sup>751</sup> GHREN interview DDIV044; photographic material on file with GHREN DDDOC056, DDDOC147, DDDOC148, DDDOC149, DDDOC150, DDDOC313.

<sup>752</sup> See “Llegada de los paramilitares llegando a Masaya”, 17 July 2018, available at: <https://www.facebook.com/Mov19AOficial/videos/llegada-de-los-paramilitares-llegando-a-a-masaya/402562023600775/>.

<sup>753</sup> Audiovisual material on file with GHREN DDDOC292.

<sup>754</sup> See <https://twitter.com/brujamistica/status/1019201417255538688>; photographic material on file with GHREN DDDOC293, DDDOC289, DDDOC289.

<sup>755</sup> Photographic material on file with GHREN DDDOC321.

<sup>756</sup> GHREN interview DDIV045.

<sup>757</sup> GHREN interview DDIV027.

<sup>758</sup> See <https://twitter.com/CIDH/status/1151886465900658688>; photographic material on file with GHREN DDDOC056, DDDOC298.

<sup>759</sup> Photographic material on file with GHREN DDDOC105, DDDOC312.

<sup>760</sup> Photographic material on file with GHREN DDDOC304.

<sup>761</sup> GHREN interviews DDIV004, DDIV022, DDIV044; photographic material on file with GHREN DDDOC296, DDDOC314.

<sup>762</sup> GHREN interview DDIV022.



and Galil; PKM machine guns and RPG-7 rocket launchers; Dragunov and 308 (both sniper weapons), by members of the special forces of the National Police.<sup>763</sup> On the part of the militarized pro-government groups, the use of shotguns, AK47, M16 and M16-A1 and in one case a Dragunov rifle was evidenced.<sup>764</sup> The GHREN had access to photographic material of casings recovered after the operation:<sup>765</sup> according to the observation of an expert consulted by the GHREN, there is a high probability that these are 5.56 calibre ammunition, which coincide with the M16A1 weapons identified in the photographic evidence.<sup>766</sup>

The IACHR recorded five people killed during this operation, including a member of the National Police.<sup>767</sup> The police officer was 24 years old, and the forensic medical report made by the IML indicates that the cause of death was a craniofacial firearm projectile wound.<sup>768</sup>

In a press release of 17 July, the National Police reported that on that day “at approximately 07:00 in the morning, in the Países Bajos neighbourhood, city of Masaya, police forces carrying out work to restore public order, to bring peace, security and tranquillity, were attacked by groups of terrorists with firearms, who for 82 days had been holding the population hostage with roadblocks in Monimbó and surrounding neighbourhoods, in which they committed murders, kidnappings, torture, assaults, extortion, fires and threats, causing terror and anxiety among the inhabitants”.<sup>769</sup> The same note reports the death of the police element, blaming “armed terrorists” for it.

Testimonies and open sources reported that, on 18 July, DOEP agents and pro-government armed groups maintained a presence in the city of Masaya, patrolling and occupying public space.<sup>770</sup> Audiovisual and photographic evidence shows individuals dressed in blue shirts and hooded, in possession of high calibre weapons, moving around in pick-up trucks.<sup>771</sup>

The official press celebrated the operation as the liberation of the city and its citizens from kidnapping by terrorists financed by the *coup* right wing.<sup>772</sup>

<sup>763</sup> Amnesty International, *Instilling Terror*, pp. 19–20; photographic material on file with GHREN DDDOC056, IIDOC009, IIDOC010, IIDOC011, IIDOC013, IIDOC062, IIDOC063, IIDOC064.

<sup>764</sup> Photographic material on file with GHREN IIDOC003, IIDOC057, IIDON058, IIDOC005, IIDOC056, DDDOC298, IIDOC023. See: <https://www.facebook.com/watch/?v=10156621225463724>, on file with GHREN IIDOC006.

<sup>765</sup> Photographic material on file with GHREN DDDOC061.

<sup>766</sup> Photographic material on file with GHREN DDDOC055; GHREN interview DDIV050.

<sup>767</sup> The CVJP only registered three deaths, as two of the victims registered by the IACHR were not registered in the electoral roll. CVJP, Fourth Report.

<sup>768</sup> Judiciary, General Directorate of Communication, “Entran fallecidos por diversas causas al IML”, 18 July 2018, available at: [https://www.poderjudicial.gob.ni/prensa/notas\\_prensa\\_imprimir.asp?id\\_noticia=8895](https://www.poderjudicial.gob.ni/prensa/notas_prensa_imprimir.asp?id_noticia=8895), on file with GHREN DDDOC166.

<sup>769</sup> National Police of Nicaragua, Press Release No. 88-2018 (Managua, 17 July 2018), available at: <https://www.policia.gob.ni/?p=20249>, on file with GHREN DDDOC100. The GHREN found no other document from the National Police reporting on the events of 17 July 2018 in Masaya and the civilians who were killed.

<sup>770</sup> GHREN interviews DDIV004, DDIV022; photographic and audiovisual material on file with GHREN IIDOC062, IIDOC063, DDDOC172, DDDOC103, DDDOC104.

<sup>771</sup> AFP Español, “Masaya vigilada tras toma de control por gobierno de Nicaragua”, 18 July 2018, available at: <https://www.youtube.com/watch?v=Jyl0A0dM5N8>; Agencia EFE, “Gobierno de Nicaragua celebra toma de Masaya”, 18 July 2018, available at: <https://www.youtube.com/watch?v=olDJybOjyw4>; Ap Archive, “Grupos paramilitares controlan calles en Masaya, Nicaragua”, 24 July 2018, available at: <https://www.youtube.com/watch?v=rxHO5SnNilg>; photographic material on file with GHREN DDDOC055, DDDOC150, DDDOC102.

<sup>772</sup> El 19 Digital, “Monimbó, Masaya Territorio Liberado”, 17 July 2018, available at: <https://www.el19digital.com/articulos/ver/titulo:79150-monimbo-masaya-territorio-liberado->; audiovisual material on file with GHREN IIDOC006.

### Case 2: Attack on UNAN Managua and the Divina Misericordia Church

As part of the social protest, demonstrators, including students, took over the facilities of the UNAN in Managua as of 7 May 2018. The protesters established their centre of operations at the headquarters of the Institute of Geology and Geophysics (IGG-CIGEO/UNAN-Managua) in the northeastern part of the university campus.<sup>773</sup> They were organized through the formation of groups, coordinated among themselves, each responsible for one of the six gates of the campus.<sup>774</sup> The people in charge of the fifth and sixth gates were also in charge of the barricades erected as of 8 May, in order to protect the demonstrators.<sup>775</sup>

On 10 July 2018, the gate coordinators began meeting with a group from the Verification and Security Commission (*Comisión de Verificación y Seguridad*, CVS), as they had received information that an attack was being planned against UNAN, such as the one carried out in Carazo two days earlier.<sup>776</sup> In light of the inherent risks to the protesters as a result of the possible attack, the dialogue focused on planning a safe and secure withdrawal from the university. At this point, many of the students who were at the UNAN were tired and fearful due to the frequent attacks,<sup>777</sup> but could not return home for fear of possible reprisals to both their families and themselves.<sup>778</sup>

The following day, a second meeting was held, with the participation of the CVS coordinator and a representative of the Catholic Church. It was agreed during this meeting to prepare a letter in which the students would communicate their intention to leave the campus peacefully and the conditions required to do so, including security guarantees in terms of precautionary measures granted by international human rights organizations, and guarantees of no reprisals or persecution against those who supported the students during the takeover of UNAN Managua, as well as their families.<sup>779</sup> The letter requested that the handover of the university be done in the presence of an oversight commission and human rights organizations, and that it be recorded by the Catholic Channel, so that they could attest that the university was being handed over in good condition.<sup>780</sup>

The letter was addressed to the CVS coordinator, who would have transmitted the letter to the Government through the communication channel which, according to the sources consulted, consisted of direct contacts with Vice President Rosario Murillo and others in her Government.

On 13 July around 11:00 a.m., before the letter could be sent,<sup>781</sup> people inside the university campus began to hear isolated gunshots on the north side, from the suburban area, near Gate 6 of the UNAN.<sup>782</sup> This was reported to the CVS coordinator, reiterating that the students were formalizing their intention to leave the university facilities. The response from the communication channel with the Executive Branch was that they were probably government sympathizers who were celebrating the withdrawal and that it was not an attack on the UNAN.<sup>783</sup>

The shooting intensified at noon, directly targeting the barricades located at the university traffic circle. In audiovisual material consulted<sup>784</sup> the GHREN was able to observe an armed

<sup>773</sup> GHREN interview DDIV033; photographs on file with GHREN DDDOC032, DDD0C033.

<sup>774</sup> GHREN interview DDIV036.

<sup>775</sup> GHREN interviews DDIV036, DDIV47; photographs on file with GHREN DDDOC348, DDDOC349, DDDOC350.

<sup>776</sup> GHREN interviews DDIV033, DDIV036.

<sup>777</sup> GHREN interviews DDIV036, DDIV047, DDIV052.

<sup>778</sup> GHREN interviews DDIV036, DDIV047, DDIV052.

<sup>779</sup> GHREN interview DDIV033.

<sup>780</sup> Document on file with GHREN DDDOC012.

<sup>781</sup> GHREN interview DDIV033.

<sup>782</sup> GHREN interview DDIV033.

<sup>783</sup> GHREN interview DDIV033.

<sup>784</sup> 100% Noticias, “De esta forma paramilitares atacan en UNAN-Managua”, 13 July 2018, available at: <https://www.youtube.com/watch?v=4ds9H5zYK70>.

group shooting with firearms from two barricades located on the UNAN's runway close to the *Axis distribuidores SA* building.<sup>785</sup> One of the individuals can be seen shooting with an M16 A1, a 5.56 calibre assault rifle of great precision and range, and a drum magazine with a capacity of up to 75 bullets can be seen.<sup>786</sup> Testimonies gathered by GHREN and open sources tell of the desperation and fear of the students present at the barricade located at the traffic circle who remained under fire for hours without being able to take shelter.<sup>787</sup>

Communication with the CVS was constant and through the CVS the demonstrators reported the attack and requested a ceasefire order so that they could evacuate the university in safety.<sup>788</sup> They were told that it was the students who were attacking, and that they had to retreat, which was impossible under the gunfire.<sup>789</sup> The students coordinated themselves to evacuate the university campus safely, moving those who were in the area under attack with the garbage truck and liaising with citizens for the final exit to the university.<sup>790</sup> Meanwhile, at the barricade located in the university traffic circle, the students resisted the attack with mortars, stones and bottles that, according to the testimonies received by GHREN, were only used as a defence mechanism.<sup>791</sup>

Before the exits became inaccessible around 3:00–3:30 p.m., many students managed to leave the university campus through Gate 5, thanks to citizen support, and were taken to safe houses.<sup>792</sup>

At this point in the attack, several people were wounded by firearms: most of them managed to be evacuated, except for four who were trapped in the university campus and then in the Divina Misericordia church until the negotiation for their evacuation was completed at 10:30 p.m.<sup>793</sup>

The fire never ceased; the demonstrators who were behind the barricade retreated as best as they could, crawling to the university campus,<sup>794</sup> *“the boys began to deploy inside the university, hiding, crawling. I heard the bullets getting closer and closer. I was in a building with a courtyard in the centre and the bullets were hitting the concrete, passing over my head and pieces of concrete were falling on us”*.<sup>795</sup> During the retreat, a group of students took refuge in what they call “el monte” (the bush), the green part of the university campus which, due to lack of maintenance, had high grass and provided an opportunity to hide.<sup>796</sup>

When the students retreated, the attackers entered the facilities and burned the Arlen Siu Child Development Centre (CDI), which functioned as a kindergarten.<sup>797</sup> The version given by the General Secretary of UNAN Managua and disseminated by the pro-government media blames the students, branded as “terrorists”.<sup>798</sup>

<sup>785</sup> See <https://goo.gl/maps/zn9BYEztkaxb7VXZ9>.

<sup>786</sup> Confidencial, “News Report | El arsenal de guerra usado por Daniel Ortega para reprimir”, 12 February 2019 (min. 0:53), available at: <https://www.youtube.com/watch?v=G2RC1GM-O5c&t=58s>; Bellingcat, “Análisis del arsenal de los paramilitares nicaragüenses”, 12 February 2019, available at: <https://es.bellingcat.com/noticias/america/2019/02/12/analisis-del-arsenal-de-los-paramilitares-nicaraguenses/>.

<sup>787</sup> GHREN interview DDIV033; El Nuevo Diario, “Ataques a la UNAN continúan y estudiantes piden ayuda”, 13 July 2018, available at: <https://www.youtube.com/watch?v=oebtmoHu7o0>.

<sup>788</sup> GHREN interview DDIV033.

<sup>789</sup> *Ibid.*

<sup>790</sup> GHREN interview DDIV036. See <https://twitter.com/i/status/1017905756232962048>.

<sup>791</sup> GHREN interviews DDIV033, DDIV036, DDIV011.

<sup>792</sup> GHREN interview DDIV036.

<sup>793</sup> GHREN interview DDIV033.

<sup>794</sup> Photographic material on file with GHREN DDDOC353.

<sup>795</sup> GHREN interview. DDIV033.

<sup>796</sup> GHREN interview. DDIV033.

<sup>797</sup> GHREN interviews DDIV033; DDIV052.

<sup>798</sup> El 19 Digital, “Terroristas atrincherados en la UNAN queman instalaciones de esta Alma Mater”, 13 July 2018, available at: <https://www.el19digital.com/articulos/ver/titulo:79021-terroristas-atrincherados-en-la-unan-queman-instalaciones-de-esta-alma-mater>;

About 200 students, 40 of whom were women, sought refuge with Father Raúl Zamora at the Divina Misericordia church.<sup>799</sup> They took with them the first aid kits they still had in storage.<sup>800</sup> Approximately 15 students stayed behind the barricades in the vicinity of the church, on the Jean Paul Genie track.<sup>801</sup>

The church also became the target of the attack and came under fire from high calibre weapons, as evidenced by the observation of the deep holes in the walls of the building,<sup>802</sup> as well as the warheads collected inside.<sup>803</sup> Analysis of the photographic evidence by an expert indicates that 5.56 calibre and 9mm calibre weapons were used.<sup>804</sup>

Testimonies to the GHREN report that the “bullets” came from everywhere, in particular from the roof of the *Claro* building, about 45 meters north of the church of the Divina Misericordia church; the Jean Paul Genie track to the east; and the south side of the perpendicular street that divides the Villa Fontana park from the church property. The demonstrators used the benches and tables of the church to protect themselves from the bullets that hit the building through the stained-glass windows.<sup>805</sup> The shots were continuous and steady, only interrupted for a few seconds at times.<sup>806</sup>

The testimonies and accounts published in the media coincide in that there were more than two hundred people taking refuge in the church, including two priests and two journalists.<sup>807</sup> In videos recorded by the people in the church and disseminated by them on the web, one can hear gunshots and the terror that the young people who had taken refuge in the church were experiencing.<sup>808</sup> At dusk, the students realized that the electricity had been cut off until it was pitch dark inside and outside the church.<sup>809</sup>

Through the CVS channel they continued to request a cease fire and to allow the youths to leave in order to guarantee their safety. The Government continued alleging that it was the demonstrators who were attacking and asked them to lay down their arms. All the testimonies gathered agree that there were no weapons in the church, only some mortars.<sup>810</sup> Constant attempts at negotiation resulted in two ambulances being allowed in to transport the four injured people and to evacuate two foreign journalists who had been with the students since the attack began. The negotiation was led by the CEN; additional international pressure also took place, thanks to the messages spread by the demonstrators

<https://www.el19digital.com/articulos/ver/titulo:79021-terroristas-atrincherados-en-la-unan-queman-instalaciones-de-esta-alma-mater>.

<sup>799</sup> GHREN interview DDIV036. Interview with priest in Reportaje Nicaragua Investiga, on file with GHREN IIDOC014.

<sup>800</sup> GHREN interview DDIV033.

<sup>801</sup> GHREN interview DDIV052.

<sup>802</sup> La Prensa, “Así quedó la parroquia Divina Misericordia tras el ataque de paramilitares”, 15 July 2018, available at: <https://www.laprensani.com/2018/07/15/imagenes/2449201-asi-queda-la-parroquia-divina-misericordia-tras-el-ataque-de-paramilitares>; photographic material on file with GHREN CCDOC233, CCDOC234, CCDOC235.

<sup>803</sup> Photographic material on file with GHREN DDDOC328.

<sup>804</sup> Photographic material on file with GHREN DDDOC062; GHREN interviews DDIV050.

<sup>805</sup> Photographic material on file with GHREN CCDOC202, CCDOC203, CCDOC204, CCDOC205, CCDOC206, CCDOC207, CCDOC210, CCDOC211, CCDOC212, CCDOC225, CCDOC229, CCDOC194, CCDOC218, CCDOC221, DDCOD224, CCDOC231, CCDOC236, CCDOC239.

<sup>806</sup> GHREN interviews DDIV033, DDIV036, DDIV052.

<sup>807</sup> BBC News Mundo, “Nicaragua: cómo fue vivir más de 15 horas bajo el asedio de fuerzas paramilitares en una iglesia llena de estudiantes”, 15 July 2018, available at: <https://www.bbc.com/mundo/noticias-america-latina-44836156>; La Mesa Redonda, “En Divina Misericordia, fuerza paramilitaria disparaba a matar”, 13 July 2020, available at: <https://www.lamesaredonda.net/en-divina-misericordia-fuerza-paramilitar-disparaba-a-matar/>.

<sup>808</sup> Audiovisual material on file with GHREN DDDOC346, DDDOC325, DDDOC326, DDDOC327

<sup>809</sup> GHREN interviews DDIV033, DDIV036, DDIV052.

<sup>810</sup> GHREN interviews DDIV033, DDIV036, DDIV052.

and journalists present and the media coverage.<sup>811</sup> The Secretary General of the OAS called for a halt to the attack while it was still directed at the UNAN.<sup>812</sup>

At 10:30 p.m. the shooting stopped for the two ambulances and one vehicle to enter. They had to stop two blocks from the church. A video provided to the GHREN shows the entry of the wounded into the ambulance, in total darkness.<sup>813</sup> They were transporting four people who had been injured some 12 hours earlier and had no access to medical care.<sup>814</sup>

After the ambulances left, the attack resumed with the same intensity: “*Throughout the night there were wounded, injured, fainted, they cut the electricity, we were in darkness; at 2:00 a.m. shooting resumed; they were shooting all the time but there were moments when they were shooting from a machine gun. They also launched a flare that hit a tablecloth that caught fire, but the kids managed to mitigate it in time. Even from the flowerpots to mitigate the fire*”.<sup>815</sup>

Two people died from gunshot wounds to the skull during the attack.

On the morning of 14 July, negotiations resulted in the evacuation of the students and their transfer to the Managua Cathedral. Around 6:30 a.m. the demonstrators were regrouped outside the church, where the negotiators informed them of the conditions set by the Government for their departure.<sup>816</sup> These included the total disarmament of the students, who, according to witnesses, had only a few mortars to hand over.<sup>817</sup> The ambulances carrying the bodies of the two fatal victims had to wait for the other vehicles to leave. Women and men had to leave separately, occupying a minibus and two buses respectively. The three vehicles left between 8 and 8:30 a.m.; the windows were rolled down and the students had to keep their faces uncovered.<sup>818</sup> A police cordon blocked the way from the intersection at the Terraza Club. The presence of members of the National Police is observed in the vicinity of the church.<sup>819</sup>

After the attack, pro-government media disseminated photos of weapons allegedly found on the UNAN campus and that they had been used by the barricaded students to carry out acts of vandalism, even outside the campus.<sup>820</sup> These photos show homemade devices and five firearms, three shotguns, a revolver and an AK-47. The same article alleges that “*the subjects were discovered when they attacked the caravan for the Repliegue de la Paz*

<sup>811</sup> See: La Prensa, “Estudiantes de la UNAN Managua siguen cercados por los paramilitares en la Iglesia Divina Misericordia”, 13 July 2018, available at: <https://www.laprensani.com/2018/07/13/nacionales/2448522-un-estudiante-herido-en-ataque-la-unan-managua>;

[https://twitter.com/partlowj/status/1017960349914554368?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etwetembed%7Ctwterm%5E1017960349914554368%7Ctwgr%5E3db2b400dbfcfb6b33caf15c94d01c4e67de481f%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2F](https://twitter.com/partlowj/status/1017960349914554368?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwetembed%7Ctwterm%5E1017960349914554368%7Ctwgr%5E3db2b400dbfcfb6b33caf15c94d01c4e67de481f%7Ctwcon%5Es1_&ref_url=https%3A%2F%2F);

[https://twitter.com/silviojbaez/status/1017921357131206656?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etwetembed%7Ctwterm%5E1017921357131206656%7Ctwgr%5E3db2b400dbfcfb6b33caf15c94d01c](https://twitter.com/silviojbaez/status/1017921357131206656?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwetembed%7Ctwterm%5E1017921357131206656%7Ctwgr%5E3db2b400dbfcfb6b33caf15c94d01c)

<sup>812</sup> See: Luis Almagro on Twitter: “We request that the attack on the National Autonomous University of Nicaragua @UNANManagua be stopped and the lives of students be protected. The use of force against the University is inadmissible. Any eviction of the University must be negotiated @OEA\_oficial” <https://t.co/HLMrFI6fFn> / Twitter

<sup>813</sup> Audiovisual material on file with GHREN DDDOC355.

<sup>814</sup> GHREN interview DDIV033.

<sup>815</sup> GHREN interview DDIV036.

<sup>816</sup> Audiovisual material on file with GHREN DDDOC345.

<sup>817</sup> GHREN interviews DDIV033, DDIV036.

<sup>818</sup> GHREN interviews DDIV033, DDIV036, DDIV052.

<sup>819</sup> La Nación, “Estudiantes vivieron noche de horror en ataque de las fuerzas de Daniel Ortega contra iglesia en Nicaragua”, 14 July 2018 (min. 00.50), available at, <https://www.nacion.com/el-mundo/politica/estudiantes-vivieron-noche-de-horror-en-ataque-de/26F7SAZTQBB2RP6RI4IRVXUPGM/story/>; photographic material on file with GHREN DDDOC339, DDDOC357, DDDOC359, DDDOC360.

<sup>820</sup> TeleSurtv, “Hallan armas en una universidad de Nicaragua”, 14 July 2018, available at: <https://www.telesurtv.net/news/hallan-armamentos-universidad-managua-nicaragua--20180714-0028.html>.

*(Peace Retreat) in the country, just as it was about to leave the vicinity of the UNAN Managua and left nine wounded”.*<sup>821</sup>

The National Police reported that “armed terrorist groups, who have been holding the Rubén Darío UNAN-Managua University campus hostage for 45 days, occupying it as a torture centre, have been leaving in vehicles and motorcycles to commit murders, robberies with intimidation, arson, armed attacks on diplomatic offices and vehicles, kidnappings and serious disturbances to public order, keeping the inhabitants of this sector threatened, terrified and in anxiety. The National Police had knowledge of two people killed in blockades where armed individuals were present, around UNAN-Managua[...] both killed by firearm wounds by members of these terrorist groups”.<sup>822</sup>

## B. Systematic violations of other civil and political rights

440. Attacks on civic and political pluralism in Nicaragua have accelerated and intensified since April 2018. The body of information analysed by the GHREN demonstrate that the Government of Nicaragua implemented a series of legal and factual measures aimed at suppressing all criticism or opposition.<sup>823</sup> These measures were systematically and widely applied against persons considered opponents or critics of the Government.

441. Through repressive strategies that have become more sophisticated over time, the Government has caused the closure of the civic and democratic space, not only to members of the political opposition and social movements, but to all persons who express criticism or positions different from its political line and who are perceived and treated as a potential threat to the Government’s control over the power of the State.

442. The GHREN investigated 102 cases of serious violations and abuses of civil and political rights, and identified the main patterns, which led to the conclusion that the Government responded to expressions of social discontent with increasingly articulated repressive measures. These violations were committed as part of a plan or policy promoted by the highest State authorities to retain power and suppress any form of dissent.

443. The Group identified a variety of actors and institutions involved in the perpetration of serious and systematic violations and abuses of the following rights: liberty and physical integrity; to be free from torture and cruel treatment or punishment; to be free from arbitrary deprivation of nationality; to remain in one’s own country; to participate in public life, including the right to be elected and to have access to public service; the right to freedom of expression and opinion, including the right to seek, receive and impart information and ideas; the freedoms of association and peaceful assembly; the freedom of thought, conscience, and religion; and education and academic freedoms, among others.

444. The GHREN identified patterns of harassment, intimidation, stigmatization, criminalization,<sup>824</sup> arbitrary detention, and torture and other cruel treatment against voices critical of the Government, as well as disproportionate and discriminatory restrictions on fundamental freedoms, in breach of international human rights standards. In addition, the GHREN concluded that organizations and political parties were arbitrarily shut down or cancelled. The GHREN emphasizes that respect for human rights and the aforementioned freedoms is a prerequisite and an essential element of democracy.<sup>825</sup>

445. The continuous discriminatory violation of fundamental rights and freedoms, directed against opponents, or against those who are perceived as critics or opponents of the Government, has generated a persecutory climate based on the suppression of dissent in all

<sup>821</sup> *Ibid.*

<sup>822</sup> National Police of Nicaragua, Press Release No. 86-2018 (Managua, 16 July 2018), available at: <https://www.policia.gob.ni/?p=19993>, on file with GHREN DDOCO98.

<sup>823</sup> Testimonies, documents, photographic and video material on file with GHREN.

<sup>824</sup> The GHREN understands criminalization as the misuse of criminal law, whether by state or non-state actors, with the aim of controlling, punishing or impeding the exercise of the right to defend human rights.

<sup>825</sup> See Commission on Human Rights Resolution 2002/46, (E/CN.4/RES/2002/46), art. 1.

spheres of social and political life in Nicaragua. This context has also led to abuses by third parties of the rights of those who oppose or are perceived as such. These include threats, harassment, attacks, and killings by Government supporters.

446. Taken together, these violations and abuses have led to the collapse of the civic space, and have forced thousands of human rights defenders, NGO workers, activists, journalists, student leaders, religious people, artists, as well as the main national and territorial opposition political leaders, to leave the country.<sup>826</sup> The UN High Commissioner for Refugees (UNHCR) stated that at least 260 thousand people have fled Nicaragua due to serious human rights violations.<sup>827</sup>

447. Thus, Nicaraguan civil society actors have been forced to leave Nicaragua and have gradually settled outside the borders of their country. Practically all independent media and human rights organizations operate from abroad due to the impossibility of doing so in Nicaragua.<sup>828</sup> Those who remain in Nicaragua have been forced to practice self-censorship in order to be able to continue doing their work. Others have stopped participating in political or human rights activities out of fear of retaliation.

448. In February 2023, Nicaraguan authorities arbitrarily deprived 316 people of their nationality, accusing them of being “traitors to the fatherland”, and expelled 222 of them from the Nicaraguan territory, in violation of their right to remain in their own country. The confiscation of their property was ordered in favour of the State, and their names were removed from birth and civil registry records. There are serious concerns about this new pattern of violations, which could be replicated in the future, and which has become a threat to all critics of the Government, inside and outside the country.

## 1. Legal framework

### a) *The right to liberty and security of the person*

449. The right to personal liberty is a fundamental, essential, and inalienable human right, recognized in customary international law as a norm of *jus cogens*.<sup>829</sup> The ICCPR, to which Nicaragua is a party, prohibits both arbitrary arrest and detention and unlawful deprivation of liberty, or deprivation of liberty imposed in disregard of the procedures established by law.<sup>830</sup> For its part, the American Convention establishes that “no one shall be subject to arbitrary arrest or imprisonment”.<sup>831</sup> The fundamental guarantee against arbitrary detention is non-derogable.<sup>832</sup>

<sup>826</sup> According to UNHCR, as of June 2022, more than 260,000 Nicaraguans had been forced to flee their country, including 191,875 to Costa Rica, 30,937 to Mexico, 21,556 to the United States of America, 8,124 to Guatemala, 6,774 to Spain, and 5,170 to Panama. UNHCR, *International Protection Considerations Regarding Persons Fleeing Nicaragua (January 2023)* HCR/PC/NIC/2023/01, p. 32.

<sup>827</sup> UNHCR, *International Protection Considerations with Regard to People Fleeing Nicaragua (2023)*, p. 7.

<sup>828</sup> The GHREN collected the testimonies of 170 human rights defenders, NGO members, activists, journalists, students, religious people, artists, and members of opposition political parties or movements who have been forced to leave the country since April 2018.

<sup>829</sup> Art. 9 of the Universal Declaration provides that no one shall be subjected to arbitrary arrest, detention or exile. Human Rights Committee, General Comment No. 35 on Liberty and Security of Person (art. 9), CCPR/C/GC/35 (16 December 2014), para. 66; see also Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, in WGAD Report, A/HRC/22/44 (24 December 2012) (hereinafter “Deliberation No. 9”), para. 51.

<sup>830</sup> ICCPR, art. 9.

<sup>831</sup> American Convention, art. 7.

<sup>832</sup> See Human Rights Committee, General Comment No. 29 on states of emergency (art. 4), CCPR/C/21/Rev.1/Add.11 (31 August 2001), paras. 4 and 11; Human Rights Committee, General Comment No. 35 on liberty and security of person (art. 9), CCPR/C/GC/35 (16 December 2014), para. 66.

450. The WGAD notes that deprivation of liberty is arbitrary if it falls into one of the following five categories:<sup>833</sup>

- a) **Category I:** when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (such as keeping a person in detention after having served his or her sentence or despite an amnesty law applicable to him or her);
- b) **Category II:** when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, and 18–21 of the Universal Declaration of Human Rights (Universal Declaration)<sup>834</sup> and in addition, concerning States Parties, in articles 12, 18–19, 21–22, and 25–27 of the ICCPR<sup>835</sup>;
- c) **Category III:** when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character;
- d) **Category IV:** when asylum seekers, immigrants, or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review of remedy; and
- e) **Category V:** when the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights.

451. For the purposes of international human rights law, the term “detention” encompasses all forms of deprivation of liberty, including house arrest.<sup>836</sup> A person is considered to be deprived of his or her liberty when he or she cannot leave his or her situation of physical detention, imposed by a third party, at will. It covers deprivation of liberty before, during, or after trial, as well as deprivation of liberty without trial of any kind.<sup>837</sup>

452. The notion of “arbitrary” must be interpreted broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. In this sense, a detention authorized by law may become arbitrary if that deprivation of liberty that initially occurs in accordance with relevant applicable law and procedures is no longer reasonable, necessary, and proportional to the objective pursued. Therefore, the notion of “arbitrariness” is not to be equated with “against the law”.<sup>838</sup>

453. As a State party to the ICCPR and the American Convention, Nicaragua is obliged to effectively protect persons within its jurisdiction against arbitrary arrest or detention, as well as to guarantee due process and the right to a fair trial.<sup>839</sup> By way of example, some of the rights and judicial guarantees, both substantive and procedural, that contribute to the protection of the liberty of persons and to guarantee that no one is illegally or arbitrarily deprived of his or her liberty include: the right to know the reasons for the detention and the charges brought against the detained person; judicial control of the deprivation of liberty; the reasonable length of pretrial detention; the right to challenge the legality of the detention; the right to be presumed innocent; the right to the effective assistance of a lawyer

<sup>833</sup> Deliberation No. 9, para. 38.

<sup>834</sup> Related to equality and non-discrimination, and freedom of movement and asylum.

<sup>835</sup> Relating to freedom of movement, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association and participation in public and political life, and the recognition and rights of religious, ethnic, cultural and linguistic minorities.

<sup>836</sup> See Deliberation No. 9, para. 57; ICTY, *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-PT, Decision on the Motion of the Defence Filed Pursuant to Rule 64 of the Rules of Procedure and Evidence, 3 April 1996, para. 16.

<sup>837</sup> See CCPR/C/GC/35, para. 17; UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Res 43/173 (9 December 1988), Principles 1 and 2.

<sup>838</sup> Deliberation No. 9, para. 61. See CCPR/C/GC/35, paras. 5 and 11–17.

<sup>839</sup> ICCPR, arts. 9 and 14; American Convention, arts. 7 and 8.



chosen by the detained person; and the right to appeal the decision before a higher court or judge.<sup>840</sup>

454. The Constitution of Nicaragua provides that “no one may be subjected to arbitrary arrest or detention, nor be deprived of his or her liberty, except for causes established by law in accordance with a legal procedure”.<sup>841</sup> It also provides that detention may only be effected by a written warrant issued by a competent judge or by the authorities expressly empowered to do so by law, except in cases of *flagrante delicto*.<sup>842</sup> The Constitution contains a list of due process guarantees in accordance with international standards.<sup>843</sup>

b) *Torture and other cruel, inhuman, or degrading treatment or punishment*

i) Absolute and non-derogable prohibition of torture

455. States are obliged to respect the right to human dignity and physical, mental, and moral integrity.<sup>844</sup> Violations of human dignity and personal integrity can take various forms. These include torture and other cruel, inhuman or degrading treatment or punishment, which are prohibited by international human rights law.<sup>845</sup> This prohibition is absolute and may under no circumstances be subject to derogation or exception.<sup>846</sup>

456. The Convention against Torture defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.<sup>847</sup>

457. Likewise, the Inter-American Convention against Torture defines torture as “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal

<sup>840</sup> ICCPR, arts. 9 and 14; American Convention, arts. 7-9. See Human Rights Committee, General Comment No. 32 on the right to a fair trial and to equality before courts and tribunals (art. 14), CCPR/C/GC/32 (23 August 2007); CCPR/C/GC/35, paras. 15 and 66; Deliberation No. 9, paras. 47-48. See also IACtHR Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, 21 November 2007, para. 51; Case of Yvon Neptune v. Haiti, Merits, Reparations and Costs, Judgment, 6 May 2008, para. 89.

<sup>841</sup> Constitution of Nicaragua, art. 33.

<sup>842</sup> *Ibid.*, art. 33.1.

<sup>843</sup> *Ibid.*, arts. 33.2(1)–(3) and 34. See, Code of Criminal Procedure, arts. 1-5 (principle of legality; presumption of innocence; principle of respect for human dignity; right to defence; principle of proportionality); arts. 8–11 (principle of free and expeditious proceedings; intervention of the victim; accusatory principle; natural judge); arts. 13–17 (principle of orality; principle of opportunity; freedom of evidence; lawfulness of evidence; and right to appeal).

<sup>844</sup> See, *inter alia*, Universal Declaration, art. 5, ICCPR, art. 7 and American Convention, art. 5(2), which proclaim that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. See also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 26 June 1987, art. 2(1); Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 December 1975; Inter-American Convention to Prevent and Punish Torture, 9 December 1985 (hereinafter “Inter-American Torture Convention”), art. 5.

<sup>845</sup> ICCPR, art. 7; Convention against Torture, art. 2(1).

<sup>846</sup> ICCPR, art. 4(2); Convention against Torture, art. 2(2) and (3); Inter-American Convention against Torture, art. 5. See, ICJ, Judgment on Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), 20 July 2012, para. 99 stating that: “the prohibition of torture is part of customary international law and it has become a peremptory norm (*jus cogens*). That prohibition is grounded in a widespread international practice and on the *opinio juris* of States”.

<sup>847</sup> It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Convention against Torture, art. 1(1).

punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish”.<sup>848</sup>

458. The Convention against Torture imposes peremptory obligations on States Parties, including Nicaragua, arising from the nature of a norm of *jus cogens* and the absolute prohibition of torture. Among these obligations, each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. It also provides that each State Party shall ensure that any individual who alleges to have been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his or her case promptly and impartially examined by, its competent authorities, as well as to prosecute and, if appropriate, extradite the person alleged to have committed the crime.<sup>849</sup> Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.<sup>850</sup>

459. Each State Party shall undertake to prevent in any territory under its jurisdiction acts that amount to cruel, inhuman or degrading treatment or punishment but which do not reach the threshold of acts of torture and in respect of which they have the same obligations detailed above.<sup>851</sup> Both the Convention against Torture and the Inter-American Convention against Torture prohibit cruel, inhuman, or degrading treatment or punishment but do not contain a definition of cruel, inhuman, or degrading treatment or punishment.<sup>852</sup> It has been suggested that the decisive criteria for distinguishing cruel, inhuman, or degrading treatment or punishment from torture include the purpose of the conduct, the perpetrator’s intent, and the powerlessness of the victim, rather than the intensity of the suffering inflicted.<sup>853</sup>

460. Article 36 of the Constitution of Nicaragua provides that “every person has the right to respect for his physical, mental and moral integrity. No one shall be subjected to torture, procedures, punishments, or cruel, inhuman, or degrading treatment. Violation of this right constitutes a crime and shall be punishable by law”. For its part, the Criminal Code establishes that: “The State guarantees that every person to whom a criminal offense or misdemeanour is attributed to has the right to be treated with the respect due to the inherent dignity of the human being. Punishments or security measures involving torture, inhuman, cruel, infamous or degrading procedures or treatment may not be imposed”.<sup>854</sup> The Prison System Act also expressly establishes in Article 7 the prohibition of torture and cruel, inhuman, or degrading treatment, as well as physical or psychological mistreatment.

<sup>848</sup> The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article. Inter-American Torture Convention, art. 2.

<sup>849</sup> In this regard, each State Party shall ensure that any individual who alleges he or she has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his or her case promptly and impartially examined by the competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against any ill-treatment or intimidation as a consequence of the complaint or any evidence given. See Convention against Torture, arts. 6–7, 10–13. On the obligation to extradite perpetrators suspected of torture, see ICJ, Judgment on Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), 20 July 2012, paras. 92–95.

<sup>850</sup> See Convention against Torture, art. 15.

<sup>851</sup> *Ibid.*, arts. 2 and 16.

<sup>852</sup> Convention against Torture, art. 16; Inter-American Convention against Torture, arts. 6–7.

<sup>853</sup> See Human Rights Council, Report of the Special Rapporteur on torture and other inhuman, cruel or degrading treatment or punishment, Manfred Nowak, A/HRC/13/39/Add.5 (9 February 2010), para. 60.

<sup>854</sup> Criminal Code, art. 4.

461. The CAT recommended that the State of Nicaragua adjust the definition of torture in the Criminal Code in accordance with article 1 of the Convention against Torture, as it does not specifically refer to offences committed by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee also urged the State of Nicaragua to reform the Military Criminal Code, given that it does not include the crime of torture, but rather the crime of “abuse of authority” and “causing injury”.<sup>855</sup> However, at the time of writing, the State of Nicaragua had not implemented the CAT’s recommendations.

462. In addition to the international instruments referred to above, the Group has consulted, for purpose of its analysis, other documents that contain a series of basic principles recognized by the international community. These include the United Nations Standard Minimum Rules for the Treatment of Prisoners or “Nelson Mandela Rules” (hereinafter “Nelson Mandela Rules”) which constitute the universally recognized minimum standards for the management of prisons and the treatment of persons deprived of their liberty; the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).<sup>856</sup>

ii) Sexual violence as torture

463. Universal and regional human rights protection mechanisms have determined that acts of sexual violence can constitute torture or cruel, inhuman, or degrading treatment.<sup>857</sup> The IACtHR acknowledges that “sexual rape is an extremely traumatic experience that may have serious consequences and causes great physical and psychological damage that leaves the victim “physically and emotionally humiliated”, situation difficult to overcome with time, contrary to what happens with other traumatic experiences. This reveals that rape inherently produces severe suffering for the victim, even when there is no evidence of physical injury or affliction”.<sup>858</sup>

464. The UN Committee on the Elimination of Discrimination against Women (CEDAW) and other international protection mechanisms have established that “gender-based violence against women may amount to torture or cruel, inhuman or degrading

<sup>855</sup> CAT, Consideration of reports submitted by States parties under article 19 of the Convention, CAT /C/NIC/CO/1 (10 June 2009), para. 10.

<sup>856</sup> UNGA, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), A/RES/70/175 (17 December 2015); UNGA, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), A/RES/65/229 (16 March 2011); UNGA, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), A/RES/40/33 (28 November 1985); UNGA, United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), A/RES/45/110 (14 December 1990).

<sup>857</sup> CEDAW has established that “gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices”. CEDAW, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, CEDAW/C/GC/35 (26 July 2017), para. 16. See Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment, A/HRC/31/57 (5 January 2016); CAT, Decision adopted by the Committee under article 22 of the Convention, in respect of communication no. 854/2017, CAT/C/67/D/854/2017 (11 September 2019); IACtHR, Case of Fernández Ortega et al. v. Mexico, Judgment, 30 August 2010 (hereinafter “Fernández Ortega Case Judgment”); Case of Miguel Castro Castro Prison v. Peru, Merits, Reparations and Costs, Judgment, Series C No. 160, 25 November 2006 (hereinafter “Miguel Castro Castro Prison Case Judgment”), para. 260.

<sup>858</sup> IACtHR, Miguel Castro Castro Prison Case Judgment, para. 306; Case of Espinoza González v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, 20 November 2014 (hereinafter “Espinoza González Case Judgment”), para 193.

treatment or punishment under certain circumstances, in particular in cases of rape”.<sup>859</sup> Because of its grave consequences, sexual violence can amount to torture and ill-treatment.<sup>860</sup> The IACtHR has emphasized that sexual violence committed against a woman who is detained or in the custody of an agent of the State is a particularly serious and reprehensible act, taking into account the vulnerability of the victim and the abuse of power displayed by the agent.<sup>861</sup> It also recalled that the threats and danger of subjecting a person to serious physical injury produces, under certain circumstances, moral anguish of such a degree that it can be considered psychological torture.<sup>862</sup>

c) *Right to participate in public affairs*

465. The Universal Declaration and the ICCPR, as well as various international treaties binding on Nicaragua, recognize the right to participate in public affairs.<sup>863</sup> This right entails the free participation of all persons in the political life of Nicaragua and comprises three fundamental dimensions: the right to participate, to vote and to be elected, and the right to have access to public service.<sup>864</sup>

466. Nicaragua must also effectively guarantee the whole exercise of, and respect for, the rights reflected in Articles 19, 21, and 22 of the ICCPR, including the freedom to engage in political activities individually or through political parties and other organizations; the freedom to debate public affairs; the freedom to hold peaceful demonstrations and meetings, including those aimed at criticizing or opposing a government; as well as the freedom to publish political material or propaganda and to conduct electoral campaigns.

467. The effective exercise of the right to participate in public affairs is also linked to the enjoyment of other human rights, such as the right to freedom of opinion and expression, freedom of association and peaceful assembly, and freedom of thought, conscience, and religion, among others.<sup>865</sup>

d) *Freedom of expression and opinion*

468. Freedom of opinion and expression is a central element of democracy and a prerequisite for the exercise of other fundamental freedoms. The right to freedom of opinion and expression is protected by several international and regional human rights instruments.<sup>866</sup>

<sup>859</sup> CEDAW, 26 July 2017, para. 16. See, e.g., European Court of Human Rights, *Aydin v. Turkey*, 23178/94 (1997); Special Rapporteur on Torture, Report on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment, U.N. Doc. E/CN.4/ 1986/15 (1986), para. 119; CAT, General Comment No. 2, U.N. Doc. CAT/C/GC/2, 24 January 2008, para. 18.

<sup>860</sup> See, e.g., Human Rights Council, Report of the Special Rapporteur on torture and other cruel treatment or punishment, A/HRC/31/57 (5 January 2016), para. 51.

<sup>861</sup> IACtHR, Miguel Castro Castro Prison Case Judgment, para. 311; *Favela Nova Brasília v. Brazil*, Judgment, 16 February 2017 (hereinafter “*Favela Nova Brasília Case Judgment*”), para. 255.

<sup>862</sup> See, *inter alia*, IACtHR, Fernández Ortega Case Judgment, para. 128; *Case of Rosendo Cantú et al. v. Mexico*, Judgment, 31 August 2010, para. 118; *Case of the Río Negro Massacres v. Guatemala*, Judgment, 4 September 2012, para. 132; *Favela Nova Brasília Case Judgment*, para. 252.

<sup>863</sup> Universal Declaration, art. 21; ICCPR, arts. 1 and 25; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5.c; ICESCR, arts. 1 and 8; CEDAW, arts. 7–8; Convention on the Rights of the Child, art. 15; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 41–42; and Convention on the Rights of Persons with Disabilities, arts. 4.3, 29, 33, para. 3.

<sup>864</sup> ICCPR, art. 25.

<sup>865</sup> Human Rights Committee, General Comment No. 34, Article 19, Freedom of Opinion and Freedom of Expression, CCPR/C/GC/34 (12 September 2011), paras. 2, 4–5, 7–9, 20. See OHCHR – South America, “The Human Right to Participation in the Conduct of Public Affairs”, 14 August 2021.

<sup>866</sup> Universal Declaration, art. 19; ICCPR, art. 19; ICESCR, art. 19; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; Convention on the Elimination of All Forms of Discrimination against Women, art. 7; American Convention, art. 13; OAS Declaration of Principles on Freedom of Expression.

469. The right to freedom of expression and opinion implies that no one can be harassed because of their opinions and that everyone has the right to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of his or her choice.<sup>867</sup> This right to express oneself freely and without interference includes the right to hold and express an opinion without restriction or censorship, to receive and impart information and ideas through any media, as well as the right to access public information.<sup>868</sup>

470. Both the ICCPR and the American Convention establish that the exercise of the right to freedom of expression entails special duties and responsibilities and, consequently, may be subject to certain restrictions, provided that these are established by law and are necessary to ensure respect for the rights or reputations of others, as well as the protection of national security, or public health or morals.<sup>869</sup>

471. The Constitution of Nicaragua guarantees the right to truthful information, including the freedom to seek, receive and disseminate information and ideas by various means and without censorship of any kind. The Constitution states that the right to information is a social responsibility and may not be subject to censorship but only to subsequent duties established by law.<sup>870</sup>

e) *Freedoms of association and peaceful assembly*

472. The rights to peaceful assembly and association are enshrined in the Universal Declaration, the ICCPR, and the American Convention.<sup>871</sup> The Constitution of Nicaragua also recognizes both the right to peaceful assembly, establishing that the exercise of this right does not require prior permission, as well as the right to public assembly, demonstration, and mobilization by the law.<sup>872</sup>

473. The right of peaceful assembly protects the non-violent gathering by persons for specific purposes.<sup>873</sup> Assemblies are an intentional and temporary gathering in a private or public space for a specific purpose.<sup>874</sup> The right of assembly is an individual right that is exercised collectively and includes demonstrations and protests.<sup>875</sup> In this sense, a protest is a fundamental tool for political participation and a way of expressing petitions and claims to public authority. It is also an essential mechanism for defending human rights and publicly denouncing human rights abuses or violations thereof.<sup>876</sup>

474. The term “peaceful” must be interpreted in a broad sense. The State, therefore, has a duty to respect the right to hold and participate in peaceful assemblies; it also has a positive obligation to facilitate the exercise of that right.<sup>877</sup> Participation in peaceful demonstrations is an important way of exercising the right to freedom of expression, freedom of association, and political participation.<sup>878</sup> Repressive responses to public demonstrations not

<sup>867</sup> Universal Declaration, art. 19; ICCPR, art. 19, paras. 1–2, American Convention, art. 13.

<sup>868</sup> See CCPR/C/GC/34, paras. 9, 11, 13, 18.

<sup>869</sup> ICCPR, art. 19. See American Convention, art. 13; CCPR/C/GC/34, paras. 21–36.

<sup>870</sup> Constitution of Nicaragua, arts. 66–67.

<sup>871</sup> Universal Declaration, art. 20, paras. 1–2; ICCPR, arts. 21–22, paras. 1–2; American Convention, arts. 15, 16.1.

<sup>872</sup> Constitution of Nicaragua, arts. 53–54.

<sup>873</sup> Human Rights Committee, General Comment No. 37 (2020) on the right to peaceful assembly (article 21), CCPR/C/GC/37 (17 September 2020), para. 4.

<sup>874</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27 (21 May 2012), para. 3.

<sup>875</sup> CCPR/C/GC/37, paras. 4–6.

<sup>876</sup> See Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/17/28 (23 May 2011), para. 31; Human Rights Council, The promotion and protection of human rights in the context of peaceful demonstrations, A/HRC/RES/25/38 (11 April 2014), preamble.

<sup>877</sup> See CCPR/C/GC/37, para. 9; A/HRC/RES/25/38, para. 2.

<sup>878</sup> CCPR/C/GC/37, paras. 9, 100; A/HRC/RES/25/38, preamble, para. 3. See IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, 31 December 2011, paras. 128–129.

only affect the aforementioned rights, but can also violate other fundamental rights such as the right to life, physical integrity, and personal safety, or the right to liberty.<sup>879</sup>

475. As regards the right to freedom of association, this implies the right of individuals to interact and organize among themselves to collectively express, promote, seek, and defend common interests.<sup>880</sup> The formation of, and membership in, an association must be voluntary; nobody may be forced –directly or indirectly– by the State or by private parties to join a group or association.<sup>881</sup>

476. Both the ICCPR and the American Convention state that no restrictions on the exercise of the freedoms of association and peaceful assembly may be placed other than those imposed in conformity with the law and which are in turn necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.<sup>882</sup>

f) *Freedom of thought, conscience, and religion*

477. The right to freedom of thought, conscience and religion encompasses the freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.<sup>883</sup> International human rights instruments distinguish between freedom of thought, conscience, religion, or belief and freedom to manifest one's religion or belief.<sup>884</sup> Freedom of thought and conscience or to have the religion or belief of one's choice is non-derogable and is not subject to limitations or restrictions. However, the freedom to manifest religion or belief may be restricted to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others, provided that such limitations are prescribed by law and are strictly necessary.<sup>885</sup>

478. The Constitution of Nicaragua guarantees freedom of conscience, religion, and worship. However, it adds that no one may evade the observance of the laws or prevent others from exercising their rights and fulfilling their duties by invoking religious beliefs or provisions.<sup>886</sup>

g) *Right to education and academic freedom*

479. The right to education is enshrined in the Universal Declaration, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the American Declaration of the Rights and Duties of Man (American Declaration).<sup>887</sup> The Constitution of Nicaragua also recognizes the right of all Nicaraguans to education and culture.<sup>888</sup>

<sup>879</sup> See CCPR/C/GC/37, paras. 74, 78–79, 85, 88; A/HRC/RES/25/38, paras. 2, 9–11; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, 31 December 2011, paras. 128–129.

<sup>880</sup> See Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in A/72/135 (14 July 2017), para. 22.

<sup>881</sup> See OHCHR and Inter-Parliamentary Union, Human Rights - Handbook for Parliamentarians N° 26, 2016, p. 167.

<sup>882</sup> ICCPR, arts. 21–22; American Convention, arts. 15, 16.2. See IACHR, Office of the Special Rapporteur for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression, 2010, paras. 74–75.

<sup>883</sup> Universal Declaration, art. 18; ICCPR, art. 18.1; American Convention, arts. 12.1 and 13.1. See Human Rights Committee, General Comment No. 22: Right to freedom of thought, conscience and religion (art. 18), 13 July 1993.

<sup>884</sup> Universal Declaration, art. 18; ICCPR, art. 18.1; American Convention, arts. 12.1 and 13.1.

<sup>885</sup> Restrictions must be adopted by laws that must stipulate precise criteria for their application, which must be applied objectively, and must be proportional to the interest to be protected. Restrictions must not nullify the purpose of the protected right and must respect the principles of equality and non-discrimination in their enunciation and application. See ICCPR, art. 18.2; American Convention, arts. 12.3 and 13.2.

<sup>886</sup> Constitution of Nicaragua, art. 69.

<sup>887</sup> Universal Declaration, art. 26.1; ICESCR, art. 13.1; American Declaration, art. XII.

<sup>888</sup> Constitution of Nicaragua, art. 58.

480. The right to education should be directed to the full development of the human personality and the sense of its dignity and should strengthen respect for human rights and fundamental freedoms. With a view to the full realization of this right, higher education should be made equally accessible to all, based on capacity, by every appropriate means, and in particular by the progressive introduction of free education.

*h) The right to nationality and the prohibition of deprivation of nationality*

481. The right to nationality is recognized in a variety of international legal instruments.<sup>889</sup> Article 15 of the Universal Declaration states that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”.<sup>890</sup> The General Assembly in its resolution 50/152 and the Human Rights Council in its resolutions 7/10, 10/13, 13/2, 20/5 and 26/14 have reaffirmed the fundamental nature of the right to a nationality, as well as the prohibition of arbitrary deprivation of nationality.

482. The issue of nationality is also regulated in the Convention on the Reduction of Statelessness, the Convention relating to the Status of Stateless Persons, and the Convention relating to the Status of Refugees.<sup>891</sup> Article 20 of the American Convention takes up the same principles and provides that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his or her nationality or of the right to change it.

483. The right to nationality implies the prohibition of its arbitrary deprivation.<sup>892</sup> Although the acquisition or loss of nationality is governed by domestic law, States must comply with their international obligations in this point.<sup>893</sup> The IACtHR found that State regulatory powers related to a nationality “are limited by their obligation to ensure the full protection of human rights”.<sup>894</sup> The Human Rights Council considered that arbitrary deprivation of nationality, especially on discriminatory grounds, such as political or any other opinion, religion, sex, national or social origin, or economic position, constituted a violation of human rights and fundamental freedoms.<sup>895</sup>

484. Arbitrary deprivation of nationality encompasses all forms of deprivation of nationality, including “loss”, except when the person voluntarily requests it. Deprivation of nationality refers, in general, to situations of “denationalization” (or withdrawal of citizenship), as well as denial of access to nationality (or refusal to grant citizenship). Arbitrariness is not limited to illegality, but to standards of justice and guarantees of due process, as well as non-discrimination.

485. Not every deprivation of nationality is arbitrary. In order not to be arbitrary, deprivation of nationality must be carried out in accordance with domestic law and comply with the specific procedural and substantive standards of international human rights law, in particular the principles of proportionality, non-discrimination or equality, and due process. In this regard, the measure in question must serve a legitimate aim consistent with the

<sup>889</sup> These include the Universal Declaration, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>890</sup> UN General Assembly, Resolution 217 A, 10 December 1948, available at: <https://www.un.org/es/about-us/universal-declaration-of-human-rights>.

<sup>891</sup> UN General Assembly, Report of the Secretary-General, Human rights and arbitrary deprivation of nationality, A/HRC/13/34, 14 December 2009, para. 3.

<sup>892</sup> UN General Assembly, A/Res/50/152, 9 February 1996, para. 16.

<sup>893</sup> Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10), chap. IV, commentary to article 4, para. 6.

<sup>894</sup> IACtHR, Advisory Opinion No. OC-4/84, 19 January 1984, “Propuesta de modificación a la Constitución Política de Costa Rica relacionada con la naturalización”, para. 38, available at: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_04\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_04_esp.pdf).

<sup>895</sup> See, *inter alia*, Human Rights Council, tenth session, Resolution 10/13, Human rights and arbitrary deprivation of nationality, 26 March 2009, operative para. 2; Resolution 32/5, 30 June 2016, A/HRC/32/5, operative para. 2.

objectives of international human rights law. It must also be the least intrusive measure among those that would achieve the desired result, and it must be proportionate to the interest it is intended to protect. In addition, decisions relating to acquisition, retention or renunciation of nationality should be issued in writing and be open to effective administrative or judicial review.<sup>896</sup> Therefore, the notion of arbitrariness could be interpreted to include not only acts that are against the law but also, more broadly, elements of inappropriateness, injustice and lack of predictability.<sup>897</sup>

486. Arbitrary deprivation of nationality has effects on the enjoyment of human rights; it results in the affected persons becoming non-citizens for the State that deprived them of their nationality. Arbitrary deprivation of nationality, therefore, places the persons concerned at a disadvantage with respect to the enjoyment of their human rights, as some of these rights may be subject to limitations that would not otherwise be applicable, and places persons in a situation of heightened vulnerability.<sup>898</sup>

i) *The right to enter and leave one's own country*

487. Article 12 of the ICCPR establishes that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence, and freedom to leave any country, including his own. Restrictions on this right must be provided by law, and shall be necessary to protect national security, public order, public health, morals, or the rights and freedoms of others. These limitations must also be compatible with other human rights. No one shall be arbitrarily deprived of the right to enter his or her own country.

488. The Human Rights Committee considers that liberty of movement is an indispensable condition for the free development of individuals. The restrictions placed on its enjoyment must not compromise the essence of the right; they must conform to the principle of proportionality, be adequate to fulfil its protective function and be the least disruptive of the instruments that can achieve the desired result. In turn, they must be compatible with other human rights and with the fundamental principles of equality and non-discrimination and must not be arbitrary.<sup>899</sup>

489. Freedom of movement includes the right of every person to enter their own country. The Human Rights Committee emphasized that “there are few, if any, circumstances in which deprivation of the right to enter one’s own country can be reasonable. A State party should not arbitrarily prevent a person from returning to their own country by depriving him or her of his or her nationality or expelling him or her to a third country”.<sup>900</sup>

## 2. Victims’ profiles

490. The patterns of human rights abuses and violations identified by the GHREN have been directed against a heterogeneous group of individuals, leaders, organizations, and entities. The work carried out by the GHREN allowed it to conclude that the individuals and/or entities that have been and continue to be the target of violations and abuses were victimized based on their political opposition to the Government, whether such a position is real or a perception of the authorities. For this reason, the GHREN refers in its analysis to attacks and human rights violations committed against “voices critical of the Government” or “persons opposed to the Government or perceived as such”.<sup>901</sup>

<sup>896</sup> UN General Assembly, A/HRC/13/34, para. 43.

<sup>897</sup> UN General Assembly, A/HRC/13/34, para. 25.

<sup>898</sup> UN General Assembly, Report of the Secretary-General, Human rights and arbitrary deprivation of nationality, A/HRC/19/43, 19 December 2011, para. 47; Human Rights Council, Resolution 32/5, 30 June 2016, A/HRC/32/5, resolution item 7.

<sup>899</sup> Human Rights Committee, General Comment No. 27, Freedom of movement (art. 12), 2 November 1999, CCPR/C/21/Rev.1/Add.9, paras. 1, 14, 18 and 20.

<sup>900</sup> *Ibid.* para. 20

<sup>901</sup> The GHREN has collected testimonies from people with diverse profiles, from recognized human rights defenders, people with clear political leadership, or celebrated Nicaraguan journalists and



491. The common denominator to this group of people is that they have been perceived by the administration of President Daniel Ortega and Vice President Rosario Murillo as a threat to their control of the State, either due to their prominence or leadership, for the role they play in the defence of human rights or access to information, for being active in social movements, or simply for having participated in demonstrations or in activities considered to be “dissident”.

492. The profile of victims targeted for violations and abuses has broadened over time. Initially, individuals who participated in the 2018 demonstrations, and in particular those who had assumed a certain leadership role in the context of protests, roadblocks, university takeovers, and coordination of humanitarian support to demonstrators, were the target of human rights violations.<sup>902</sup>

493. After the initial phase of mass mobilization in 2018, attacks focused on individuals and organizations with high public profiles. However, as time went on and the civic space closure deepened, the attacks spread towards a broader group of critical voices, including human rights defenders, students, feminists, social organizations, journalists and independent media employees, as well as members of political parties.

494. The GHREN analysed the specific dynamics of repression against women considered to be critical of the Government. Women and women’s groups and organizations have been a specific target of human rights violations and abuses.<sup>903</sup> Feminist movements and women’s leadership enjoy a historical trajectory and crucial importance in Nicaragua, with significant participation of women in human rights organizations and activities. Feminist women and women’s organizations adopted critical stances toward Daniel Ortega’s Government since times before 2018. In addition, many of the women activists and in leadership roles come from a Sandinista tradition, having broken with the FSLN at different times since the 1990s. During the protests, women actively participated in the protests and contributed to the development of strategies and activities to provide medical assistance, logistical support, protection, companionship, and legal services to victims and their families.<sup>904</sup> For these various reasons, women and women’s groups and organizations have been subjected to reprisals.

495. Repression has also been particularly strong towards those people who participated in the revolution, or who at some point in their lives were part of the FSLN.

496. The closure of the civic and democratic space was dramatically intensified in the context of the 2021 presidential elections, with the cancellation of three opposition parties and the criminal prosecution of the main opposition political figures, journalists, as well as social, business, and local leaders.

497. Starting in 2022 and up until the writing of this report, there has been an increasing number of people victimized for expressing critical views, including on social media, or for being active in social organizations and movements, including religious leaders, members of the Catholic Church, and family members of people opposed to the Government or victims of human rights violations and abuses. The cancellation of the legal status of hundreds of civil society organizations was part of this dynamic.

498. The GHREN has reasonable grounds to believe that the objective of the repression of dissident or nonconformist voices was to suppress all current or potential forms of criticism or protest against the Government that could generate a change in the *status quo*.

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intellectuals, to anonymous people who participated for the first time in protests, demonstrations, political parties or social movements in the wake of the events of 2018.

<sup>902</sup> IACHR, Persons Deprived of Liberty in Nicaragua in the Context of the Human Rights Crisis Initiated on 18 April 2018, OEA/Ser.L/V/II. Doc. 287 (5 October 2020), para. 39; GHREN interviews EEIV001, EEIV002, EEIV004, EEIV005, EEIV006, EEIV007, EEIV0010, EEIV0011, EEIV013, EEIV014.

<sup>903</sup> GHREN interviews AAIV005, AAIV017, AAIV024, AAIV045.

<sup>904</sup> Elvira Cuadra Lira, “Quebrar el cuerpo, quebrar el alma: la reconfiguración de las violencias hacia las mujeres en Nicaragua 2018-2022”, Centro de Estudios Transdisciplinarios de Centroamérica, 2022, p. 8.

Thus, there has been a generalized silencing effect, social movements and civic organizations have been dismantled, access to independent information has been hindered, public demonstrations have been prevented, the population's freedom of worship has been restricted, and all political alternatives to the ruling party have been annulled.

### 3. Patterns

- a) *Violent detentions, without arrest warrants, incommunicado, and without guarantees*
- i) Detentions marked by the use of violence

499. The detentions of opposition persons, real or perceived, were characterized by the use of violence by the Police and members of pro-government armed groups and the deployment of large scale operatives to execute the apprehensions.<sup>905</sup> In the vast majority of the cases investigated by the Group, agents of the National Police and/or members of pro-government armed groups used excessive and unnecessary violence, including through gunfire, blows with firearms and other blunt objects, blows with fists, kicks, insults and threats, both during the apprehension and during the transfer of the detained persons. These findings are consistent with previous assertions by the GIEI Nicaragua, the IACHR, and national and international human rights organizations.<sup>906</sup>

500. Arrests carried out in the context of the 2018 demonstrations by National Police agents and members of pro-government armed groups were particularly violent. A witness detained on 19 April during a march in Estelí told the GHREN that police officers detained him “with kicks and fist blows, with batons and gun butts, hair pulling, insults, and shoving”. The witness reported that “we went through the UNAN and UPONIC (the National Autonomous University of Nicaragua and the Popular University of Nicaragua) of Estelí until at a certain point in the centre of the city (a civilian's name) stood in front of us and pulled out a revolver. The police did nothing, on the contrary, they jumped on me. I was taken out by the dark blue patrolmen, famous for using extreme violence in the city, they put me in the patrol car, and began to beat me with the butts of their guns, about 4 or 5 policemen. I spent one night in the police station, and the next day they let me go, with many warnings”.<sup>907</sup>

501. During the period between June and August 2018, popularly known as “operation clean-up”, arrests were often carried out as part of large-scale operations, with heavy police deployments and the participation of heavily armed hooded civilians who were identified by witnesses as members of pro-government armed groups. A young protester arrested in July 2018 along with five others described:

*At 15:00 while we were on our way back, two patrol cars appeared in front of us, and we caught a glimpse of another 15 that were parked on the slope of the street. A bunch of officers got out of the patrol cars and started shooting at our van. They were mixed police, officers, riot police, and “paramilitaries”. They gave me a blow that left my nose broken, my eyebrow cut and my eye with a permanent injury. They grabbed me and threw me in the tub (back of the van). A commissioner slapped me in the face, and an officer put his boot over my face and started rubbing it on the floor of the tub. Soon after, some buses from the Judicial Assistance Directorate arrived and they put me in one of them. They had me handcuffed with my hands*

<sup>905</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV007, EEIV009, EEIV010, EEIV011, EEIV012, EEIV015, EEIV017, EEIV023, EEIV063, EEIV064, EEIV065, EEIV066, EEIV067, EEIV068, EEIV069, CCIV056, AAIV046, AAIV047, AAIV048, AAIV049, AAIV050, AAIV051, AAIV052.

<sup>906</sup> GIEI Nicaragua Report, p. 197; IACHR, OEA/Ser.L/V/II. Doc. 287, pp. 34–39; Informe Colectivo Nicaragua Nunca Más, “Volviendo a ser humano, Informe sobre excarcelados y excarceladas políticas” available at: <https://colectivodhnicaragua.org/wp-content/uploads/bsk-pdf-manager/2020/02/Informe-Volviendo-a-ser-humanos.pdf>; Amnesty International, Instilling terror.

<sup>907</sup> GHREN interview EEIV016.

*behind my back and my face on my knees when an officer came and punched me in the face with her fist, hit me in the lip, and knocked out a tooth.*<sup>908</sup>

502. Another young protester told the GHREN about his detention in July 2018 in Masaya:

*We were on our way to Monimbó when a gray van intercepted us. Seven people in black ski masks, armed, dressed in civilian clothes with sneakers (the witness identified them as “paramilitaries”) got out of the van. They put an AK to the back of my neck and tried to pull me out of the vehicle, I said I could get out on my own, but they grabbed me by the hair, I tried to get up, but they kicked me in the shin and I fell again. After a while, their boss, the director of police intelligence in Masaya, came down. One of the guys pointed at my face again. They tied my hands and took off my shoes. They took me to the Nindirí police station. While they had me in the tub (back of the van) they were kicking me in the stomach.*<sup>909</sup>

503. Members of pro-government armed groups also executed arrests, apparently autonomously, in the context of the 2018 demonstrations and then handed over the detained persons to the National Police. In some cases, individuals were transferred to unofficial places of detention, where they were tortured and interrogated before being handed over to the police. A young woman interviewed by the GHREN was traveling with other young people when her vehicle was intercepted by members of a pro-government armed group:

*The paramilitaries began to shoot at the vehicle. They punctured the tires, we got out of the truck because there was no way to move forward. It was an empty place. In a matter of minutes, a small car arrived from which armed and hooded paramilitaries came out. They started shouting at us and telling us: “Now you can’t escape”. They lined us up and pointed their guns at us. They started shouting furiously: “Where are the weapons?” They said that if we didn’t tell them where the guns were they were going to kill us. They took our phones, they searched our vehicle. We told them we had no weapons. They shouted at us: “Why are you doing this to our commander?” [...] We were handcuffed with our shoelaces [...] They began to shout at us more, that we were “tranqueros”, that we were going to pay for it. One of them told me “we are going to rape you and then we are going to kill you”. While he tied my hands, one of them grabbed me by the hair, lifted me in the air, and threw me to the ground so that I was face down on the floor, on the ground.”<sup>910</sup>*

504. From July 2018 onwards, selective apprehensions of opponents or persons perceived as such were also recorded. These took place in public spaces, offices, homes, or in safe houses where the persons were guarded. Often, the detainees had been subjected to surveillance, intelligence activities, intimidation, and threats for weeks or months prior to their arrest. In at least 25 cases investigated by the GHREN, arrests were carried out with a disproportionate police presence, with deployments that included DOEP elements and hooded plain-clothed individuals. The Group found that, in the course of these operations, there was a pattern of violations of due process and violence.<sup>911</sup> As highlighted by one victim,

*Around 2:00 p.m. about 40 DOEP riot police broke down the door and entered my house. They came in from all sides, fell like ants from the roof, going over the wall, and smashed the flowers. They pushed me away, I couldn’t even count the number of patrol cars that were parked outside the house. They took several personal things, my camera, camcorder, my radios, my recorders.*<sup>912</sup>

<sup>908</sup> GHREN interview EEIV006.

<sup>909</sup> GHREN interview EEIV004

<sup>910</sup> GHREN interview AAIV010. This narrative matches with interview AAIV019.

<sup>911</sup> GHREN interviews AAIV038, AAIV046, AAIV047, AAIV048, AAIV049, AAIV050, AAIV052, EEIV005, EEIV016, EEIV065.

<sup>912</sup> GHREN interview EEIV065.

505. During many of these arrests and searches, police officers also assaulted the detainees and people present in the premises, including family members and elderly people.<sup>913</sup> Several children were present during the violent arrests of their family members and the searches and raids that followed.<sup>914</sup> According to a testimony received by the Group,

*I have no idea how they managed to get into our house. More than 10 policemen came in. They handcuffed my grandmother who was in a wheelchair and suffers from dementia and the domestic worker. They gave me such a “galletazo” (blow) that I fell on the floor. They put the handcuffs on me so hard that it hurt.*<sup>915</sup>

506. According to another testimony:

*“They arrived at 5:00 a.m., three or four police patrols, they beat my 79-year-old father, they threw him to the ground, and my mother started screaming until she fainted. The next day we found out that my brother was in El Chipote and a month later they transferred him to La Modelo”.*<sup>916</sup>

ii) Arrests without producing an arrest warrant

507. In none of the 44 cases investigated by the GHREN were the individuals informed of the reason for their detention or were presented with a court order or police arrest warrant. They were also not allowed to contact their family or anyone else they deemed appropriate.<sup>917</sup> This is in contravention of Article 33 of the Constitution of Nicaragua and Article 95 of the Code of Criminal Procedure.

508. Based on the examination of arrest warrants issued by the authorities, cross-referenced with testimonial and documentary evidence, the GHREN was able to establish that, in at least 25 cases investigated by the Group, the Director of the DAJ was the one who issued the arrest warrant.

509. In cases where arrests were made in residential homes and other buildings, they were accompanied by searches and seizures of these properties. These actions were also carried out without presenting any arrest or search warrant, in contravention of the Code of Criminal Procedure and the Constitution of Nicaragua, which establish that only a competent judge may issue a written order to search or seize a residence.<sup>918</sup> These searches often took place at night, outside the hours established by law, without the exceptional circumstances provided for in the law.<sup>919</sup> Neither were the receipts for the occupation of the goods stolen from the homes of the persons arrested handed over.<sup>920</sup>

iii) Failure to appear before a judicial authority within the legal term

510. According to the Constitution of Nicaragua, detained persons have the right to be presented before a competent authority within 48 hours of their detention or, otherwise,

<sup>913</sup> GHREN interviews EEIV009, EEIV023, EEIV063.

<sup>914</sup> GHREN interviews AAIV038, AAIV047, AAIV050.

<sup>915</sup> GHREN interview EEIV063.

<sup>916</sup> GHREN interview EEIV023.

<sup>917</sup> GHREN interviews EEIV004, EEIV005, EEIV007, EEIV006, EEIV009, EEIV012, EEIV015, EEIV016, EEIV017, EEIV024, EEIV035, EEIV045, EEIV063, EEIV064, EEIV065, EEIV066, EEIV067, EEIV069, BBIV003, AAIV002, AAIV008, AAIV018, DDIV022, AAIV010, AAIV019, AAIV046, AAIV047, AAIV048, AAIV049, AAIV050, AAIV051, AAIV052.

<sup>918</sup> Constitution of Nicaragua, art. 26; Code of Criminal Procedure, art. 217.

<sup>919</sup> Article 217, para. 2 of the Code of Criminal Procedure establishes that “the search must be carried out between six in the morning and six in the afternoon. It may proceed at any hour when the inhabitant or his representative consents or in extremely serious and urgent cases, in which the judges shall resolve within a maximum period of one hour the requests made by the prosecutor or the head of the police unit in charge of the investigation”.

<sup>920</sup> GHREN interviews EEIV003, EEIV004, EEIV005, EEIV009, EEIV013, EEIV019, EEIV020, EEIV021, EEIV025, EEIV028, EEIV065, EEIV067, EEIV069, AAIV038, AAIV046, AAIV047, AAIV048, AAIV049, AAIV050, AAIV051, AAIV052; documents on file with GHREN AADOC031, AADOC053.

must be released.<sup>921</sup> The Code of Criminal Procedure also recognizes this right and establishes that detained persons must be presented before the judge for the preliminary hearing, where the Public Prosecutor's Office must present its accusation. If this requirement is not met, the judge must order the release of the detained person.<sup>922</sup>

511. The Group of Experts documented how, from the time when the protests began, this right of detained persons was systematically violated. In all the cases investigated by the GHREN, the victims were first brought before a judicial authority and informed of the reasons for their detention several days, and even weeks, after the arrest.<sup>923</sup>

iv) Lack of effectiveness of the habeas corpus remedy

512. The GHREN has reasonable grounds to believe that authorities from the judiciary, the Police and the National Prison System deliberately hindered or prevented the execution of the writs of *habeas corpus* filed on behalf of opponents or persons perceived as such, denying them their right to appear before a court and to challenge the legality of their detention.<sup>924</sup>

513. The GHREN received extensive information on practices used by the authorities to delay the execution of writs of *habeas corpus*, which included: the designation by the Criminal Chamber of the Court of Appeals of deceased persons or those residing abroad or in departments far from the prisons as executing judges; the appointment of executing judges who repeatedly excused themselves from making such exhibitions; or the refusal by the authorities of the DAJ and the Prison System to comply with the orders related to such requests, preventing the executing judges from seeing the detained persons.<sup>925</sup> In some cases, the judges declared the *habeas corpus* writs inadmissible, arguing that the 48-hour maximum period for presenting the detained person before the judicial authority had not elapsed, that the detained person had been presented before a judge with competence to preside over a special hearing for the protection of constitutional guarantees, or that the execution of said motion was beyond their competence and corresponds to the Criminal Chamber of the Court of Appeals, among others.<sup>926</sup>

v) Enforced disappearance and solitary confinement

514. The GHREN found a consistent pattern of incommunicado detention and the authorities' refusal to provide information to family members or legal representatives about their whereabouts. This finding coincides with those expressed by OHCHR, the IACHR, the WGAD, and international and national human rights organizations.<sup>927</sup> In several cases, these facts can technically qualify as enforced disappearances.

<sup>921</sup> Constitution of Nicaragua, art. 33 para. 2.2.

<sup>922</sup> Code of Criminal Procedure, arts. 95(9) and 256. See also IACHR, OEA/Ser.L/V/II. Doc. 287, pp. 42–44.

<sup>923</sup> The GHREN investigated 44 cases of persons detained between April 2018 and September 2022. In all of these cases, preliminary hearings were held several days, even weeks after the person's apprehension.

<sup>924</sup> ICCPR, art. 9, paras. 3–4. This remedy is regulated by the Amparo Act, Law No. 49, approved on 11 February 2008, published in *La Gaceta, Diario Oficial* No. 212 of 4 November 2008, arts. 52 to 60.

<sup>925</sup> GHREN interviews EEIV014, EEIV032; confidential documents on file with GHREN EEDOC103, EEDOC104. See also IACHR, OEA/Ser.L/V/II, Doc. 287, pp. 114–115; IACHR, Press Release 210/2018 “Rapporteurship on the Rights of Persons Deprived of Liberty Conducts Visit to Nicaragua”, Managua/Washington DC (26 September 2018); OHCHR, 2018 Report, para. 84.

<sup>926</sup> Amnesty International, “Nicaragua: ¿Dónde están?: Desaparición forzada como estrategia de represión”, 25 August 2021, p. 13, available at: <https://www.amnesty.org/es/documents/amr43/4631/2021/es/>.

<sup>927</sup> OHCHR, 2018 Report, pp. 29–30; WGAD, Opinion No. 39/2020 (Nicaragua), A/HRC/WGAD/2020/39 (9 October 2020); WGAD, Opinion No. 10/2022 (Nicaragua), A/HRC/WGAD/2022/10 (27 May 2022); WGAD, Opinion No. 19/2019 (Nicaragua), A/HRC/WGAD/2019/19 (2 July 2019); IACHR, OEA/Ser.L/V/II. Doc. 287, para. 77; Amnesty International, “Nicaragua: ¿Dónde están?: Desaparición forzada como estrategia de represión” (25

515. In most of the cases investigated by the GHREN, the individuals were detained by members of the National Police in public places or their homes and transferred to police stations or to the DAJ. In at least 31 cases investigated by the GHREN, the detainees were held in solitary confinement and incommunicado for periods ranging from a few days to several months without being allowed any contact with their families or lawyers. Prolonged incommunicado detention can facilitate the perpetration of sexual violence and torture as well as other cruel, inhuman, or degrading treatment, and may itself constitute such treatment. In at least 29 of the cases investigated by the GHREN, individuals were subjected to such treatment during the period of isolation and incommunicado detention.<sup>928</sup>

516. According to numerous testimonies collected by the GHREN, despite multiple requests from family members and legal teams of the detained persons, the authorities denied them information about their location.<sup>929</sup> In some cases, the Public Prosecutor's Office or the police issued a press release regarding the detention of the individuals, confirming that they were in the custody of the State. However, the place of detention of the individuals was not disclosed, nor was information provided about their state of health or conditions of detention.

517. Given the lack of information on the detained persons, their relatives, and legal representatives filed writs of *habeas corpus*. However, as stated above, these remedies were not effectively executed.

518. The GHREN also received information about detentions during the 2018 protests by members of pro-government armed groups, who transferred detainees to unofficial places of detention. According to the information received, individuals remained missing in such places for periods ranging from hours to days, including secret locations, FSLN party houses, or facilities belonging to the municipalities.<sup>930</sup> They were subsequently handed over to the police, in some cases with obvious signs of torture.

b) *The instrumentalisation of criminal law*

519. During the period under review, Nicaraguan authorities utilized criminal law and the Justice System to arbitrarily detain and criminally prosecute persons who were opponents or perceived as such. Unfounded, disproportionate criminal charges, based on laws that violate human rights and/or on false evidence, were used as an instrument of political persecution. Accused persons were deprived of their rights to due process and defence, leaving them totally defenceless in the face of these charges.

520. The GRHEN investigated 44 cases of detentions of persons deprived of their liberty as a consequence of their participation in the 2018 social protests and/or the exercise of

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August 2021); Colectivo Nicaragua Nunca Más, "Nicaragua entre represión y resistencia ciudadana, La situación de derechos humanos en Nicaragua 2021-2022," p. 57.

<sup>928</sup> GRHEN interviews EEIV004, EEIV005, EEIV006, EEIV007, EEIV009, EEIV010, EEIV012, EEIV015, EEIV016, EEIV018, EEIV019, EEIV020, EEIV023, EEIV024, EEIV036, EEIV45, EEIV050, EEIV063, EEIV064, EEIV065, EEIV066, EEIV067, EEIV068, EEIV069, AAIV046, AAIV048, AAIV049, AAIV050, AAIV052. The WGAD has reiterated on several occasions that incommunicado detention places individuals outside the protection of the law and violates the right to recognition as a person before the law enshrined in art. 6 of the Universal Declaration and art. 16 of the ICCPR. Thus, the WGAD has consistently held that incommunicado detention constitutes an act of arbitrary detention. WGAD, Links between arbitrary detention and cases of torture and ill-treatment, A/HRC/39/45 (2 July 2018), paras. 59–60.

<sup>929</sup> GHREN interviews EEIV006, EEIV007, EEIV012, EEIV013, EEIV016, EEIV020, EEIV022, EEIV024, EEIV029, EEIV042, EEIV045, EEIV036, EEIV034, EEIV028, EEIV065, EEIV069.

<sup>930</sup> GHREN interviews BBIV003, EEIV045, EEIV069; IACHR, OEA/Ser.L/V/II. Doc. 287, para. 109. See also, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/16/52 (3 February 2011), paras. 67–68. The Special Rapporteur recalled General Assembly resolution 60/148 and Human Rights Council resolution 8/8, which affirmed that prolonged incommunicado detention or detention in secret places can facilitate the commission of acts of torture and other cruel, inhuman or degrading treatment or punishment and constitute in itself a form of such treatment. See UNGA, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/60/148 (21 February 2006).

their right to freedom of association and peaceful assembly, freedom of opinion and expression, and/or freedom of thought, conscience, and religion. In the 44 cases investigated, the Group was able to establish that the authorities of the Justice System deprived opponents or persons perceived as such, of their liberty in an arbitrary manner.<sup>931</sup> The victims of arbitrary detention in the cases investigated were sentenced to long prison terms, ranging from 4 to 17 years of imprisonment, and were subjected to detention conditions contrary to international human rights standards.<sup>932</sup>

521. In addition, the GHREN analysed 25 court files<sup>933</sup> and considered information contained in reports from international organizations and human rights protection mechanisms –including the IACHR, OHCHR, and the CAT–; reports and other documentation made available by civil society organizations such as expert reports; and photographic and audiovisual material.<sup>934</sup> Based on the body of information analyzed, the GHREN has reasonable grounds to believe that arbitrary detentions were used in a systematic and widespread manner to persecute persons opposed to the Government or perceived as such.

522. The Group was able to identify patterns of repeated behaviours, an evolution of the strategy over time, and the coordinated intervention of different institutions and branches of the State. The GHREN concluded that such violations were not isolated or random acts but were part of a State policy aimed at suppressing any criticism or act of opposition. This policy included the adoption of criminal legislation contrary to international human rights standards, to provide an appearance of legality to the arbitrary detention practices carried out, and to facilitate the criminalization of individuals considered critical of or in opposition to the Government.

523. According to data provided by the IACHR, 2,018 people had been arbitrarily deprived of their liberty, from April 2018 to December 2022.<sup>935</sup> As of the date of writing this report, 37 people who self-identified as “political prisoners” continue to be detained.<sup>936</sup>

524. The profiles of the victims and the charges used to instrumentalize criminal law evolved. The GHREN documented a series of patterns within different stages through which the use of arbitrary detention as a mechanism of repression of the acts of real or perceived Government opponents has evolved. During these stages, differentiated practices are evident, as well as a progressive sophistication in the methods employed, which included the development of specific legislation to pursue Government opponents or those perceived as such. The following major phases can be distinguished.

#### **April 2018 to June 2018**

525. During this period, there were massive, violent, and indiscriminate detentions in the context of demonstrations, carried out by agents of the National Police in coordination with members of pro-government armed groups.<sup>937</sup> The GIEI Nicaragua characterized these

<sup>931</sup> These deprivations of liberty fall within the categories of arbitrary deprivations of liberty developed by the WGAD.

<sup>932</sup> The detainees were also victims of enforced disappearances, torture and other cruel, inhuman or degrading treatment or punishment.

<sup>933</sup> The GHREN was able to obtain 25 partial court records that provided sufficient elements to conduct a comprehensive analysis of judicial processes. The GHREN also received another 19 incomplete records that provided additional information consistent with the patterns identified. The GHREN highlights the lack of access to the complete records by the victims themselves and their lawyers.

<sup>934</sup> Organizations that have made court files and other documentation available to the GHREN include the Union of Nicaraguan Political Prisoners and Detainees (*Unión de Presas y Presos Políticos Nicaragüenses*, UPPN), UDJ and CPDH.

<sup>935</sup> Data shared with the GHREN by the IACHR, based on the MESENI database of persons arbitrarily deprived of their liberty.

<sup>936</sup> Mechanism for the Recognition of Political Prisoners, February 2023 report, available at: <https://presasypresospoliticosnicaragua.org/wp-content/uploads/2023/02/03ea9894-16a8-4c62-8c3c-6ebf01258e6e.pdf>.

<sup>937</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV007, EEIV016, EEIV045, EEIV050, EEIV67, EEIV069.

detentions as “police razzias”.<sup>938</sup> During these operations, hundreds of men and women, and dozens of adolescents were deprived of their liberty.<sup>939</sup> Most of those detained were released 24 to 48 hours later.

### July 2018 to June 2019

526. Selective criminalization of leaders began.<sup>940</sup> During this period, mass arrests continued in the context of the demonstrations and the operations for the forced removal of roadblocks, popularly known as “operation cleanup”. In addition, the selective criminal prosecution of people who had assumed a leadership role in the context of the demonstrations, as well as of journalists considered critical of the Government, began. This prosecution was done under accusations of hindering public services (in relation to roadblocks and barricades) and based on serious crimes such as terrorism; association to commit a crime; organized crime; kidnapping; and crimes related to the carrying, possession, trafficking, manufacture, and use of weapons, among others.<sup>941</sup> During this period, a practice which became entrenched in 2020 began to take shape. It consists of the adoption or amendment of legislation to allow or facilitate the criminal prosecution of real or perceived Government opponents. Thus, on 16 July 2018, the National Assembly approved the Law against Money Laundering, Financing of Terrorism, and Financing of the Proliferation of Weapons of Mass Destruction which modified the definitions of terrorism and financing of terrorism contained in the Criminal Code.<sup>942</sup>

### February to June 2019

527. During this period, 492 individuals who had been detained in connection with the social protests were released. This was done within the framework of the negotiations of the Negotiating Table (*Mesa de Negociación por el Entendimiento y la Paz*)<sup>943</sup> between the Government and the Civic Alliance for Justice and Democracy (*Alianza Cívica por la Justicia y la Democracia*).<sup>944</sup> The entry into force of the Amnesty Law on 10 June 2019,

<sup>938</sup> GIEI Nicaragua Report, p. 194.

<sup>939</sup> The IACHR registered more than 200 adolescents deprived of their liberty during the first days of the protests; some were detained in centres reserved for adult men over 18 years of age. CIDH OEA/Ser.L/V/II. Doc., paras. 174–175.

<sup>940</sup> The GHREN investigated 20 cases of arrests of protesters between July 2018 and June 2019 (13 men, 7 women, including 1 trans woman, and 1 child).

<sup>941</sup> Documents on file with GHREN EEDOC003, EEDOC006, EEDOC053, EEDOC054, EEDOC059, EEDOC064, EEDOC065, EEDOC066, EEDOC066, EEDOC078; GRHEN interviews AAIV010, AAIV019.

<sup>942</sup> See Chapter III.1.4 of this report for a detailed analysis of the Act Against Money Laundering, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction, Law No. 977, approved on 16 July 2018, published in *La Gaceta, Diario Oficial* No. 138 of 20 July 2018 (hereinafter “Anti-Money Laundering Act”), available at: [https://www.bcn.gob.ni/sites/default/files/marco\\_juridico\\_financiero/12\\_Ley\\_No\\_977\\_Ley\\_contra\\_el\\_Lavado\\_de\\_Activos.pdf](https://www.bcn.gob.ni/sites/default/files/marco_juridico_financiero/12_Ley_No_977_Ley_contra_el_Lavado_de_Activos.pdf).

<sup>943</sup> The negotiation process began on 27 February and concluded on 27 March 2019. It was agreed to release all persons detained in connection with the events of April 2018 and to bring their cases to a final legal closure in accordance with the current legislation. It was further agreed that the International Committee of the Red Cross would monitor the process of release based on an updated and consolidated list, which was compiled from lists submitted by the two parties.

<sup>944</sup> According to the Ministry of the Interior, 350 of these releases were carried out by unilateral decision of the Government, 36 based on the list presented at the Negotiation Table and 106 on the occasion of the approval of the Amnesty Act. Ministry of the Interior, Press Release of 27 February 2019 (100 persons), available at: <https://www.migob.gob.ni/nota-de-prensa-25/>; Press Release of 15 March 2019 (50 persons), available at: <https://www.migob.gob.ni/nota-de-prensa-13-2-2/>; Press Release of 5 April 2019 (50 persons), available at: <https://www.migob.gob.ni/nota-de-prensa-13-2/>; Press Release of 20 May 2019 (100 persons); Press Release of 30 May 2019 (50 persons) available at: <https://www.migob.gob.ni/nota-de-prensa-19/>; Press Release of 16 April 2019 (36 persons) available at: <https://www.migob.gob.ni/nota-de-prensa-14/>; Press Release of 10 June 2019 (50 persons), available at: <https://www.migob.gob.ni/nota-de-prensa-21/>; Press Release 11 June 2019 (56 persons), available at: <https://www.migob.gob.ni/nota-de-prensa-22/>.



vacated the measures of deprivation of liberty imposed against all those who participated in the events of 2018, including protesters.<sup>945</sup>

### July 2019 to December 2020

528. During this phase, some of those released from prison were harassed and/or re-arrested. This phase also saw the development of a legal architecture for criminalization. During the months following the releases, and especially since the suspension of the work of the Negotiating Table in July 2019, patterns of intimidation, threats, and permanent surveillance of the released persons by elements of the National Police and civilian members of pro-government groups, were observed.

529. Although the number of persons detained was substantially reduced as a result of the release process described above, in June 2019, the Mechanism for the Recognition of Political Prisoners (*Mecanismo para el Reconocimiento de Personas Presas Políticas*) reported a total of 91 men still deprived of their liberty for political reasons. This number rose over the following months and until 30 December 2019, when the Ministry of the Interior announced the release of another 91 people under the special regime of family cohabitation.<sup>946</sup>

530. There were numerous re-arrests of individuals who had been previously detained for their participation in the 2018 demonstrations. Real or perceived Government opponents were charged with the commission of common crimes, including drug trafficking, illegal arms trafficking and possession, and aggravated robbery.<sup>947</sup> Between October and December 2020, the National Assembly adopted two laws that were instrumental for the criminal prosecution of real or perceived Government opponents: the Cybercrimes Law and the Sovereignty Law.<sup>948</sup>

531. In November 2021, 22 people (17 men and 5 women) who had been active in organizing political movements and parties for participation in the presidential elections, were detained. Among those detained were at least nine individuals who had previously been deprived of their liberty for their participation in the 2018 protests.<sup>949</sup> During this period, new criminal offenses of undermining national integrity and spreading false news, introduced at the end of 2020, began to be used and, since 2021, became the most commonly used criminal charges to prosecute real or perceived Government opponents.

### 2022–present

532. Arrests of victims' relatives and criminal prosecution for exercising freedom of expression and freedom of conscience or religion have taken place during this period. Since

<sup>945</sup> The Amnesty Act was characterized by ambiguity in relation to the crimes that were pardoned, the persons benefited by the law, and the authorities that would determine the application of the amnesty. In addition, the Act contemplated the possibility of revoking the benefits established by the Act if “*new acts were perpetrated that incurred in repetitive conducts generating the crimes [...] contemplated*” and without establishing a statute of limitations period (art. 3). Thus, the criminal action would not be completely extinguished, as contemplated in the Code of Criminal Procedure (arts. 6, 72 and 155), but would remain in a type of suspension, and could be reactivated at any time a new crime was committed.

<sup>946</sup> Mechanism for the Recognition of Political Prisoners, Monthly Report, June 2019, available at: <https://presasypresospoliticosnicaragua.org/wp-content/uploads/2020/08/Personas-Presas-Politicas-Nicaragua-Junio-2019.pdf>; Ministry of the Interior, Press Release 30 December 2019, available at: <https://www.migob.gob.ni/nota-de-prensa-25/>.

<sup>947</sup> Documents on file with GHREN EEDOC071, EEDOC160, EEDOC260; GHREN interviews EEIV067, EEIV069.

<sup>948</sup> See Chapter III.1.4 of this report for a detailed analysis of these laws. Special Cybercrimes Act, Law No. 1042, approved on 27 October 2020, published in *La Gaceta, Diario Oficial* No. 201 of 30 October 2020 (hereinafter “Cybercrimes Act”); Defence of the People’s Rights to Independence, Sovereignty and Self-Determination for Peace Act, Law No. 1055, approved on 21 December, 2020, published in *La Gaceta, Diario Oficial* No. 237 of 22 December 2020 (hereinafter “Sovereignty Act”).

<sup>949</sup> Listing provided by the organization Unidad de Registro (UDR), on file with the GHREN EEDOC102.

August 2022 and up to the date of writing of this report, criminalization has also extended to other profiles of critical voices, with the detention of 12 religious leaders and members of the Catholic Church, 1 academic, and at least 8 relatives of opponents or perceived as such, including relatives of victims of human rights violations who had claimed for justice for their loved ones.

i) Adoption of laws to restrict and criminalize the exercise of fundamental freedoms

533. The National Assembly adopted a series of laws that were used to criminalize the exercise of fundamental freedoms and to criminally prosecute real or perceived opponents. These include the Anti-Money Laundering Law, the Cybercrimes Law, the Sovereignty Law, and Law No. 1060 reforming the Code of Criminal Procedure.

a. Law against Money Laundering, Financing of Terrorism, and Financing of the Proliferation of Weapons of Mass Destruction

534. The Anti-Money Laundering Law amends articles 394 and 395 of the Criminal Code, which respectively criminalize the offenses of “terrorism” and “financing of terrorism”.<sup>950</sup> According to the amended provision of the Criminal Code, the crime of terrorism is committed by “whoever, individually or acting in conjunction with terrorist organizations, performs any act intended to cause death or serious bodily injury to any person or to destroy or damage public or private property or services, when the purpose of such acts, by their nature or context, is to intimidate a population, alter the constitutional order or force a government or an international organization to perform an act or to refrain from doing so”. The Law establishes a penalty of fifteen to twenty years imprisonment.<sup>951</sup>

535. This definition is broader than that of “terrorist acts” contained in the Anti-Money Laundering Law,<sup>952</sup> since it refers to the destruction or damage of public or private goods or services. Said precept has been considered detrimental to the right to freedom of peaceful assembly and expression, since it can be used against individuals engaging in social movements where damage to property is unwittingly incurred.<sup>953</sup>

536. A group of UN Special Rapporteurs expressed concern about the above, concluding that the reference to damage to “public or private goods or services” can be interpreted by the authorities to wrongly label and criminalize non-peaceful protesters as “terrorists”. The Group of Experts agrees that the possible classification of demonstrators who participate in demonstrations that turn violent as terrorists ignores the essence of the concept of terrorism, and disproportionately restricts the exercise of freedom of assembly. In this sense, crimes against property, which do not have the quality of terrorism and depending on their seriousness, should not be subject to anti-terrorist legislation.<sup>954</sup>

537. Both the definition of “terrorist organization” and “terrorist” under the Anti-Money Laundering Law provides for participation “as an accomplice” to be enough requirement for the individual’s activity to be considered terrorist activity and for the person to receive the corresponding penalty.<sup>955</sup> This introduces a broad discretion for the relevant authorities

<sup>950</sup> Anti-Money Laundering Act, arts. 4.2, 4.15, 4.16 and 44.

<sup>951</sup> Anti-Money Laundering Act, art. 44, which amends art. 394 of the Criminal Code.

<sup>952</sup> “Terrorist acts; Are those that have the objective of causing death or physical and/or psychological injury against any person, when the purpose of such act, by its nature or context, is to intimidate a population or to force a Government or an international organization to carry out an act or to abstain from doing so”, as well as those acts defined in a series of international instruments to which Nicaragua is a party. Anti-Money Laundering Act, art. 4.2.

<sup>953</sup> Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/40/52 (1 March 2019), para. 41; Mandate Letter of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and of the Special Rapporteur on the situation of human rights defenders to the Government of the Republic of Nicaragua, OL NIC 4/2020 (4 January. 2021), p. 2.

<sup>954</sup> OL IAS 4/2020, p. 2.

<sup>955</sup> Anti-Money Laundering Act, art. 4.15 and 4.16.

to qualify a person as a participant in a terrorist activity based on vague legal criteria of participation and complicity.

538. Regarding the financing of terrorism, art. 395 of the Criminal Code as amended by the Anti-Money Laundering Law punishes with 15 to 20 years imprisonment “whoever by any means, directly or indirectly, unlawfully and deliberately, collects, captures, channels, deposits, transfers, moves, secures, administers, safeguards, intermeddles, lends, provides, delivers assets, whether they be assets of a financial nature or not, whether from licit or illicit sources, with the intention that they are used or in the knowledge that they will be used, in whole or in part, to [...] “commit terrorist acts”.<sup>956</sup>

539. The GHREN reviewed several cases of charges for terrorism offenses brought since April 2018 and concluded that, in such cases, justice system authorities made use of such crimes to prosecute individuals for acts that were not consistent with the definition of the crime. According to information provided to the GHREN by the “Unidad de Defensa Jurídica” (UDJ), as of April 2018, 174 terrorism charges were registered in Nicaragua, including 13 for conspiracy to commit terrorist acts and 5 for financing terrorism.

b. Law No. 1042: Special Cybercrimes Law

540. The Cybercrimes Law came into force at the end of 2020. Article 30 of the Cybercrimes Law criminalizes the “propagation of false news”, stating that:

*“whoever, using [i]nformation and [c]ommunication technologies, publishes or disseminates false and/or misrepresented information, which causes alarm, fear, anxiety in the population, or a group or sector of it, to a person or his family, shall be sentenced to two to four years in prison and a fine of three hundred to five hundred days”. The Law provides for a penalty of one to three years imprisonment in cases where the publication or dissemination of such information damages “the honour, prestige or reputation” of a person or his family; and a penalty of three to five years imprisonment if such publication or information “incites hatred and violence, endangers economic stability, public order, public health or sovereign security”.<sup>957</sup>*

541. A group of UN Special Rapporteurs expressed concern about the compatibility of art. 30 with art. 19 of the ICCPR, and art. 13 of the American Convention.<sup>958</sup> The ICCPR “does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events”.<sup>959</sup> Moreover, the offense in art. 30 is characterized in ambiguous and subjective terms, prohibiting the dissemination of “false information” or “misrepresented information,” which is inconsistent with international standards on restrictions on freedom of expression.<sup>960</sup> The GHREN agrees with the Special Rapporteurs in pointing out that the Cybercrimes Law violates the exercise of the right to freedom of expression by providing for the use of criminal law in several of its articles to punish acts that can be framed within the exercise of this right.

542. Art. 30 of the Law requires for the information that is considered false to “produce alarm, fear, or anxiety in the population, or a group or sector of the population, or a person or his or her family”. As the Special Rapporteurs have noted, this criterion is inherently subjective, making it difficult to predict in advance what types of information

<sup>956</sup> Anti-Money Laundering Act, art. 44, which amends art. 395 of the Criminal Code.

<sup>957</sup> Cybercrimes Act, art. 30.

<sup>958</sup> Communication OL NIC 3/2020 from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to the Government of the Republic of Nicaragua (13 November 2020).

<sup>959</sup> CCPR/C/GC/34, para. 49.

<sup>960</sup> *Ibid.*

might produce such an effect.<sup>961</sup> The lack of precision in the definition of the offense of propagation of false information generates a high level of legal uncertainty and could have a chilling effect on the dissemination of ideas, criticism, and information for fear of criminal prosecution. For example, it could lead to criminal prosecution of individuals for expressing misinformation in good faith. Similarly, parody, political satire, debate on matters of public interest, and speech protected by the ICCPR, could be open to penalties under the Law.

543. Article 30 of the Law also introduces imprisonment as a penalty for cases of defamation. In this regard, the Human Rights Committee has stated that imprisonment is never an appropriate penalty for such cases.<sup>962</sup> Additionally, the Criminal Code itself does not provide for imprisonment as a punishment for libel or slander, and the reason for the imposition of this penalty is not properly justified in the Cybercrimes Law.<sup>963</sup>

544. Statements made by the highest authorities make clear the Nicaraguan Government's intention to unlawfully restrict freedom of expression.<sup>964</sup> Since its adoption at the end of 2020, at least 55 cases have been documented in which the Cybercrimes Law was used to criminally prosecute the expression of political opinions.<sup>965</sup>

c. Law No. 1055: Law for the Defence of the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace.

545. In December 2020, the National Assembly approved the Sovereignty Law, which consists of a single substantive article that states:

*Nicaraguans who lead or finance a coup d'état, who alter the constitutional order, who promote or urge terrorist acts, who carry out acts that undermine independence, sovereignty, and self-determination, who incite foreign interference in internal affairs, who call for military interventions, who organize themselves with financing from foreign powers to carry out acts of terrorism and destabilization, who propose and manage economic, commercial and financial blockades against the country and its institutions, those who demand, exalt and applaud the imposition of sanctions against the State of Nicaragua and its citizens, and all those who harm the supreme interests of the nation contemplated in the legal system, shall be "Traitors to the Fatherland" and therefore shall not be eligible for elected office, without prejudice to the corresponding criminal actions established in the Criminal Code of the Republic of Nicaragua for "Acts of Treason", "Crimes that compromise Peace" and "Crimes against the Constitution of the Republic of Nicaragua".<sup>966</sup>*

546. The Sovereignty Law infringes on the freedoms of expression and opinion, and the right to participate in public life, by punishing the expression of opinions protected by international law, such as political speech, and disproportionately and arbitrarily limiting the right to political participation. In this regard, the Human Rights Committee, which

<sup>961</sup> OL NIC 3/2020.

<sup>962</sup> CCPR/C/GC/34, para. 47.

<sup>963</sup> See Criminal Code Title IV.

<sup>964</sup> For example, in June 2021, Rosario Murillo stated during a radio interview: "*Sometimes people believe that being a communicator gives them impunity to turn communication spaces into spaces of intimidation and destruction of tranquillity; to be a journalist is to be truthful, responsible, to communicate the facts, without bias, and above all without political agendas of a culture, unfortunately massive, of hate. culture of hate, that is what the international media distils*". El 19 Digital, "Compañera Rosario Murillo en Multinoticias", 25 June 2021, available at: <https://www.el19digital.com/articulos/ver/titulo:117652-companera-rosario-murillo-en-multinoticias-25-06-21>: "*A veces las Personas creen que ser Comunicador les da carta de impunidad para convertir los Espacios de Comunicación en Espacios de intimidación y de destrucción de la tranquilidad [...] ser Periodista es ser veraz, responsable, es comunicar los hechos, sin sesgos, y sobre todo sin Agendas Políticas de una Cultura, masiva desgraciadamente, de Odio. Cultura de Odio, esa es la que destilan los Medios Internacionales de Comunicación*".

<sup>965</sup> Listing provided by UDR, on file on file with GHREN EEDOC102.

<sup>966</sup> Sovereignty Act, art. 1.

monitors States' compliance with the ICCPR, has noted that restrictions on the right to run for public office must be based on "objective and reasonable" criteria.<sup>967</sup>

547. This legislation could also facilitate the disqualification to access popularly elected positions of persons who had participated in the 2018 protests, which, as previously discussed, the Government qualified as an "attempted *coup d'état*". On the other hand, by defining "*traitors to the fatherland*", among others, those who "*demand or applaud the imposition of sanctions against the State of Nicaragua and its citizens*" or "*incite foreign interference in internal affairs*". the Law serves to stigmatize.

548. The Sovereignty Law does not provide for the creation of a new criminal offense of "treason". However, the conducts generically denominated "treason to the Fatherland" or "traitors to the Fatherland" as described in the sole article of this Law, are susceptible to sanctions since the law provides for the disqualification to opt for popularly elected positions. The Law also does not establish any specific process, criminal, administrative, or of any other nature, for the imposition of such sanction.

549. On 9 February 2023, the Sovereignty Law was invoked by the Court of Appeals of Managua to impose sanctions on individuals detained and prosecuted for other crimes. These sanctions included at first the disqualification from holding publicly elected office, and later the deprivation of nationality and the expulsion of 222 people.<sup>968</sup> In addition, it was used to arbitrarily deprive another 94 people of their nationality, through a resolution declaring them traitors to the fatherland. The persons were also declared justice fugitives and the confiscation of all their assets in favour of the State was ordered. These very serious sanctions were applied without any legal proceedings that would have allowed individuals to exercise their right to defence.

d. Law No. 1060 reforming the Code of Criminal Procedure

550. In February 2021, the National Assembly introduced a reform to the Code of Criminal Procedure that made it possible to "legalize" prolonged detentions without filing an indictment.

551. Law No. 1060 introduced art. 253 *bis* in the Code of Criminal Procedure, which allows judges to issue a measure of "judicial detention", extending the maximum period of 48 hours between the detention and the preliminary hearing established in the Constitution, up to 90 days.<sup>969</sup> The Public Prosecutor's Office may request the extension of the term during a special hearing for the protection of guarantees "*Whenever it is considered that the results of the investigation require more time to complement information or evidence sufficient to support and formulate accusations against one or more persons*".<sup>970</sup>

552. This reform is contrary to the Nicaraguan Constitution and international human rights standards, and violates the presumption of innocence and the person's right to know without delay and in detail the charges against him or her.<sup>971</sup> In the words of OHCHR, the

<sup>967</sup> Human Rights Committee, General Comment No. 25, Article 25, Participation in public affairs and the right to vote, HRI/GEN/1/Rev.7 (1996), para. 4.

<sup>968</sup> El 19 Digital, "Declaración del Magistrado Presidente de la Sala Penal Uno del Tribunal de Apelaciones de Managua, con relación a la Deportación de 222 traidores a la Patria", available at: <https://www.el19digital.com/articulos/ver/titulo:136779-nicaragua-ordena-la-deportacion-de-222-traidores-a-la-patria->.

<sup>969</sup> Under art. 253 *bis* of the Code of Criminal Procedure, the judge may order the measure of "judicial detention" for a maximum period of 90 days, taking into consideration "the seriousness of the act, the complexity of the investigation, the plurality of affected persons, accused or acts, in such cases when the investigation involves crimes related to organized crime, or crimes of social relevance and national transcendence, and any other information or evidence that may be of help to support the merits of the request". The ambiguous terms of "social relevance and national transcendence" are also found in Law No. 952, which adds the seventh clause to art. 22 of the Code of Criminal Procedure and broadens the territorial jurisdiction of the Courts of Managua.

<sup>970</sup> *Ibid.*

<sup>971</sup> On 27 March 2021, CENIDH filed an appeal of unconstitutionality against Law No. 1060 before the Supreme Court of Justice. The appeal was admitted by the Court in July 2021; however, it had not been resolved at the date of writing of this report.

law that introduced this reform “allows for detention to investigate, instead of investigation to detain”.<sup>972</sup> In addition, it puts at risk the integrity and security of the so-called “judicial detainees”, who remain without effective judicial control of guarantees, since “judicial detention” is not duly regulated in the law.

ii) Instrumentalisation of the justice system

553. Officials of the National Police, the Judiciary, the Public Prosecutor’s Office, the Public Defender’s Office, the National Prison System, and the Institute of Forensic Medicine carried out concerted actions to ensure and extend the arbitrary deprivation of liberty of these individuals, to violate their procedural rights, to fabricate evidence, and to conceal acts of torture and forced disappearance.

554. The GHREN has reasonable grounds to believe that the officials received direct instructions from the State’s hierarchy. All of this was possible due to the manifest lack of independence of the judiciary and prosecutorial autonomy in Nicaragua, which was further aggravated as of April 2018. According to numerous concordant testimonies of actors in the justice system, both the Judiciary and the Public Prosecutor’s Office respond in their functioning to a vertical structure, strictly hierarchical, which guarantees compliance with the instructions of the highest authorities within the Government. In this way, the division of powers as established in the Constitution has disappeared and has been replaced by a justice system directed and controlled by the Executive Branch.<sup>973</sup>

555. The justice system was mobilized to detain and validate *a posteriori* illegal detention operations, searches, and other procedures that were presented as documentary, expert, and testimonial evidence in the Prosecution’s indictment, as well as to accuse, convict and execute judgments based on judicial proceedings with evidence produced *ad hoc* or regulations interpreted and/or designed to implement the instructions of the Presidency, violating the most elementary procedural guarantees and ignoring the complaints and appeals filed by relatives, lawyers, and human rights defenders.<sup>974</sup>

556. The GHREN has reasonable grounds to believe that the National Police and the Public Prosecutor’s Office operated jointly to produce indictments against opponents or persons perceived as such; they fabricated evidence, instructed prosecution witnesses, and drafted indictments that did not conform to reality.<sup>975</sup> There was also collusion between the National Police and the Public Prosecutor’s Office not to present the detained persons before the competent judicial authority within the terms established by law, thus prolonging their stay in police custody. The purpose of this was to give State agents additional time to continue investigating and interrogating the detainees. In other cases, these delays helped for the physical marks of the torture perpetrated against the detainees to disappear or be concealed before the detainees were brought before a competent judge.<sup>976</sup>

557. The GHREN received information indicating that judges, led by the President of the CSJ, Alba Luz Ramos, and Vice President, Marvin Aguilar, were instructed to confirm the indictments prepared by the Public Prosecutor’s Office along with the National Police, under threat of being dismissed from their positions if they refused to comply.<sup>977</sup>

558. The Group also found that some of the judges who have tried and condemned opponents or persons perceived as such since 2018, have been promoted. However, the Group could not confirm that any public competitive examination has taken place since

<sup>972</sup> OHCHR, 3 February 2021, available at: <https://twitter.com/ACNUDH/status/1356955406187307008>; UN News, “ONU Derechos considera que la reforma del código penal de Nicaragua es “contraria a la Constitución”” (3 February 2021), available at: <https://news.un.org/es/story/2021/02/1487582>.

<sup>973</sup> GHREN interviews EEIV014, EEIV025, EEIV028, EEIV029, EEIV032, EEIV039, BBIV001, BBIV005, BBIV015.

<sup>974</sup> GHREN interviews BBIV001, BBIV006, BBIV011, BBIV012, BBIV013, EEIV014, EEIV028, EEIV032, EEIV052.

<sup>975</sup> GHREN interviews BBIV001, BBIV005, BBIV006.

<sup>976</sup> GHREN interviews EEIV014, EEIV025, EEIV029, EEIV028, EEIV032, EEIV039, BBIV001, BBIV005, BBIV006, BBIV012, BBIV030.

<sup>977</sup> Document on file with GHREN BBD0C194.

2017, even though this would be the regular path for promotion in the Judiciary. One of the judges who was promoted is now the President of the Court of Appeals of Managua, in charge of reviewing convictions in the second instance. The same judge also signed the first two resolutions issued in February 2023 resolving to strip 316 Nicaraguans of their nationality.<sup>978</sup> In addition, the GHREN received information about the appointment as judges of former police officers close to the governing party, and even of a person known to be a member of a pro-government armed groups.<sup>979</sup>

iii) Instrumentalisation of detention for investigative purposes

559. As of February 2021, with the adoption of Law No. 1060, judicial authorities systematically authorized judicial detention in favour of the Public Prosecutor's Office, leaving detained persons subject to prolonged police custody. This extension granted the police and the Public Prosecutor's Office additional time to formulate the indictment, to gather and/or manipulate evidence and to identify other real or perceived opponents and link them to the same criminal process.

560. The persons were detained for months without being charged by the prosecutor, and special hearings for the protection of constitutional guarantees were held secretly and behind closed doors. During these hearings, the detainees were not allowed to be represented by a defence attorney of their choice. In the presence of public defenders, the judicial authority determined that the requests of the Public Prosecutor's Office to extend the detention period were admissible, setting 90 days as a reasonable period for the "complementary investigation" and the formulation of the indictment, thus granting the measure of "judicial detention".

561. For example, an opponent was detained in 2021 and remained incommunicado from his family and lawyer for three months.<sup>980</sup> The hearing for the protection of guarantees provided for in Law No. 1060 was held without any authority notifying the family members or legal representatives of the detainee so that they could participate in, or have knowledge of the results of, the hearing. His relatives filed a writ of *habeas corpus* before the Court of Appeals of Managua, which ruled that the appeal was inadmissible due to lack of grounds. The preliminary hearing was conducted orally and privately at the DAJ facilities, without notifying the relatives or legal representatives of the detainee's free choice; the detainee was not able to meet with his lawyer until the initial hearing, three months later. He was charged with undermining national integrity and spreading false news through information and communication technologies and sentenced to nine years in prison.

562. Through judicial arrest warrants, the detainees have been subjected to prolonged custody by the National Police, and in particular by the DAJ, an entity also in charge of carrying out investigations, allowing the latter to carry out as many interrogations as it deems necessary, and exposing the detainees to risks of torture and cruel, inhuman or degrading treatment or punishment. It should also be noted that the DAJ does not have adequate facilities for prolonged detention, as it is a police precinct, and does not have the regulations, protocols, and specialized personnel available to the National Prison System.

563. The judicial authorities also made excessive and arbitrary use of preventive detention, imposing it in a generalized manner, without taking into account the specific circumstances of each case, the criteria of proportionality and finality of the process, nor the absence of evidence, and without due consideration of alternative measures to detention. All of this is in contravention of the principle of the exceptionality of this measure established in international human rights standards and in Nicaraguan law itself.<sup>981</sup>

564. Similarly, during the entire period under examination, the courts applied the "complex processing" envisaged in art. 135 of the Code of Criminal Procedure in a

<sup>978</sup> GHREN interviews BBIV005, BBIV001, BBIV006, BBIV012; documents on file with GHREN BBDOC332, BBDOC333, BBDOC334, BBDOC335, BBDOC336, BBDOC339.

<sup>979</sup> Documents on file with GHREN BBDOC337; GHREN interview BBIV001.

<sup>980</sup> GHREN interviews EEIV019, EEIV042.

<sup>981</sup> Code of Criminal Procedure, arts. 167–169; ICCPR, art. 9, para. 3. See CCPR/C/GC/35, para. 38.

generalized manner, doubling the maximum duration of the judicial process, as well as the periods for filing appeals and carrying out actions within the same. Thus, criminal proceedings were deliberately delayed under the pretext of legality.

iv) Instrumentalisation of criminal charges

565. At a first stage, corresponding to the mass demonstrations of 2018, the National Police made abusive use of the figure of “public scandal” contemplated in art. 537 of the Criminal Code, to detain demonstrators while allegedly committing the offense *in flagrante delicto*.<sup>982</sup> This pattern was confirmed by the CVJP, which reported a total of 1,248 arrests linked to protests in the period from 18 April to 16 August 2018, the motive in 1,075 of them being a public scandal.<sup>983</sup> Most of the individuals detained during this first period were not subject to prosecution charges but were released within 24 to 48 hours.<sup>984</sup>

566. Given the persistence of the demonstrations, from July 2018 onwards, the authorities used criminal law selectively and arbitrarily to criminally prosecute individuals who had organized or exercised leadership roles in the context of the demonstrations. Most of the persons detained between July 2018 and June 2019 were charged with the crimes of hindering public services (art. 327 of the Criminal Code) –in relation to roadblocks and barricades– and for serious crimes including terrorism (art. 394 of the Criminal Code), association to commit crimes (art. 392 of the Criminal Code), organized crime (art. 393 of the Criminal Code), simple kidnapping (art. 163 of the Criminal Code), kidnapping for extortion (art. 164 of the Criminal Code), illegal possession or carrying of firearms or ammunition (art. 401 of the Criminal Code), and manufacture, trafficking, possession and use of restricted weapons, explosive substances or devices (art. 404 of the Criminal Code).

567. Through the analysis of documentary and testimonial evidence and the review of 25 legal files corresponding to persons detained for acts related to civil protests, the GHREN was able to establish that the persons were accused of disproportionate crimes and/or for crimes which did not correspond to the facts that were the object of the indictment.<sup>985</sup>

568. The case of the “water carriers” (*aguadores*) should be highlighted as an example of this pattern. This involved the arbitrary detention of 9 men and 7 women, mostly young people, 13 of whom were members of the National Blue and White Unity (*Unidad Nacional Azul y Blanco*, UNAB)<sup>986</sup> when they were trying to hand out water and medicine to a group of 10 mothers of people imprisoned in the context of the protests.<sup>987</sup> The mothers had been on hunger strike since 14 November 2019, at the San Miguel Arcángel Church in Masaya, demanding the release of their relatives. In response, the Masaya mayor’s office

<sup>982</sup> Art. 231 of the Code of Criminal Procedure grants the National Police powers of arrest without a warrant in three cases: i) when the perpetrator is caught in the act of committing the crime; ii) when he or she is pursued fleeing from the scene of the crime; or iii) when he or she is caught at or near the scene with weapons, instruments or other objects that in some way suggest his or her immediate participation in the crime. GHREN interview EEIV031. See IACHR Report, Grave breaches, para. 122.

<sup>983</sup> The information presented, according to CVJP, was the result of a research and verification process with official sources, social networks and media as of 15 October 2018.

<sup>984</sup> GIEI Nicaragua Report, p. 195.

<sup>985</sup> In this regard, the GIEI Nicaragua found “the existence of patterns of behaviour in the criminalization processes, where the congruence between the facts and the typical adequacy of the conducts was non-existent. [...] abusive use was made of the criminal definitions of terrorism and organized crime to prosecute and punish acts of opposition to the government”. GIEI Nicaragua Report, p. 265.

<sup>986</sup> The UNAB was born in October 2018 as a political movement that brought together political parties, social organizations, student associations, academics, professionals, feminists, peasants, entrepreneurs, among others, to demand the reactivation of the national dialogue, among other things.

<sup>987</sup> Files on file with GHREN EEDOC010, EEDOC011, EEDOC012, EEDOC013, EEDOC014. See Amnesty International, press release, “Detention of activists in Nicaragua”, 18 November 2019, available at: <https://www.amnesty.org/es/documents/amr43/1423/2019/es/>; La Prensa Nicaragua, “La historia de “los aguadores de a pie” de Masaya”, 20 December 2019, available at: <https://www.youtube.com/watch?v=fU8bEHo7Vxs>



cut off the public services of water and electricity to the church, which was surrounded by agents of the DOEP of the National Police.

569. On the first night of the protest, young people and residents of Masaya appeared in front of the church with bottles of water and medicine to give to the protesters. The police did not allow them to approach and ordered them to leave. However, some of the young people managed to get several bottles of water through the gates of the church and left the place. On their way back to Managua they were intercepted and detained by a contingent of three patrol cars. The young men and women were taken to the Masaya police station and later to El Chipote. On 17 November 2019, the Prosecutor's Office of Managua filed an indictment and requested the opening of proceedings against the 16 persons detained, as perpetrators of the crime of illicit arms trafficking. On 30 December 2019, 16 youths were released from prison under a regime of family cohabitation. The oral trial, scheduled for January 2020, never took place.<sup>988</sup>

570. As of July 2019 and until early 2021, the GHREN noted the indictment for common crimes against real or perceived opponents, in reference to alleged acts that were not apparently related to their participation in the 2018 protests or movements or acts of opposition to the Government. In the words of a victim interviewed by the GHREN:

*I was captured in February 2020. I was accused of drug trafficking. Most of the people captured during this time were accused of common crimes such as theft, and narcotics. They included information from my Facebook profile, and I was accused of drug trafficking at the university. I was detained in a punishment cell at "La 300".*<sup>989</sup>

571. According to the organization UDR, of the 88 persons arrested during this period (86 men and 2 women), at least 52 were charged with trafficking in narcotics, psychotropic and other controlled substances, in several cases, in concurrence with the crime of manufacturing, trafficking, and illegal possession/import of weapons; 15 were charged with aggravated robbery; at least 15 others were charged with manufacturing, trafficking, illegal possession/import of weapons.<sup>990</sup>

572. For example, a young student was first arrested in September 2018 and convicted for the crimes of hindering public services and illegal carrying and use of firearms. In 2019 he was released under the regime of family cohabitation and the charges against him were suspended under the Amnesty Law. A few months later, he was re-arrested and sentenced for the crime of aggravated robbery to four years and six months imprisonment. He was held for approximately three years in solitary confinement in the maximum-security section of the Jorge Navarro prison complex, known as La Modelo.<sup>991</sup>

v) Instrumentalisation of the criminal process

573. The indictments were based on laws contrary to international human rights standards, unfounded charges that did not correspond to the facts described or were based on false evidence. Criminal proceedings were plagued with serious irregularities and violations of due process guarantees. Faced with this type of indictments, the courts widely violated real or perceived opponents' rights to the presumption of innocence, equality before the courts, fair trial, and effective defence by a lawyer of their choice, leaving individuals defenceless.

a. Violations of the right to the presumption of innocence

574. The detentions and criminalization processes took place in the context of strong stigmatization of the opposition or individuals perceived as such. On repeated occasions,

<sup>988</sup> GHREN interviews EEIV010, EEIV001, EEIV041; WGAD, Opinion No. 21/2020, concerning 16 persons (Nicaragua) before the Human Rights Council, A/HRC/WGAD/2020/21 (3 July 2020).

<sup>989</sup> GHREN interview EEIV067.

<sup>990</sup> Listing provided by UDR, on file with GHREN EEDOC102.

<sup>991</sup> WGAD, Opinion No. 39/2020, A/HRC/WGAD/2020/39 (9 October 2020); IACHR, Resolution 33/2021, Precautionary Measure No. 205-21, 22 April 2021.

authorities, including President Daniel Ortega and Vice President Rosario Murillo, publicly accused real or perceived opponents of being responsible for committing serious crimes, making assertions about their guilt, and using denigrating language to refer to them. Several of those detained were also subjected to specific stigmatization and delegitimization campaigns by State authorities, as well as through social networks and pro-government media. The authorities also issued official communiqués presenting the detained persons as guilty. Said actions were carried out before or contemporaneously with the criminal proceedings to which the persons were subjected, in violation of their right to the presumption of innocence.<sup>992</sup>

575. Thus, in 2018 and 2019, several of the persons detained in relation to their participation in demonstrations and roadblocks were transferred to the *Plaza el Sol* Police Complex in Managua, exposed before the media and presented as “terrorists”, “violent criminals”, and “coup plotters”, who had been successfully captured by the National Police.<sup>993</sup>

576. On 31 January 2022, the Public Prosecutor’s Office informed about the opening of the trials of the persons who were detained in the DAJ and under house arrest –all of them with a high public profile due to their political or business leadership, or their academic or journalistic work–. Through a press release, the Public Prosecutor’s Office stated that *“these are the same criminals and delinquents who have reoffended, attacking the rights of the Nicaraguan people and society, compromising peace and security. They are the same ones who promoted the terrorist acts of aggression of the failed coup attempt of 2018, having paralyzed the country and created damage to the economy; they are the same ones who have caused so much pain and mourning in Nicaraguan families because of the murders, tortures and kidnappings”*.<sup>994</sup>

b. Criminal proceedings based on laws contrary to Nicaragua’s international human rights obligations, on unfounded charges, or false evidence

577. The analysis of testimonies, documentation, and review of files allowed the GHREN to verify the indictment of real or perceived opponents under criminal charges created by laws contrary to international human rights standards, under unfounded and/or disproportionate charges, or based on false evidence.

578. Since their approval in late 2020, the Cybercrimes Law and the Sovereignty Law have been widely used to prosecute individuals for their political choice or for expressing views critical of, or opposed to, those of the Government. Between May 2021 and 15 February 2023, at least 90 individuals were arrested and charged with the crime of conspiracy to commit undermining of national integrity under arts. 410 and 412 of the Criminal Code, in connection with the Sovereignty Law.<sup>995</sup> In addition, in 53 of these cases, the persons were charged with conspiracy to commit undermining of national integrity in

<sup>992</sup> CCPR/C/GC/32, para. 30: “all public authorities have a duty to refrain from prejudging the outcome of a trial, for example, by refraining from making public statements affirming the guilt of the accused. Defendants should not normally be shackled or kept in cages during the trial, or otherwise presented the court in a manner indicating that they may be dangerous criminals”.

<sup>993</sup> GHREN interviews EEIV04, EEIV005, EEIV012, EEIV017, EEIV069; documents on file with GHREN EEDOC179. See, for example, Vivanicaragua13, “Policía Nacional captura a los terroristas acusados de causar zozobra en Managua”, 18 September 2018, available at: <https://youtu.be/GQ9WFhfOttY>; El 19 Digital, “Presentan a sujetos señalados de terrorismo y asesinato”, 18 September 2018, available at: <https://youtu.be/MY1hKGV00vQ>.

<sup>994</sup> Public Prosecutor’s Office – Republic of Nicaragua, Comunicué 001-2022, 31 January 2022, available at: <https://ondalocalni.com/media/uploads/2022/01/31/juicios-politicos-ministerio-publico.jpg>: “[e]stos mismos criminales y delincuentes que han reincidido, atentando contra los derechos del pueblo y la sociedad nicaragüense, comprometiendo la paz y la seguridad. Son los mismos que promovieron los actos terroristas de la agresión del fallido intento de golpe de Estado del año 2018, habiendo paralizado el país y creado daño a la economía; son los mismos que han provocado tanto dolor y luto en las familias nicaragüenses a casusa de los asesinatos, torturas y secuestros”.

<sup>995</sup> List provided by UDR, on file with GHREN EEDOC102.

conjunction with the crime of spreading false news through information and communication technologies, in accordance with art. 30 of the Cybercrimes Law.

579. The analysis of the 25 files to which the GHREN had access also revealed that, in the majority of the cases, there was no clear, precise, specific, and circumstantial relationship between the punishable act and the participation of the accused in it, as required by the principle of legality.<sup>996</sup> On the contrary, there were blatant inconsistencies in relation to the persons, places, and times of the perpetration of the acts, as well as evident gaps in the legal qualification and the elements of conviction that supported it, as well as criminal accusations based on generalities, such as the participation of “groups of subjects of unknown identities or subjects not yet identified”.<sup>997</sup>

580. The formulation of indictments was largely based on vague and strongly generic evidence, which did not specify or establish the participation of the accused in vaguely described facts, and on the testimony of National Police agents.

581. The GHREN has reasonable grounds to believe that, in many of the cases examined, the police and the Public Prosecutor’s Office presented “fabricated” evidence, including false testimony and manipulated documentation. For example, in several cases, arrest warrants were presented with dates after the date on which the individuals were arrested. In others, the dates were manipulated to make it appear that the warrant had been issued before the arrest. Multiple and credible witnesses interviewed by the GHREN also reported that police officers “set up” weapons or drugs in their vehicles.<sup>998</sup> In other cases, victims reported that social media posts from fake accounts with their names were presented as evidence.<sup>999</sup>

c. Violations of the rights to equality before the courts and to a fair trial

582. In the majority of the judicial processes analysed by the GHREN, the judges accepted all of the evidence presented by the Public Prosecutor’s Office –which only included, in some cases, the testimony from police personnel–, while discarding the defence’s rebuttal evidence, allegations or objections.<sup>1000</sup> Defence attorneys interviewed by the GHREN denounced that the appeals filed against irregularities in the process and the evidence presented in the prosecution’s indictment, were systematically rejected.<sup>1001</sup>

583. The lack of equality before the courts also included the lack of equality of procedural means,<sup>1002</sup> since the lawyers did not have access to the entire file, to the prosecutor’s indictment, to evidence or to copies of investigative acts. Access to the online consultation system of the Judiciary was also blocked.

584. In all of the criminal proceedings analysed that took place as of 2021, the attorneys were denied access to the indictments, which prevented them from preparing their defence and introducing evidence on their clients’ behalf. Faced with the impossibility of accessing the indictments, and the fear of reprisals, the accused persons chose not to present witnesses on their behalf and their defence chose the strategy of refuting the evidence in its entirety, considering that, on the one hand, it had been obtained illegally and, on the other hand, it

<sup>996</sup> Code of Criminal Procedure, art. 77, section 4.

<sup>997</sup> Legal files on file with GHREN EEDOC003, EEDOC004, EEDOC006, EEDOC053, EEDOC059, EEDOC064, EEDOC067.

<sup>998</sup> GHREN interviews EEIV003, EEIV017, EEIV018, EEIV022, EEIV025, EEIV029, EEIV067 EEIV069.

<sup>999</sup> GHREN interviews EEIV025, EEIV036, EEIV046, AAIV051.

<sup>1000</sup> Legal files on file with GHREN EEDOC027, EEDOC028, EEDOC053, EEDOC054, EEDOC055, EEDOC056, EEDOC057, EEDOC058, EEDOC059, EEDOC060, AADOC100, AADOC101, AADOC102, AADOC103, AADOC104, AADOC105, AADOC108, AADOC10, AADOC11, AADOC12, AADOC13, AADOC13, AADOC15, AADOC116; GHREN interviews EEIV008, EEIV014, EEIV025, EEIV028, EEIV029, EEIV032, EEIV039, EEIV063, EEIV064, EEIV065, EEIV066, EEIV067, EEIV068, EEIV069.

<sup>1001</sup> GHREN interviews EEIV008, EEIV014, EEIV025, EEIV028, EEIV029, EEIV032, EEIV039, EEIV044, EEIV052.

<sup>1002</sup> ICCPR, art. 14, para. 1.

did not support the allegations surrounding the alleged crime. However, the courts accepted the entire indictment and evidence presented by the Public Prosecutor's Office. At the same time, the courts found all the defendants guilty and sentenced them to prison terms of between 8 and 13 years, and total disqualification from holding public office, employment, or other positions for the same period.

585. Since 2022, the courts have also failed to deliver the judgments. This has prevented defence attorneys from drafting properly supported and reasoned appeals, since they are not aware of the legal arguments put forward by the judicial authority in the judgments.

d. Violations of the right to counsel of the defendant's choice and retaliation against counsel

586. The hearings were held behind closed doors, without prior notification, and at unusual times and places to avoid public scrutiny and prevent the presence of the attorney of the accused person's choice. In several documented cases, this favoured the appointment of a public defender.<sup>1003</sup> According to the testimony of a defence attorney:

*They conducted the hearings of several defendants secretly, we were not notified. They even held them in the early hours of the morning. The process began on 2 June and we had access to the defendants until September and only for ten minutes, before the preliminary hearing when we were presented with a file of 250 folders. There were multiple due process violations. We were never informed of the reasons for the indictment, we could not access the documents, the physical and digital files that should be public. Even so, we were able to do so and presented appeals, and incidents of nullity that were not resolved. When we alleged violations of constitutional and procedural norms, the judges remained silent.*<sup>1004</sup>

587. In cases where lawyers were able to establish themselves as defenders, they carried out their duties under extremely limited conditions. They did not have access to the complete files, nor did they enjoy privacy in communications with their clients. In none of the 44 cases investigated by the GHREN lawyers were allowed to visit the detainees in custody to discuss the case and to prepare the defence. During hearings, police officers took photos and recordings of conversations between detainees and their legal teams, and judges prohibited lawyers from using cell phones and taking written notes.<sup>1005</sup>

588. Defence attorneys were subjected to humiliating treatment and intimidation by judges, prosecutors, and the police:<sup>1006</sup>

*They are increasingly aggressive in technically disqualifying the defence. When we present our opening arguments, refuting the prosecution's evidence and stating that we cannot present witnesses because there is fear in people, they threaten us with disciplinary action before the Supreme Court against us for presenting impertinent arguments. The judge told me that "I already know how you work".*<sup>1007</sup>

589. Defence attorneys have also been subjected to reprisals, including attacks, threats against their lives and the lives of their families, criminal prosecution, surveillance, intimidation, the discrediting of their work, and disbarment from practicing law.<sup>1008</sup>

<sup>1003</sup> OHCHR, Report on the Situation of Human Rights in Nicaragua, A/HRC/42/18, 17 September 2019, para. 42; GRHEN interviews EEIV008, EEIV014, EEIV025, EEIV028, EEIV029, EEIV032, EEIV063, EEIV064, EEIV065, EEIV066, EEIV067, EEIV068, EEIV069, AAIV046, AAIV047, AAIV048, AAIV049, AAIV050, AAIV051, AAIV052.

<sup>1004</sup> GHREN interview EEIV008.

<sup>1005</sup> GHREN interviews EEIV008, EEIV014, EEIV025, EEIV029, EEIV028, EEIV032, EEIV052, EEIV070.

<sup>1006</sup> In this regard, the Human Rights Committee, in its General Comment No. 32, has reiterated that "A hearing is not fair if, for instance, the defendant in criminal proceedings is faced manifestations of hostility or support for one of the parties in the courtroom is evident".

<sup>1007</sup> GHREN interview EEIV048.

<sup>1008</sup> GHREN interviews EEIV008, EEIV014, EEIV025, EEIV028, EEIV029, EEIV032, EEIV039, EEIV052, EEIV070.

590. The GHREN documented the case of a lawyer who defended more than 60 cases of people detained and prosecuted in 2018 and 2019 in the context of the protests, and who was the victim of threats and harassment through social networks: “*We’ll see where you will hide. We’ll see if, on the other side, you’ll be able to advocate for coup plotters who were already dispatched*”.<sup>1009</sup> In August 2019, when she was leaving her workplace, she noticed that her car was making a strange noise. When she took her car to the mechanic, the mechanic informed her that the tires had been loosened. Weeks later, members of pro-government groups surrounded her house and painted graffiti on the walls, writing the word “plomo” (lead) in capital letters. One night, a month later, a group of motorized individuals surrounded her house and shouted at her that she was a “golpista”, “murderer”, and “defensor de tranqueros” and that she was going to regret it. Although she called the police emergency number, they never answered. Her underage children were also victims of threats through social networks: “*You went on channel 10. We know where your children study. We will give you peace*”.<sup>1010</sup> Given the constant harassment and threats, the lawyer decided to leave the country together with her family.<sup>1011</sup>

591. Since 2019, at least 13 lawyers who have defended detained opponents have been forced to leave the country after being subjected to harassment, surveillance, and threats.<sup>1012</sup> The lawyers who have remained in the country carry out their work in extremely complex conditions that imply a constant risk, forcing them to limit their professional and personal activities. One person who has provided criminal defence for detained protesters and opposition members told the GHREN:

*They broke the windows of my car in front of 30-40 police officers and nobody did anything. They have also crashed my vehicle. One of the hard crashes was in 2020. The last time was in 2021. On this date in a program on Grigsby (a radio program related to the Government), they mentioned a group of pro-coup lawyers, who were doing money laundering. They were all lawyers from the “Unidad de Defensa Jurídica”. That is why I had to leave my house, I was forced to move to another house.*<sup>1013</sup>

592. The UN Basic Principles on the Role of Lawyers recognize minimum guarantees for the exercise of their profession. Among them is the obligation of governments to ensure appropriate conditions for lawyers to be able to perform all their professional functions without intimidation, obstacles, harassment, or undue interference; to communicate freely with their clients; and not to suffer or be exposed to administrative, economic or other persecution or sanctions as a result of any action they have taken by the obligations, rules, and ethical standards recognized for their profession. When their safety is threatened as a result of the exercise of their functions, States must provide adequate protection.<sup>1014</sup>

### c) Torture and other cruel, inhuman, and degrading treatment or punishment

593. The GHREN has reasonable grounds to believe that, during the period under review, agents of the National Police and the National Prison System (SPN) and members of pro-government armed groups committed acts of physical and psychological torture, including sexual and gender-based violence, and other cruel, inhuman, or degrading treatment or punishment, against opponents or those perceived as such. The acts reported to the GHREN were deliberate, carried out by State agents, or with their consent or acquiescence in the context of the apprehensions, interrogations, and detention of the victims. In some instances, the violations and abuses were committed with the aim of intimidating and punishing opponents, or those perceived as such. On other occasions, they were committed with the aim of extracting information.

<sup>1009</sup> Message dated 25 July 2019 via Facebook Messenger, on file with GHREN EEDOC190.

<sup>1010</sup> Message dated 25 July 2019 via Facebook Messenger, on file with GHREN EEDOC191.

<sup>1011</sup> GHREN interview EEIV014; documents on file with GHREN EEDOC193, EEDOC194, EEDOC195.

<sup>1012</sup> GHREN interview EEIV070.

<sup>1013</sup> GHREN interview EEIV025.

<sup>1014</sup> See <https://www.ohchr.org/es/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

594. The GHREN concluded that, in at least 37 cases investigated by the Group, persons deprived of their liberty were subjected to a variety of acts and a combination of treatment and conditions that violate the mandatory prohibition of torture and cruel, inhuman, or degrading treatment or punishment, and whose common denominator is that they were intended to inflict physical and psychological pain and suffering.<sup>1015</sup> The GHREN found that agents of the National Police and the SPN were the main perpetrators of these acts. In some cases, non-state actors, particularly civilians belonging to pro-government armed groups, participated as perpetrators, acting jointly with State actors or with the knowledge and/or acquiescence of the State.

595. According to the investigation conducted by the GHREN, it was reasonably evident that several of the methods used, considered in isolation, clearly constitute acts of torture or cruel, inhuman, or degrading treatment or punishment. There were also methods, techniques, or conditions of detention that by themselves cannot be equated to acts of torture. However, their combination and/or recurrence, or long duration, along with other external stressors or vulnerabilities –including health conditions, age, gender identity, and sexual orientation–, had devastating impacts on individuals.<sup>1016</sup> Thus, rather than examining each factor separately to determine which ones transcend the “severity” threshold, the GHREN considered the “torture environment” generated by the combination of these different practices and factors, to understand the reality and effects on the victims experiencing them and analyse them holistically and not as a series of isolated techniques and circumstances.<sup>1017</sup>

596. The information collected indicates that there was an evolution over time in the methods of torture and forms of ill-treatment used. During 2018, more cases were reported concerning the use of physical violence and sexual violence during and after interrogations. Throughout the period under review, patterns of discriminatory treatment were noted in SPN centres, which constituted inhuman and degrading treatment or punishment and, in some cases, torture.

597. The testimonies collected refer to more complex methods from 2021 onwards, with a combination of different techniques and the generation of psychological torture environments, mainly aimed at punishing and breaking detainees. Regarding this last phase, one witness stated: “*there is a psychological attack against people to destroy their personality through prolonged confinement, lack of medical attention, poor nutrition. Now there is another type of violence (because) the message has already been given with the murders and tortures, fear has been installed, the barbarity has become evident, and so now they are killing people little by little*”.<sup>1018</sup>

<sup>1015</sup> The GHREN collected testimonies from released detainees, witnesses, and relatives of detainees. The Group also analysed reports from international organizations and human rights protection mechanisms, including the IACHR, OHCHR and the CAT; judicial records and requests for legal medical examinations, as well as *habeas corpus* writs to establish the health status of the detainee; documentation made available to the Group by civil society organizations, such as UPPN, UDJ, CPDH, including reports, expert opinions, medical and psychological reports, photographic material corroborating the testimonies received; and the Precautionary Measures of the IACHR and Opinions issued by the WGAD which include relevant information and considerations on acts of torture and other cruel, inhuman or degrading treatment to which the persons deprived of their liberty were subjected.

<sup>1016</sup> UN, Report of the Independent Expert on protection against violence and discrimination on the basis of sexual orientation or gender identity, A/73/152 (12 July 2018), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/220/44/PDF/N1822044.pdf?OpenElement>.

<sup>1017</sup> *Ibid.* See Report of the Special Rapporteur, Torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/40/59, 16 January 2019, paras. 48, 59–60. In particular, where there is no physical pain or suffering, due regard should always be given to the context in which certain methods are used. For example, while under normal circumstances publicly expressed insults and defamation may constitute a criminal offence, but not torture, this assessment may change considerably when the same conduct becomes a matter of systematic State-sponsored vilification and persecution involving additional measures such as arbitrary detention, constant surveillance, systematic denial of justice and serious threats or intimidation.

<sup>1018</sup> GRHEN interview EEIV025.

## i) Mistreatment during apprehension

598. Apprehensions and transfers to police stations and the DAJ were often carried out through the deployment of DOEP police contingents, often assisted by pro-government armed groups, and making disproportionate and unnecessary use of force through kicks and punches, the use of police batons and gun butts, hair pulling, insults, threats, and shoving.<sup>1019</sup> In some cases, severe violence was exercised with the aim of purposeful infliction of pain or suffering on a powerless person, reaching the threshold of torture.<sup>1020</sup> According to a witness,

*Two policemen approached me and asked me for my name. From that moment on they began to assault me, to hit me with culetazos (gun butts), and they handcuffed me. On the way they kept hitting me and (asking me questions). I said I didn't know what they were talking about. My wife informed me that they entered the house and began to search it, they beat her, and she asked what they were looking for, but they did not answer her. In El Chipote they stripped me naked and continued to beat me with culetazos (gun butts), they handcuffed me and put me in a preventive cell, and they continued asking questions [...]*<sup>1021</sup>

599. In relation to arrests that took place in a house, the victims interviewed consistently reported violent entry into the property.<sup>1022</sup> One witness reported:

*They arrested me at a friend's house. The police arrived and arrested 13 people. It was a group of police and hooded people, they surrounded the house and entered without a warrant, and pointed a gun at the owner, they arrived and began to beat us, they took off our shoes, they took pictures of us while we were on the floor, then they threw us in the vans and trampled us so that we would look down.*<sup>1023</sup>

600. In some cases that took place during the period of the 2018 protests, members of pro-government groups detained and held protesters captive in unofficial detention places, including facilities provided by individuals sympathetic to the Government, the FSLN, and some municipalities. In these places, members of these groups subjected protesters to lengthy interrogations and punishments using torture, including through beatings and burns.<sup>1024</sup> After several hours or days, the detainees were handed over to the National Police, with visible signs of violence.<sup>1025</sup> However, the police did not arrest the perpetrators nor did it carry out actions aimed at protecting the victim and establishing the facts; on the contrary, the police continued torturing and mistreating the individuals.

601. A young protester recounted how he was detained by members of a pro-government armed group in a clandestine detention site:

*I didn't know how much time passed, but they moved me to a place where I could hear crickets and frogs. I remember thinking about my family. I thought no one was going to find me. They took me to a farm that was used as a clandestine prison. I could hear screams from the entrance. They took off my shoes and socks. They took*

<sup>1019</sup> GHREN interviews EEIV004, EEIV006, EEIV009, EEIV007, EEIV010, EEIV011, EEIV012, EEIV015, EEIV016, EEIV017, EEIV024, EEIV045, AAIV002, AAIV047, AAIV048, AAIV050, AAIV052, DDIV022, EEIV031, EEIV038.

<sup>1020</sup> See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Use of force outside detention and prohibition of torture and other cruel, inhuman or degrading treatment or punishment, para. 47.

<sup>1021</sup> GHREN interview EEIV009.

<sup>1022</sup> GHREN interviews EEIV003, EEIV005, EEIV011, EEIV016, EEIV023, EEIV047, EEIV063, EEIV065, AAIV002, AAIV047, AAIV048, AAIV050, AAIV052.

<sup>1023</sup> GHREN interview EEIV016.

<sup>1024</sup> GHREN interviews BBIV003, EEIV035.

<sup>1025</sup> GHREN interviews EEIV045, BBIV003, AAIV018, AAIV019; document on file with GHREN EEDOC052; UPPN and International Human Rights Network (RIDH), Report "Detained, tortured and displaced; political imprisonment and its aftermath in Nicaragua", presented to the UN Committee against Torture (CAT) during its 74<sup>th</sup> session from 12–29 July 2022 (hereinafter "UPPN and RIDH Report"), p. 4, available at: <https://ridheuropa.org/es/detenidos-torturados-y-desplazados-el-presidio-politico-y-sus-secuelas-en-nicaragua/>.

me out of the vehicle and beat me all over. It was hard for me to walk because I was handcuffed and with cable ties (plastic cable handcuffs) on my feet. They hit me with something metallic, I think with an AKA.<sup>1026</sup>

602. In other cases, members of pro-government armed groups participated in the apprehension of persons in conjunction with National Police agents, and violently assaulted the detainees, both during transfers and in police stations.<sup>1027</sup>

*I was going to the market to buy something and was stopped in a corner by about 15 people with AKs and shotguns, with their faces covered and dressed in civilian clothes. They signalled me to stop. [...] They got upset when they saw that I had the (Nicaraguan) flag. They started kicking me with their guns, looking for my face, my nose. They tied me up with my shoelaces, they put my shirt on my face. They put me in a van. [...] Three of the people stayed behind with me in the trunk and were very aggressive. One person, in particular, hit me with his hands, kicked me, and hit me with his gun. If I spoke he assaulted me, if I kept quiet he assaulted me too. They went all over the streets of (place omitted). They stopped at some point and fired shots into the air. [...] At 18:00 they took me to the police in (place omitted). They took off my shoelaces, put me in metal handcuffs, and handed me over to the police. About 80 people were waiting for me in line with pipes, pieces of metal, and wood. They told me to go through the middle of the line and they started to beat me among all of them, police and civilians, soldiers, and government fanatics shouting "vendepatria". I fainted. When I regained consciousness, I woke up face down, I couldn't see, because of the blood, and I couldn't hear very well.<sup>1028</sup>*

603. According to the information received at the date of writing of this report, these acts have not been investigated or sanctioned by the authorities and remain unpunished.

## ii) Torture and ill-treatment in police custody

604. The use of physical and sexual torture techniques was particularly prevalent between April 2018 and June 2019, during extensive interrogations carried out under police custody for information. Torture and ill-treatment were also aimed at punishing individuals who participated in the protests.

a. To obtain information

605. The GHREN investigated the cases of 17 persons who were subjected to torture and ill-treatment during interrogations by National Police agents in National Police stations and DAJ facilities in Managua.<sup>1029</sup> In these places, the detainees were kept locked up without

<sup>1026</sup> GHREN interview BBIV003; IACHR Report, Persons Deprived of Liberty in Nicaragua in the Context of the Human Rights Crisis Initiated on 18 April 2018, 5 October 2020, para. 81, available at: <http://www.oas.org/es/cidh/informes/pdfs/Nicaragua-PPL-es.pdf>

<sup>1027</sup> GHREN interviews EEIV004, EEIV016, EEIV022, EEIV024, EEIV045, EEIV050, EEIV067, EEIV069, AAIV010, AAIV019.

<sup>1028</sup> GHREN interview EEIV045.

<sup>1029</sup> GHREN interviews EEIV024, EEIV038, DDIV022. According to information received, most of the victims were transferred to the DAJ facilities. See UPPN and RIDH Report, p. 7. El Chipote, built in 1931 on the shores of the Tiscapa Lagoon, in a secluded area inaccessible to the public, has a history of use as a torture centre, both under the Somoza dictatorship and after the Sandinista revolution. All of its cells were "punishment cells", most of them very small and unsanitary, without adequate ventilation and without access to natural light. When the new DAJ facilities were inaugurated in El Nuevo Chipote, most of the people previously detained in the old facilities were transferred there. Although these new facilities have a more adequate and sanitary infrastructure, the practices of interrogation, torture and cruel, inhuman and degrading treatment persisted. See Diario Las Américas, "El Chipote, un tenebroso sitio de tortura en Nicaragua", 1 July 2015, available at: <https://www.diariolasamericas.com/america-latina/el-chipote-un-tenebroso-sitio-tortura-nicaragua-n3195981>.



being allowed to make a phone call to their family or lawyers, and without being informed of the reasons for their detention.<sup>1030</sup>

606. The authorities sought to extract information through the arbitrary detention of the persons, and the use of torture, cruel, inhuman or degrading treatment, threats, and other humiliations. The individuals were subjected to numerous and intense interrogations, during which the National Police officers repeatedly questioned them about student and social leadership, the organization of the 2018 protests, and the sources of funding for the demonstrations and other activities of opposition movements and of actors considered critical of the Government, which were described by the authorities as “terrorist acts”.

*I asked them to show me a judge’s order, and instead, one of the policemen hit me in the mouth and told me I had no right to speak. “We just want you to say (content omitted)”. At that point, they opened (tied) my feet with a nail on each wall. They kicked me, beat me, turned me around, and started to hit me with machetes on my back and other parts of my body. They let me rest for a minute and then began to remove my toenails. I was crying, screaming. [...] Then they stripped me naked, threw water on me, and began to use wires to give me electric shocks on my feet and testicles. They asked me again about several people, they told me they were going to cut off my ear. They gave me a big scar on my eye and, after that, they took me to the cell and threw me in. I lost consciousness and woke up inside the cell.<sup>1031</sup>*

607. The torture techniques documented by the Group in the context of interrogations included: beatings and assaults inflicted on different parts of the body including the face, ribs, stomach, back, buttocks, head, and teeth; the application of electric shocks, including to the genitals; the infliction of acid and cigarette burns; asphyxiation; simulated drowning (“submarine”); blows with open hands to the ears –colloquially known as the “telephone”–; penetrating injuries with sharp objects to wrists and ankles; pulling out fingernails; and stress positions –legs spread wide, suspension of the hands, handcuffed to chairs for hours–.<sup>1032</sup> Instruments such as police batons, chains, ribbons, ropes, firearms, tasers, handcuffs, knives, and bridles, among others, were used.

608. A witness detained in El Chipote in July 2018 described the torture suffered:

*On the third day, they took me out again to the interrogation, they told me that I was too smart; the fourth day it was the same; the fifth day the same questioning began, who was paying me, who was authorizing me. My face was swollen from the blows, my eye was swollen and closed, and I could only see out of one eye and could tell the time more or less. The same captain, who was always present at the interrogations, this time took out a phone and began to record. The others kept hitting me in the face, in the ribs, in the stomach, always handcuffed with my hands behind my back [...]. At that moment, two other officers came in with a pair of pliers, they beat me, and kicked me until I almost fainted. After a while, they put my hands on a desk and removed a nail from my left hand. This time the pain was unbearable, I asked them for forgiveness, and I begged them to stop, they pulled off the second nail, they pulled off the third nail, and put a knee on top of their hands, I could not stand the pain anymore [...] there were more than five of them and the captain was laughing.<sup>1033</sup>*

<sup>1030</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV007, EEIV009, EEIV010, EEIV012, EEIV015, EEIV016, EEIV017, EEIV024, EEIV035, EEIV045, AAV002, AAV008, AAV010, DDIV022.

<sup>1031</sup> GHREN interview EEIV024.

<sup>1032</sup> GHREN interviews EEIV004, EEIV006, EEIV009, EEIV015, EEIV016, EEIV024, EEIV045, EEIV030, BBIV003, DDIV022, AAV019; UDJ, report “Principales resultados y hallazgos – Proceso de peritación forense”, November 2022, pp. 38–39.

<sup>1033</sup> GHREN interview EEIV006.

609. The GHREN also received testimonies about acts of sexual violence in DAJ facilities, including cases of rape:

*They put me in such a way that my hands and feet were facing upward, and they hung me from a chain with a hook from the ceiling. My back was down and my face was up. [...] they went out and came back and asked me. I said, “what can I tell you if I have no idea what you are talking about, I can’t tell you what you want to hear because I don’t know”. Then they started hitting me with fists, elbows, knees, and kicks. Then they took me down, put me on the desk handcuffed, and started to hit me with wires, they started to put the lit cigarette on my buttocks, and on my legs, I screamed, I cried and they covered my mouth. At some point, I told them that I couldn’t take it anymore. They told me they were going to give me a pill. They started to rape me.*<sup>1034</sup>

610. Testimonies collected by the GHREN show how, in addition to the physical pain suffered, detainees were subjected to mental and psychological suffering through humiliation and threats, including death threats against them and their families; they were also shown photos of their daily lives and were made aware that they were under surveillance.<sup>1035</sup> In the vast majority of the cases investigated by the GRHEN, individuals were forced to undress and do squats, and some of them were forced to remain naked for long periods of time.<sup>1036</sup>

611. A young man detained in El Chipote in September 2018 told the GHREN that:

*At El Chipote they forced me to undress and do squats. They put me in a very narrow cell where they proceeded to take my personal information. Then a commissioner came and began to interrogate me, then they took me to another cell. They took me out again for another interrogation. Finally, they put me in a cell with four tombstones (cement beds). There was no light, there was a thick metal door. They passed me things through a little window. [...] During the first week, they took me out five to seven times a day to interrogate me with blows. They never introduced themselves or showed me their IDs. One person had one sun on his uniform, he would be a deputy commissioner. Another had two suns. On one occasion they threatened me with my family. They told me that they knew where my (relative) worked, in the company (name omitted), and that he had done a job. [...] They told me my relative’s schedule.*<sup>1037</sup>

612. Women suffered sexist insults and specific threats of being subjected to sexual violence. During interrogations of female detainees, the agents used sexist insults such as “whores”, “lazy women”, and “damn bitches”. The agents also made comments about the detainees’ children, seeking to induce feelings of guilt for “being bad mothers”, referring to patriarchal views of the role of women in society and, in particular, that women should not be participating in demonstrations or political events, but should stay at home and “take care of their children and families”.<sup>1038</sup> Acts of denigration of people’s sexual orientation were also common during interrogations.<sup>1039</sup>

b. In order to punish

613. Acts of torture and other cruel, inhuman, or degrading treatment or punishment were also used to intimidate and punish people who participated in the 2018 protests. According to the testimonies and information gathered, there was a particular viciousness against public officials, retired military men and women, peasant leaders, students, and former

<sup>1034</sup> GHREN interview EEIV024.

<sup>1035</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV007, EEIV009, EEIV010, EEIV012, EEIV015, EEIV016, EEIV017, EEIV024, EEIV035, EEIV045, AAV002, AAV008, AAV010, AAV019, DDIV022.

<sup>1036</sup> *Ibid.*

<sup>1037</sup> GHREN interview EEIV012.

<sup>1038</sup> GHREN interviews AAV002, AAV010, AAV047, AAV050; document on file with GHREN AADOC084.

<sup>1039</sup> GHREN interviews AAV008, AAV039.

members of the FSLN and the Sandinista Youth who participated in the protests, and who were considered traitors to the party and the Sandinismo.<sup>1040</sup>

614. Police agents, both men and women, were reported to be the main perpetrators of these acts, which took place, in most cases, in police stations, and El Chipote. However, in at least seven of the cases investigated by the GHREN, the victims reported having been tortured and/or treated in a cruel, inhuman, or degrading manner, also by members of pro-government armed groups in the presence and/or with the knowledge of police authorities.<sup>1041</sup> A former public official who suffered acts of torture told the GHREN:

*The paramilitaries were inside along with the policemen who came in and started beating me one by one while saying “What do we do with the deserter?” Two paramilitaries grabbed me and took me to a horrible, damp, rough corridor, I was saying “where are they taking me, where are they taking me?” At the end of this corridor, there was an empty place, it seemed destined for lockers, I resisted, but they threw me into this space, I tried to get up, but they knelt me down and smashed me against the wall [...] The officers were watching. They kicked me for about three hours. I fainted many times, defecated, and urinated. They offered me a cigarette, to rest for a while. They started kicking me again because I was a traitor [...] At the same time, I could see how they tortured (name of his companion).<sup>1042</sup>*

615. Moreover, during detention in police stations and especially in El Chipote, practices of sensory or physiological irritation were used<sup>1043</sup> through bad smells, deprivation of sleep, food and drink, detention in very small, humid, dirty spaces, or in total darkness or with permanent artificial light.<sup>1044</sup> People were not provided with sheets or mattresses and were forced to sleep on the floor, which they described as cold and wet.<sup>1045</sup> One witness reported:

*When I woke up I was in a dark place where I couldn’t see anything, with no water and no food. It was seven or eight days before they opened the door to give me something to eat. So I spent 72 days in total isolation, from (month omitted) 2018 when they transferred me to El Chipote until (month omitted) 2018, when they took me out to the doctor (medical centre) of El Chipote.<sup>1046</sup>*

616. According to the testimony of another witness:

*In El Chipote I was detained in a very small cell with four cabins, a wash basin, and a hole to relieve ourselves, and everything stank. The door was sealed, the light was turned off and there was a complete absence of natural light. There was a hole covered with mesh and bars in the ceiling, and sometimes at night snakes and cats would come in and we could see by the gleam in their eyes. In the other corridor, we could hear the cries of the girls. We were all in uncertainty and we thought they were going to kill us. I did not sleep thinking about my son and I cried. During the*

<sup>1040</sup> IACHR Report, Persons Deprived of Liberty in Nicaragua in the Context of the Human Rights Crisis Initiated on 18 April 2018, 5 October 2020, paras. 8, 115, 159, 172; interviews, <https://www.facebook.com/watch/?v=2108348169495364>.

<sup>1041</sup> GHREN interviews EEIV004, EEIV06, EEIV016, EEIV024, EEIV045, BBIV003, DDIV022.

<sup>1042</sup> GHREN EEIV004 interview.

<sup>1043</sup> Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, report A/HRC/43/49, 20 March 2020, para. 26: “physical “no-touch” torture avoids direct physical interaction, but still intentionally manipulates or instrumentalizes physiological needs, functions and reactions to inflict physical pain or suffering. Although these techniques deliberately use the conduit of the victim’s body for the infliction of pain and suffering, they are sometimes discussed as psychological torture, mainly because of their psychological rationale and intended destabilizing effect on the human mind and emotions, and the limited physical contact between the torturer and the victim. If “no-touch” techniques inflict severe physical pain or suffering of any kind, however, they should be regarded as physical torture”.

<sup>1044</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV009, EEIV012, EEIV016, EEIV017, EEIV024, EEIV045, DDIV022, AAIV039, AAIV047, AAIV048, AAIV052.

<sup>1045</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV012, EEIV016, EEIV017, EEIV024, EEIV045, AAIV047, AAIV048, AAIV050, AAIV051, AAIV053, DDIV022.

<sup>1046</sup> GHREN interview EEIV024.

*days that I remained in El Chipote, in total darkness, I was able to know the approximate time, thanks to the regular searches that were carried out in the compound. During these searches, the officers took us [...] naked out of our cells and ordered us to pronounce our names, surnames, and prisoner code. If we did not do so, they would smash our heads against the wall.*<sup>1047</sup>

617. Another witness described the conditions of detention in El Chipote in the following terms:

*The DAJ's cell number [...] was full of water, the cabins were broken. I spent 38 days in this cell always handcuffed. The water jet was always on. They took me out to torture me and put me back in, always beating me on my head and sides. The door was made of iron, and a little yellowish light entered through the bars. With each change of guard, they opened the dungeon to torture me. I had heard of a medical post and I requested attention [...], plus all the mosquitoes inside, I had lost track of time. They took me to this medical post on two or three occasions, and they gave me pills [...] to sleep, but I didn't take them because I was afraid they were going to come and kill me when I was sleeping. I was always naked with a pair of underwear.*<sup>1048</sup>

618. In at least nine cases investigated by the GHREN, both men and women were forced to remain naked or semi-naked during their detention at the DAJ, for periods ranging from a few hours to several weeks.<sup>1049</sup>

### iii) Torture and discriminatory treatment in the National Prison System

619. Opponents or persons perceived as such who were transferred to SPN centres were subjected to discriminatory treatment and detention conditions contrary to international standards, which constituted cruel, inhuman or degrading treatment and, in some cases, torture.

620. Between April 2018 and June 2019, most of the men detained were transferred to the Jorge Navarro prison complex in Tipitapa, Managua, known as “La Modelo”, and women to the *Establecimiento Penitenciario Integral de Mujeres* (EPIM) in Tipitapa, also known as “La Esperanza”. In these centres, people were held in separate cells or galleries in overcrowded conditions and deprived of any interaction with common prisoners. Starting in July 2019, political detainees were held in SPN centres in various parts of the country, in addition to La Modelo and La Esperanza.<sup>1050</sup>

621. The detainees in La Modelo and La Esperanza were subjected to mistreatment implemented in a discriminatory manner, as punishment for their political choices, these being real or perceived. These included beatings, threats, and insults; prohibition to communicate with other detainees; isolation in punishment cells; inadequate food, in some cases in smaller portions than those corresponding to common prisoners; water and electricity cut off in the cells; and refusal to hand over parcels of food and basic supplies brought by their families. Access to medical attention was very limited and was provided only on rare occasions or when the person's medical situation had worsened.

a. Prolonged and indefinite isolation

622. At La Modelo, several of the detainees were subjected to a prolonged and indefinite isolation regime in the maximum security section, known as “La 300” and in the punishment cells known as “El Infiernillo” (the little hell).<sup>1051</sup> The detainees were placed in

<sup>1047</sup> GHREN interview EEIV006.

<sup>1048</sup> GHREN interview EEIV009.

<sup>1049</sup> *Ibid.*

<sup>1050</sup> Mecanismo para el registro de personas presas políticas, “Lista personas presas políticas Nicaragua”, October-November 2022, available at: <https://presasypresospolicosnicaragua.org/wp-content/uploads/2022/12/lista-PP-oct-nov-2022.pdf>.

<sup>1051</sup> The Nelson Mandela Rules define solitary confinement as “solitary confinement extending for a minimum of 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days”.

segregated cells, measuring 3 by 2 meters; these cells were closed with metal doors, were dark, unsanitary, lacked ventilation and sufficient natural light, and were exposed to humidity, cold or extreme heat.<sup>1052</sup> This particularly severe treatment was applied mostly to leaders of blockades and university takeovers, social leaders, members of the political opposition, former FSLN militants, and student leaders.<sup>1053</sup>

*[Name omitted] told me that this was the end of me, that I was going to pay, that I was going to know now what prison is. They had taken off my clothes, I was only in boxer shorts. The cell door was sealed, and I had a space of 3 by 2 meters. I spent [more than nine months] detained in this cell. I was always in La 300, always alone. Eventually, we managed to get them to let us in with a bible.*<sup>1054</sup>

623. The cells at El Infiernillo reached temperatures of 45 degrees Celsius and had limited access to water. Several witnesses described to the GHREN the conditions of detention in these punishment cells:

*They took me to the cells of modules 3-2 known as El Infiernillo [...], without permission to have basins or plates to eat, or sheets, or towels, or toothbrushes, and the psychological attacks began, stealing my parcels or taking things from them to hide the theft, the lack of medical attention [...] My health deteriorated, when I asked for medication I received verbal violence, sometimes they pressed us and hit our fingers with the door window [...] all this in that small space, the heat pressure is very strong since it does not have enough ventilation, it is plagued by vermin such as scorpions, snakes, spiders, beetles, flies [...] the water arrived dirty for short periods of time [...] we were not allowed any type of mental and physical activity, it is forbidden to do push-ups, there is no access to books, sports and any type of recreation, we were in solitary confinement, any inmate who had communication with us was punished by the prison system.*<sup>1055</sup>

624. Another witness described his personal experience in the following terms:

*In El Infiernillo my skin got contaminated, it rotted. I got fungus, and my skin erupted. I felt deep pain and burning. My mother had tried to bring me to the whole pharmacy because I also had lung problems. There was no light, and no air, and it is very difficult to recycle the air there. The wind chill in this place reaches 45 degrees.*<sup>1056</sup>

625. Exits from the cell were irregular and infrequent; some persons were unable to leave the cell to go out to the yard or receive visitors, or to communicate with their families for weeks or even months. Some detainees remained in this regime for more than two years. Starting in 2020, cameras were installed in each cell, preventing any moment of privacy.

626. The measure of isolation was imposed both on convicted persons and those awaiting trial and, in most cases, it was not justified or explained. For example, neither the detainees nor their legal representatives were informed whether it was a disciplinary measure or a measure for risk prevention and protection of the detained individual. Nor was solitary confinement applied as a circumstantial and temporary measure, as required by Article 108 of the Prison System Act.<sup>1057</sup> On the contrary, it was applied for indefinite and prolonged

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They restrict the use of solitary confinement to exceptional circumstances, as a last resort, for as short a time as possible and subject to independent review and prohibit the use of indefinite and prolonged solitary confinement. Nelson Mandela Rules, Rules 38.2, 43.1, 44, 45.1, 45.2, 46.

<sup>1052</sup> Documents on file with GHREN EEDOC039, EEDOC040, EEDOC041, EEDOC042, EEDOC043, EEDOC044, EEDOC045, EEDOC046, EEDOC047, EEDOC048, EEDOC049, EEDOC050.

<sup>1053</sup> GHREN interviews EEIV005, EEIV016, EEIV023, EEIV067, EEIV069.

<sup>1054</sup> GHREN interview EEIV017.

<sup>1055</sup> Documents on file with GHREN EEDOC051, EEIV016.

<sup>1056</sup> GRHEN interview EEIV067.

<sup>1057</sup> Prison System Act, art. 108 (precautionary measures in case of risk): In cases where the physical integrity of the prisoner and his or her family is at risk, as well as the order and security of the prison or its personnel, the following precautionary measures must be taken: 1. Placement of the prisoner in maximum security units within the same centre; [...] The precautionary measures will be used

periods of time during which the detainees did not have any significant human contact, both inside the prison and with the outside world. They also had no access to mail and telephone calls, nor to reading material, television, or radio.<sup>1058</sup> According to one testimony:

*In April they transferred me to El Infiernillo [...] They made me go through the tunnel that leads to El Infiernillo and told me that now things change. They locked me in a 3 by-2 cell with a camera on 24 hours a day. That's when my harassment began, they decided that I wasn't going to have visitors, the director would arrive in the early morning to (insult me), and another day (he beat me). I spent a long time with blood on my face without water to clean myself. In these cells, water comes for one hour a day [...] I spent (number omitted) years in the Infiernillo in isolation [...] it was so sad not knowing what was going on outside, never having outings to the patio, never seeing the sun.*<sup>1059</sup>

627. In several documented cases, persons detained in maximum-security cells were only able to receive visits once a month, and for a reduced time of between 15 and 45 minutes. During these visits, no physical contact was allowed between the detainee and his family members, as they were conducted through the glass and by telephone. Conversations were recorded. The visiting schedule was often altered without prior notice, which caused much frustration and suffering for both the detainees and their families.<sup>1060</sup>

*We were put on a monthly visiting regime, in my personal case of 30 minutes a month, talking on a phone that records all conversations and is being monitored, and I know this because they told me things that I had talked about with my relatives [...] Day by day in the maximum security cells it is the same, sick comrades, deplorable food, insults, threats, discrimination, repression, hatred, psychological attacks in which they changed the dates of visitations or simply did not give them to you so that you do not know what day they will come to visit you, which causes wear and tear, will they come? has something happened to someone in my family?*<sup>1061</sup>

628. According to the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, solitary confinement reduces meaningful social contact to an absolute minimum. The resulting level of social stimulation is not sufficient for the person to maintain a reasonable state of mental health.<sup>1062</sup> For the Rapporteur, prolonged solitary confinement is of particular concern; the 15-day time limit is the boundary between “solitary confinement” and “prolonged solitary confinement” because, at that point, some of the harmful psychological effects of solitary confinement may be irreversible.<sup>1063</sup> The Special Rapporteur has considered that the longer the duration of solitary confinement or the greater the uncertainty about the duration, the greater the pain and suffering of those in solitary confinement and the greater the risk of serious or irreparable harm to the prisoner. Various human rights mechanisms, such as the Human Rights Committee, the CAT, and

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exclusively as a form of prevention and circumstantial and temporary solution to situations of imminent personal or institutional danger. In any of the cases these measures must be reasoned and substantiated in writing by the director of the prison, everything must be recorded in the prisoner's file and communicated personally to the inmate.

<sup>1058</sup> GHREN interviews EEIV005, EEIV013, EEIV016, EEIV026, EEIV027, EEIV067, EEIV069.

<sup>1059</sup> GHREN interview EEIV069.

<sup>1060</sup> GHREN interviews EEIV005, EEIV016, EEIV017, EEIV023.

<sup>1061</sup> GHREN EEIV016 interview.

<sup>1062</sup> See Report of the Special Rapporteur against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, report A/66/268, 5 August 2011, para. 62. Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions. Experts who have examined the impact of solitary confinement have found three common elements that are inherently present in solitary confinement, social isolation, minimal environmental stimulation and “minimal opportunity for social interaction”. See, along the same lines, A/63/175.

<sup>1063</sup> Research also shows that solitary confinement appears to cause “psychotic disorders”, a syndrome that has been termed “prison psychosis”. Symptoms may include anxiety, depression, anger, cognitive disorders, perceptual distortions, paranoia and psychosis, and self-inflicted injuries. *Ibid.*, para. 26.

the IACtHR have considered that such a situation could constitute cruel, inhuman, or degrading treatment or punishment, or torture.<sup>1064</sup>

b. Inadequate and discriminatory detention conditions

629. Detention conditions in SPN facilities violated international human rights standards. In 2018 and the first half of 2019, people detained in the context of the protest were deprived of any interaction with common prisoners and were held in separate cells or galleries in overcrowded conditions. Due to the overcrowded conditions, many people did not have a bed, mattress, or blanket.<sup>1065</sup> From the second half of 2019 onwards, opponents were charged with common crimes and began to be deprived of their freedom in areas assigned to common prisoners, with some exceptions in the case of persons held in the maximum-security unit and in punishment cells.

630. Opponents, whether real or perceived, received inadequate food in the SPN. The GHREN received multiple and credible testimonies indicating that worms, pieces of glass, stones, flies, and aluminium were found in the food. At the same time, the food brought to them by their families was systematically withheld and requisitioned; in the cases in which it was finally delivered, it was in poor condition, expired and obviously manipulated.<sup>1066</sup> Likewise, hygiene and sanitary conditions were and continue to be very precarious.

631. Access to medical care was very limited or non-existent. According to the testimonies received, medical attention was provided on very few occasions, or when the patient's condition had already deteriorated and was serious. In some cases, prison authorities ignored court orders for medical attention, forensic evaluations, and referrals to specialists. In addition, the distribution of medications to chronic patients was disorganized.<sup>1067</sup> The GHREN also received testimonies of the mistreatment of prisoners by SPN doctors.<sup>1068</sup> A defence attorney told the GHREN:

I requested on [several] occasions the physical or psychological evaluation of my defendant under the principle of humanity. In addition, I requested an examination by a forensic doctor and dentist from the Forensic Medical Institute, but he was not evaluated even once.<sup>1069</sup>

632. One prisoner related his experience with the medical services in the following terms:

*When I woke up in the hospital [...] the doctor decided to take only X-rays [wounds omitted]. The boy who was taking the x-rays told me with signs that I had [wounds omitted]. The doctor said, "this dog has nothing, take him away".*<sup>1070</sup>

633. Moreover, there were cases of torture and cruel, inhuman, or degrading treatment or punishment in the context of interrogations, searches, and punishments in the SPN. These were applied by cutting off water, electricity, and delivery of parcels with supplies provided by the families, beatings, and threats. A young man detained in La Modelo reported:

*They took me out to beat me on several occasions. I remember [...] they took us [several men] out to make an example, they hung us from a tube with the shackles upside down, they came to beat us with gun butts, with bats, while they told us that they were from the Sandinista front, they wanted to get even with us. After that I did not receive medical attention, I spat and vomited blood, and I defecated blood and never received medical attention. My family filed a complaint because they found*

<sup>1064</sup> CAT, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and Recommendations, CAT/C/DNK/CO/5, para. 14; IACtHR, Cantoral Benavides v. Peru, Judgment of 18 August 2000, paras. 63 and 104.

<sup>1065</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV007, EEIV009, EEIV010, EEIV012, EEIV015, EEIV023, EEIV024, EEIV026, EEIV037, EEIV045, DDIV022.

<sup>1066</sup> GHREN interviews EEIV005, EEIV006, EEIV012, EEIV016, EEIV045, EEIV050, DDIV022.

<sup>1067</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV009, EEIV010, EEIV012, EEIV015, EEIV023, EEIV024, EEIV026, EEIV037, EEIV045, DDIV022.

<sup>1068</sup> GHREN interviews EEIV016, EEIV024.

<sup>1069</sup> GHREN interview EEIV029.

<sup>1070</sup> GHREN interview EEIV024.

*out about the wounds. Another day they were angry and came to beat us. Even the doctor came to beat us.*<sup>1071</sup>

634. According to other testimony:

*They received us with blows, they stripped us naked. They started to take turns with “tonfas” [truncheons], about 20 minutes, we were shackled, and they gave us uniforms. They beat us, they threatened us all the time. They left us with damage to our spines. And they complicated our visits and our medical attention. In two years I was bearded twice because they wanted to attack us in this way too, cutting our hair ugly.*<sup>1072</sup>

635. At least on four occasions, anti-riot control agents carried out operations in La Modelo and La Esperanza, during which they used excessive force, assaulting detainees with punches, kicks, police batons, and chemicals (tear gas) aimed directly at the face and genitals.<sup>1073</sup> For example, on 7 February 2019, in La Esperanza, some women detained in the context of protests were violently repressed with blows by the guards for having opposed the transfer of three of them. Some of them were seriously injured as a result of that operation.<sup>1074</sup>

636. The death of prisoner Eddy Montes Praslín also occurred in this context of constant tension. On 16 May 2019, a group of men deprived of their liberty in Pavilion 61 of La Modelo protested the inhumane conditions of detention. The prison custodians responded to the protest by using firearms, causing the death of Mr. Montes, and injuring 17 others.<sup>1075</sup> According to eyewitnesses interviewed by the Group, the prison staff allegedly failed to assist the victim, despite the fact that he was in their custody and that the other detainees immediately requested assistance.<sup>1076</sup>

#### **iv) White torture and cruel, inhuman, or degrading treatment or punishment in El Nuevo Chipote**<sup>1077</sup>

637. Starting in May 2021, many of the country’s main opposition political leaders, activists in movements and political parties, journalists, academics, and religious leaders were arrested. Most of the people detained during this period were transferred to a new precinct of the DAJ –*Complejo Policial Evaristo Vásquez*, inaugurated in 2019 and known as “El Nuevo Chipote”– except some people who were confined in La Esperanza and La

<sup>1071</sup> GHREN interview EEIV016.

<sup>1072</sup> GHREN interview EEIV067.

<sup>1073</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV016, EEIV017, EEIV023, EEIV024, EEIV026, EEIV029, EEIV033; CNN en Español, “Denuncian golpiza a presos de cárcel La Modelo en Nicaragua”, 21 February 2019, available at: <https://cnnespanol.cnn.com/2019/02/21/denuncian-golpiza-a-presos-de-carcel-la-modelo-en-nicaragua/>

<sup>1074</sup> Documents on file with GHREN AADOC127, AADOC057. *See also* La Prensa, “Denuncian nueva golpiza a presas políticas de la dictadura Ortega-Murillo”, 8 February 2019, available at: <https://www.laprensani.com/2019/02/08/nacionales/2522379-denuncia-nueva-golpiza-presas-politicas-de-la-dictadura-ortega-murillo>; Artículo 66, “Mujeres de la diáspora nicaragüense denuncian en Miami los abusos contra las presas políticas”, available at: <https://www.articulo66.com/2019/02/15/mujeres-la-diaspora-nicaraguense-denuncian-miami-los-abusos-las-presas-politicas/>; and Radio Corporación, “Noticiero en línea del 8 de febrero de 2019”, available at: <https://es-la.facebook.com/RadioCorporacion/videos/noticiero-en-1%C3%ADneavienes-08-de-febrero-2019/282804985730918/>

<sup>1075</sup> La Prensa, “Así ocurrió el asesinato de Eddy Montes, según los relatos de los excarcelados políticos”, 21 May 2019, available at: <https://www.laprensani.com/2019/05/21/nacionales/2551494-asi-ocurrio-el-asesinato-de-eddy-montes-segun-los-relatos-de-los-excarcelados-politicos>.

<sup>1076</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV009, EEIV024, DDIV022.

<sup>1077</sup> According to satellite images obtained through DigitalGlobe on 14 December 2022, the El Chipote facilities appear to have been demolished. However, the new DAJ facilities, known as El Nuevo Chipote, have reportedly been expanded; satellite photos on file with GHREN EEDOC262; EEDOC262; EEDOC263.



Modelo, and some territorial political leaders who were confined in SPN centres in other departments of the country.<sup>1078</sup>

638. The GHREN investigated 14 cases of real or perceived opponents who were deprived of their liberty in El Nuevo Chipote since May 2021. It found an evolution in the methods used against the group of persons detained in these facilities, favouring practices such as prolonged and indefinite isolation, including *incomunicado* detention in some cases, sensory irritation, threats, insults, and the creation of an “environment of torture”: that is, the generation of a variety of situations and combination of methods deliberately designed to inflict pain and mental and physical suffering –limited access to natural light, food restrictions, sleep deprivation, prohibition of any recreational activity, and access to reading material, writing, television, radio, correspondence or calls from relatives.

639. In some cases, such treatment reached the threshold of torture, due to its combination, prolonged nature, the presence of other stressors or vulnerabilities, and the severe psychological damage inflicted on the victims. These practices were aimed at punishing and breaking people, and not necessarily at obtaining information.

a. Isolation

640. Upon arrival at El Nuevo Chipote, both men and women were stripped of their clothes and held alone in separate cells, without a blanket or pillow, sleeping on a cement slab without a mattress, and without any shelter, towel, or clothing. They were deprived of all contact with their families and attorneys. During the first days and even weeks of their detention, the authorities refused to provide information about the whereabouts of the detainees to their families and attorneys, who searched for them both at the DAJ and at the police stations, without being able to obtain official information. Detention or arrest without the authority informing the fate or whereabouts of the detained persons, thus removing them from the protection of the law, technically constitutes enforced disappearance. Enforced disappearance may amount to a form of torture both as regards the disappeared person and his or her relatives.<sup>1079</sup>

641. After a few weeks to several months in solitary confinement, most of the detainees were placed in cells shared with one other person. However, they were not allowed to talk to each other and were subjected to various punishments if they broke this rule. Custodians were present 24 hours a day to ensure that people could not talk, especially in the women’s pavilion. Particularly harsh treatment was identified against four women political leaders of UNAMOS, who were placed in separate cells for the entirety of their detention, i.e., more than 18 months.

642. Time spent outdoors was sporadic or non-existent for men and women. The frequency of outdoor time varied for different prisoners, ranging from once a week for 15 minutes to not going out at all for a prolonged period of two months, to an absolute

<sup>1078</sup> On 4 October 2022, the IACtHR granted provisional measures to 45 persons deprived of their liberty in eight detention centres in Nicaragua. In its order, the Court admitted the request presented by the IACHR considering that the persons subjected to arbitrary detentions from 2020 and during 2021, “*would be in unsanitary conditions, suffering ill-treatment with the arbitrary application of maximum-security regimes, in addition to the lack of adequate, timely and specialized medical attention*”. Therefore, it ordered the adoption of “*the necessary measures to avoid irreparable damage to the rights to life, personal integrity and health*” of the 45 beneficiaries, as well as their immediate release. See IACtHR, Resolution of 4 October 2022, Provisional Measures, Case of 45 persons deprived of their liberty in 8 detention centres regarding Nicaragua. Given the State’s failure to comply, the IACtHR declared Nicaragua in permanent contempt of court a few weeks later. IACtHR, press release, “*Corte Interamericana declara desacato permanente del estado de Nicaragua respecto a las medidas provisionales adoptadas en los asuntos Juan Sebastián Chamorro y otros y 45 personas privadas de su libertad en 8 centros de detención respecto de Nicaragua*”, San José, Costa Rica, 29 November 2022, available at: [https://www.corteidh.or.cr/docs/comunicados/cp\\_86\\_2022.pdf](https://www.corteidh.or.cr/docs/comunicados/cp_86_2022.pdf)

<sup>1079</sup> Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report A/56/156, 3 July 2001, paras. 9–16.

prohibition.<sup>1080</sup> Detainees were prohibited from any kind of communication with other detainees; they were forbidden any contact with the outside world, apart from irregular visits from family members, and had no access to information, reading or writing materials, or any recreational activities.<sup>1081</sup> According to the testimonies received, the labels of the products given to them by their families were removed to restrict their ability to read them.

*The women used to read aloud the labels on the toilet paper, on the water bottles, so they could hear their own voice [...] When the interrogations stopped for a while [she] missed them [the police officers] because it was the only human contact she had.*<sup>1082</sup>

b. Detention conditions

643. Medical attention was inadequate, insufficient, and even denied. This aggravated the condition of people suffering from chronic illnesses or caused new ailments in other people, which arose due to the conditions of detention. Hernias, diabetes, high blood pressure, uric acid, and dermatological problems were mentioned. The distribution of medicines to chronic patients continued to be disorderly.<sup>1083</sup> According to the testimony of a witness close to a detainee:

*The case of [name omitted] is dramatic, she has [a series of medical conditions], and they have not given her any response, they only send a doctor from the judicial system. He was in a damp, damp punishment cell for [many] days. That caused fungus all over his body that has not been treated either. He has significantly lost weight.*<sup>1084</sup>

644. On 12 February 2022, Hugo Torres Jiménez, one of the emblematic leaders of the Sandinista revolution in Nicaragua and a member of UNAMOS, died eight months after being detained.<sup>1085</sup> According to Nicaraguan civil society organizations, the precarious conditions and lack of medical attention accelerated the deterioration of his health. Hugo Torres died in a Managua hospital while in prison custody. He had precautionary measures granted by the IACHR on 30 August 2021. The IACHR had considered that his rights to life, personal integrity, and health were at serious risk.<sup>1086</sup>

645. The food provided to the detainees was also of poor quality and intentionally reduced; as one witness reported: “*there were days when you could count the beans*”.<sup>1087</sup> Access to food has been used arbitrarily against detainees in the DAJ, going from small rations and suppression of certain types of food to copious and highly caloric meals.<sup>1088</sup> According to the information collected, food restrictions have been used as a punishment mechanism against detainees, particularly after public statements made by their relatives.<sup>1089</sup>

<sup>1080</sup> GHREN interviews AAI047, AAI048, AAI050, AAI052, EEIV063, EEIV064, EEIV065, EEIV068.

<sup>1081</sup> GHREN interviews AAI047, AAI048, AAI050, AAI051, AAI052, EEIV063, EEIV064, EEIV065, EEIV068.

<sup>1082</sup> GRHEN EEIV010 interview.

<sup>1083</sup> GRHEN interviews EEIV008, EEIV011, EEIV013, EEIV019, EEIV020, EEIV021, EEIV025, EEIV029, EEIV032, EEIV047.

<sup>1084</sup> GRHEN interview EEIV008.

<sup>1085</sup> Listing provided by the UDR on file with GHREN EEDOC102.

<sup>1086</sup> IACHR, Resolution 71/2021 Precautionary Measures Nos. 593-21, 665-21 and 680-21, Ana Margarita Vijil Gurdían et al. regarding Nicaragua, 30 August 2021, available at: [https://www.oas.org/en/iachr/decisions/mc/2021/res\\_71-21\\_mc\\_593-21,%20665-21%20and%20680-21\\_ni\\_en.pdf](https://www.oas.org/en/iachr/decisions/mc/2021/res_71-21_mc_593-21,%20665-21%20and%20680-21_ni_en.pdf)

<sup>1087</sup> GHREN interviews EEIV010, EEIV025, EEIV047, EEIV063, EEIV065, EEIV066, EEIV068, AAI047, AAI048, AAI050, AAI052.

<sup>1088</sup> GHREN interviews EEIV063, EEIV065, EEIV066, EEIV068, AAI047, AAI048, AAI050, AAI052.

<sup>1089</sup> See in particular, La Mesa Redonda, “Presos políticos de ‘El Chipote’ en situación “crítica de salud”, denuncian familiares”, 24 January 2022, available at: <https://www.lamesaredonda.net/presos-politicos-de-el-chipote-en-situacion-critica-de-salud-denuncian-familiares/>; Alianza Progresista,

646. On 29 August 2022, at a press conference, relatives of the detainees publicly denounced that the food rations at El Nuevo Chipote were reduced to an extent incompatible with life and that most of the detainees had lost weight significantly. In response to these allegations, between August and September 2022, the Government held “informative hearings” during which it publicly presented 27 of the detainees to demonstrate their “good health”. Such hearings do not exist in Nicaraguan criminal procedural law and were conducted without the presence of the technical defence of the detainees.

c. Uncertainty and arbitrariness in the application of internal rules and protocols

647. The lack of regulation of prolonged deprivation of liberty in El Nuevo Chipote, a police precinct that is not part of the SPN, placed detainees in a position of vulnerability and created a general climate of insecurity. In the absence of regulation, the authorities exercised control arbitrarily, constantly changing the rules, applying punishments, and restricting the rights of detainees at will.

648. This situation, combined with the arbitrariness of the criminal proceedings and the difficulties in communicating with the outside world and their families, caused extreme anxiety among the detainees, contributing to patterns of inhuman and degrading treatment, which in some cases constituted torture.

649. Family visits to the detainees in El Nuevo Chipote were authorized irregularly, at intervals of between 45 and 75 days, and by means of notification a few hours before the visit. The victims and their families were not able to have any kind of communication outside of the visits; the delivery of parcels was also hindered. This generated a lot of tension and stress for the victims and their families. At least four of the detainees were prohibited from having any contact with their children for periods ranging from 15 to 18 months.<sup>1090</sup>

v) **Punishment through punishing relatives**

650. Throughout the entire period under review, and in the various places of detention, real or perceived opponents were subjected to punishments and threats against the life and integrity of their family members. Psychological torture often had a gender component, with sexist insults, threats, and blaming of women using their sons and daughters.<sup>1091</sup>

651. The use of cruel, inhuman, or degrading treatment also extended to family members of the detainees. Family members reported having suffered physical and/or psychological violence from the personnel at El Nuevo Chipote, La Modelo, and La Esperanza. This included humiliating or degrading treatment, sexual and gender-based violence during searches, and threats of reprisals against their detained family members if they denounced the detention conditions.<sup>1092</sup>

vi) Use of sexual violence

652. The GHREN has reasonable grounds to believe that agents of the National Police, the SPN and, in some cases, persons sympathetic to the Government, committed acts of sexual violence against persons who were opponents or perceived as such. These acts were carried out in the context of the victims’ deprivation of liberty. The similarity of the

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“Comunicado de familiares de personas presas políticas secuestradas en la estación policial, El Chipote”, 6 May 2022, available at: <https://alianza-progresista.info/2022/05/06/comunicado-de-familiares-de-personas-presas-politicas-secuestradas-en-la-estacion-policial-el-chipote/>; [https://www.swissinfo.ch/spa/nicaragua-crisis\\_familias-denuncian-adelgazamiento-extremo-de-opositores-presos-en-nicaragua/47861566](https://www.swissinfo.ch/spa/nicaragua-crisis_familias-denuncian-adelgazamiento-extremo-de-opositores-presos-en-nicaragua/47861566).

<sup>1090</sup> The GHREN received information about a softening of the measure as of December 2022, which the Government presented as a humanitarian concession in the context of the Christmas holidays. This allowed for visits on 7, 24, 25, 31 December 2022 and 1 January 2023, GHREN interview EEIV046.

<sup>1091</sup> GHREN interviews AAIV008, AAIV010, AAIV047, AAIV048, AAIV050.

<sup>1092</sup> GHREN interviews EEIV011, AAIV032, AAIV036, AAIV047. See also IACtHR, Resolution of 4 October 2022, Provisional Measures regarding Nicaragua, Case of 45 persons deprived of liberty in 8 detention centres regarding Nicaragua.

methods used in various places of confinement reveals a pattern of intentional and organized behaviour.

653. The GHREN received direct testimonies from victims of different forms of sexual violence and analysed statements from other survivors originally collected by international human rights mechanisms and civil society organizations.<sup>1093</sup> This information presents a partial view of the situation due, among other reasons, to the obstacles that exist for victims of sexual violence to report such acts and the social stigmas associated with this dynamic of violence, both for men, women, and people of sexual diversity.

654. The use of different forms of sexual violence has varied according to the different phases of repression. The information collected indicates that the use of rape and sexual torture was more frequent during the early stages –between April and August 2018– while other forms of sexual violence such as forced nudity and sexual touching remain common practices. The fact that certain forms of sexual violence are no longer reported with the same frequency could indicate a change in the treatment practices of detainees and thus reflect an institutional control over the behaviour of perpetrators.

655. National Police agents, both men and women, were identified as perpetrators or accomplices in these acts. Several testimonies report the presence of women during the rapes.<sup>1094</sup> The presence of hooded persons, hiding their identities, some dressed in civilian clothes, was also reported.<sup>1095</sup> The information collected by the GHREN indicates that acts of sexual violence generally took place in DAJ facilities, in police stations in different parts of the national territory, or clandestine places of detention –in 2018–, which would confirm the hypothesis that this practice does not respond to isolated or individual acts.<sup>1096</sup>

a. Rape

656. Both the GHREN and other human rights mechanisms have received numerous testimonies about the use of rape against arbitrarily detained women, men, and trans people.<sup>1097</sup> The use of rape was particularly reported during the first period of the repression, between April and August 2018. These events occurred in the context of deprivation of liberty, generally in the context of interrogations.

657. According to the information collected by the GHREN, rape of men was generally, but not exclusively, carried out through penetration by the male genital organs of the perpetrators,<sup>1098</sup> by objects,<sup>1099</sup> or by fingers.<sup>1100</sup> When committed against men, rape not only causes physical suffering but also pursues the objective of “demasculinizing” or “feminizing” them, as a form of psychic devastation and humiliation.

658. A witness interviewed by the GHREN recounted that he was violently arrested in 2018 by DOEP police officers in Managua. According to his testimony, during an interrogation,

<sup>1093</sup> In order to avoid re-victimization processes, the GHREN limited the receipt of direct testimonies from victims of sexual violence. The GHREN’s information is based on the collection of testimonies received, as well as on other testimonies collected by entities identified by the seriousness of their information collection methods and the credibility of their sources. Meetings were also held with people who have treated or analysed cases of sexual violence. GHREN interviews AAIV028, AAIV041, EEIV047.

<sup>1094</sup> Confidential documents on file with GHREN AADOC063, AADOC024.

<sup>1095</sup> Confidential document on file with GHREN AADOC024.

<sup>1096</sup> A document received by the GHREN singles out the police stations of Nindirí, Masaya and Granada. Confidential document on file with GHREN, AADOC016.

<sup>1097</sup> See in particular IACHR, *Persons Deprived of Liberty in Nicaragua*, 5 October 2020, OEA/Ser.L/V/II.Doc 287/20; Arias Foundation for Peace and Human Progress, *Tribunal of Conscience, Sexual Violence as a Crime against Humanity under the Ortega–Murillo Regime*, 2018.

<sup>1098</sup> GHREN interviews EEIV006, EEIV024. See also Arias Foundation for Peace and Human Progress, *Tribunal of Conscience, Sexual Violence as a Crime against Humanity under the Ortega–Murillo Regime*. 2018, p. 80.

<sup>1099</sup> GHREN interview EEIV045.

<sup>1100</sup> GHREN interview EEIV015.

*they brought the men in and told me they were going to beat me up and one thing I will never forget. I went to hit [one of the men], but I was so sedated that I didn't hit him. The men beat me, they grabbed me with kicks. They threw me against the wall. I had something metal and they put it in the back, in my anus. I bled. That's when I felt that all the "hope" I had was lost. I said to myself when they were raping me, that they had already broken me.*<sup>1101</sup>

659. A victim reported being repeatedly beaten and tortured during interrogations, including by pulling out his fingernails. During one of these interrogations, the victim related that he started laughing and blew a kiss to the police officers present. *"Upon seeing this, the officers said to me 'we are going to show you what love is.' Instantly they grabbed me between two of them and pulled down my pants, laid me on a desk, and between the five of them they penetrated me over and over again"*. When he returned to his cell, the victim noticed that he had anal bleeding. He reported that he was taken to the IML for an evaluation, but neither he nor his lawyer ever had access to the report.<sup>1102</sup>

660. The GHREN documented the use of various methods to rape women, such as vaginal penetration by the sexual organ of their perpetrators;<sup>1103</sup> inserting fingers into the vagina;<sup>1104</sup> or penetration with firearms.<sup>1105</sup> The GHREN also received information about a woman who was reportedly forced to choose between being beaten or raped.<sup>1106</sup> Several cases of rape by multiple perpetrators were reported, as well as victims who were raped over several days. These patterns of victimization particularly affected women.<sup>1107</sup>

661. In the old El Chipote, a pregnant detainee reported that, during an interrogation, *"two men came in and began to beat me. Then they ordered me to do 50 squats, to have my arms raised and my legs spread. While my legs were shaking like jelly, they touched me and stuck their fingers in, demanding that I tell them first who the terrorists I supported were". In addition, she was subjected to various forms of torture for several days: "they tried to humiliate me, but I was so superior to them, that the only way out they had left was to physically disappear me"*.<sup>1108</sup>

662. Another victim reported that:

*at that moment, the officer herself pulled down my shorts and underwear and began to touch me and then she left and later came with a man who was walking around with his face covered, dressed in civilian clothes. The woman told me "talk" and I told her not to do anything to me, that I didn't know anything, please; at that moment, she pushed me and I fell to the ground [handcuffed with my hands behind my back], then she grabbed my mouth and covered it with her hands and the man began to rape me. The woman just laughed, the man never spoke. I tried to move to get her off and she hit me on the head and [told me] to stay still. I could only feel my tears because she had my eyes and mouth covered with her hands, the man came, got up, and left.*<sup>1109</sup>

663. The GHREN also received the testimony of a homosexual man who was locked up for 15 days with particularly violent common criminals who raped him.<sup>1110</sup>

<sup>1101</sup> GHREN interview BBIV003.

<sup>1102</sup> GHREN interview EEIV006.

<sup>1103</sup> Confidential documents on file with GHREN AADOC063.

<sup>1104</sup> Original interview obtained by Arias Foundation for Peace and Human Progress, Tribunal of Conscience, Sexual Violence as a Crime against Humanity under the Ortega–Murillo Regime. 2018, p. 32.

<sup>1105</sup> Confidential documents on file with GHREN AADOC016.

<sup>1106</sup> Confidential documents on file with GHREN AADOC070.

<sup>1107</sup> Confidential documents on file with GHREN AADOC024.

<sup>1108</sup> Original interview obtained by Arias Foundation for Peace and Human Progress, Tribunal of Conscience, Sexual violence as a crime against humanity under the Ortega–Murillo regime. 2018, p. 34.

<sup>1109</sup> Confidential documents on file with GHREN AADOC083.

<sup>1110</sup> GHREN interview AAIV009.

## b. The threat of rape

664. The GHREN received information on the use of the threat of rape during arrests and detentions.<sup>1111</sup> One witness interviewed described women’s vulnerability and fear of rape: *threats of rape. It is much stronger to think that, if you are caught, you will be raped*’.<sup>1112</sup>

665. The threat of rape was also extended to detainees’ family members. In particular, some of the detained women were threatened with the rape of their daughters:

*He [the officer in charge of the interrogation] told me that since I did not want to cooperate they were going to bring my daughter to [location omitted] because my daughter was big and they wanted to sexually abuse her and started to describe to me all the acts they were going to do with the girl since I was not cooperating.*<sup>1113</sup>

## c. Sexual torture

666. The GHREN received testimonies and information about the use of other forms of sexual torture during interrogations, aimed at injuring or inflicting damage to the sexual organs of the victims. For example, a witness interviewed by the GHREN related that he was violently arrested in May 2018 by DOEP agents in Managua. The witness referred that hooded men applied electric shocks to his genitals repeatedly while insulting him: *“they kicked me, hit me in the face, in the stomach, in the genitals. He told me I was a pig [...]”*.<sup>1114</sup>

667. Other witnesses reported having received kicks or blow to the genitals for several minutes and, in some cases, even hours.<sup>1115</sup> According to one of these witnesses:

*They partially pulled down my pants, opened my legs and beat me, kicked me for two hours in the testicles, legs, shoulders, and stomach, there were four or five “paramilitaries” from the same group that had kidnapped me. They took turns kicking me in the testicles, one of them pointed at me and shouted that he was not going to kill me yet and that I was going to die skinned, and that first they were going to kick me in the balls.*<sup>1116</sup>

668. Another victim related what happened to him in the old El Chipote in the following terms:

*The parapolice [members of pro-government armed groups] were inside along with the policemen who came in and began to beat us one by one while saying “What do we do with the deserter?” Two paramilitaries grabbed me and took me to a horrible, damp, rough hallway, I was saying “where are they taking me, where are they taking me?”. At the end of this corridor, there was an empty place, it looked like it was meant for lockers. I resisted, but they throw me into this space, I tried to get up, but they kneel me down and smash me against the wall. “We’re going to rip your balls off”. I replied, “remove the handcuffs then”. Then they start to take off my pants. The officers are watching. [...] They try to take off my shirt and I told them “how are you going to take off my shirt, you idiot if I’m covered up”. I could hear at least four voices and the boss. They kicked me in for about three hours in the*

<sup>1111</sup> GHREN interview AAIV010. The witness also recounted the sexual harassment to which a group of women protesters were subjected, especially by members of pro-government armed groups who touched their genitals as the women marched by. See also IACHR, Persons Deprived of Liberty in Nicaragua, 5 October 2020, OEA/Ser.L/V/II.Doc 287/20, para. 185.

<sup>1112</sup> GHREN interview AAIV010.

<sup>1113</sup> See also UPPN, RIDH and RIDHE, “Detenidos, torturados y desplazados, Informe acerca de la tortura y el trato inhumano, cruel y degradante de personas privadas de libertad en condición de detención política en Nicaragua y la permanencia de la violencia de Estado en sus vidas post-carcelarias”, report directed to the CAT (hereinafter “UPPN, RIDH and RIDHE Report”), p. 5.

<sup>1114</sup> GHREN interview BBIV003.

<sup>1115</sup> UPPN, RIDH and RIDHE Report, p.7.

<sup>1116</sup> *Ibid*, p. 8.

*testicles. I fainted many times, defecated, and urinated. They offered me a cigarette, to rest for a while.*<sup>1117</sup>

d. Forced nudity and other forms of sexual violence

669. Forced nudity was used against detainees in many detention centres,<sup>1118</sup> as a generalized practice at the time of apprehension and/or during the course of detention – including in cells, during interrogations, or during searches–. The practices of forced nudity applied did not respond to the search or body inspection procedures established in the rules in force that regulate the SPN.<sup>1119</sup> It is a practice aimed at asserting the power of the aggressor over the victim, humiliating them, and generating feelings of vulnerability and helplessness in the victim.<sup>1120</sup>

670. A witness reported that when he arrived at the old El Chipote facility, he was made to undress inside the cell in front of several male and female officers. They searched him and took all his belongings. During the interrogation that followed, he was forced to undress again and had to remain naked for 30 minutes. He also said that during the daily searches that took place in the facilities of El Chipote, the guards forced the detainees to undress.<sup>1121</sup> This account coincides with other testimonies received by the GHREN.<sup>1122</sup>

671. The GHREN received information on cases of persons who were forced to remain naked for several days during their detention.

672. A former prisoner recounted how upon arriving at El Chipote:

*they stripped me naked and put me in a holding cell that is maybe one square meter. [One] can never sit down, you are always standing, completely naked. I was there for twenty-four hours. They even poured cold water on me and that's how it was then until they moved me to a cell.*<sup>1123</sup>

673. Forced nudity was usually accompanied by the requirement to do numerous squats in front of the National Police and SPN personnel. The GHREN also received information about people who had nude photos taken of them.<sup>1124</sup> Detainees reported being interrogated naked and held in detention without clothes for several days without being provided with changes of clothing.<sup>1125</sup> For example, one woman detained at a police station outside Managua reported:

*There I entered on [date omitted]. It was almost dark and they told me they were going to interview you [...] Then two hooded men came in and a woman also came in and told me: "Before the interview, we are going to search you" and she told me "take off your clothes". I go back to the men and say: "How can I take off my clothes if there are two men here". He says: "Go on, take them off or I'll take them off for you". The witness said: "Let them leave, because I am supposed to give an interview and I don't have to be naked and there should be no men, the same police law says that there cannot be men where they are searching a woman and a man cannot search a woman". Then the woman told them to get out. I took off my clothes and I was in my underwear. She said to me: "Take everything off! "But I'm on my*

<sup>1117</sup> GHREN interview EEIV004.

<sup>1118</sup> GHREN interviews EEIV004, EEIV009, AAIV041, AAIV010, AAIV046.

<sup>1119</sup> See Prison System Act, art. 41.

<sup>1120</sup> As the Istanbul Protocol underlines: "Sexual torture begins with forced nudity, which in many countries is a constant factor in torture situations. An individual is never as vulnerable as when naked and helpless. Nudity enhances the psychological terror of every aspect of torture, as there is always the threat of potential sexual torture or ill-treatment, including rape". UN, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 455, available at: <https://www.ohchr.org/documents/publications/training8rev1sp.pdf>.

<sup>1121</sup> GHREN interview EEIV006.

<sup>1122</sup> GHREN interviews EEIV004, AAIV041, AAIV010, AAIV046.

<sup>1123</sup> Confidential documents on file with GHREN AADOC016.

<sup>1124</sup> GHREN interview AAIV050.

<sup>1125</sup> GHREN interviews EEIV009, EEIV035.

*period”, I replied, and she told me that it didn’t matter, to take everything off. Once I was completely naked, he took off my clothes and the men came in. They told me: “Now we’re going to talk”. I put my hands in front of me because I wanted to cover myself, and they put the handcuffs on me.*<sup>1126</sup>

674. This practice has also been used against real or perceived opponents, in detention, before and after family visits, or when they were transferred to court.<sup>1127</sup>

675. Similarly, family members of those detained reported being forced to remove all their clothes, being subjected to invasive body search procedures, and forced to do squats before visits, in conditions described as “humiliating” and degrading.<sup>1128</sup> A practice of bringing metal detectors close to the intimate parts of family members was also reported. These actions particularly affected women.

676. These practices had previously been denounced in Nicaraguan prisons.<sup>1129</sup> However, since 2018, they have been particularly used to punish family members and real or perceived opponents who are detained. For example, among other cases, the IACHR referred to the IACtHR the case of the mother of a detainee who was asked to undress in the presence of other officers, “they even tried to penetrate her genitals”.<sup>1130</sup> Testimonies collected by the GHREN confirm the recent use of these practices:<sup>1131</sup>

*As family members, we went through humiliation. They forced us to take off our clothes to search for us. The last visit was for me, as a woman, very degrading. The police asked me to undress completely and forced me to do three squats. I felt that was very humiliating, I don’t understand why you have to go through that. It doesn’t just happen to me, it happens to other family members.*<sup>1132</sup>

677. The SPT emphasized that “persons subjected to a search must be able to give their consent and must not be exposed to total nudity. Intrusive searches of private parts are legally prohibited”.<sup>1133</sup> The IACtHR held that such searches are not necessary to maintain prison security or prevent disorderly conducts.<sup>1134</sup>

678. Finally, the GHREN received information about women who suffered abortions during or as a consequence of their imprisonment,<sup>1135</sup> as well as several cases of relatives of persons detained who, when visiting detention centres, were subjected to exhaustive searches, which included inappropriate touching under clothing in intimate areas or genitals. Underage girls were also subjected to sexual touching.<sup>1136</sup>

vii) Serious impacts on physical and mental health

679. The injuries suffered by the detainees were diverse, both physical and psychological. The GHREN received information about torture sequelae, including chronic ailments such as loss of mobility, body pain, chronic fatigue, and difficulty concentrating. Sensory deprivation for long periods of time caused hearing and visual loss. The Group also

<sup>1126</sup> Confidential documents on file with GHREN AADOC169.

<sup>1127</sup> GHREN interviews, AAIV002, AAIV019.

<sup>1128</sup> GHREN interviews AAIV002, EEIV042, AAIV032, AAIV034, AAIV047.

<sup>1129</sup> SPCT, CAT/OP/NIC/ROSP/1, 28 November 2022, Visit to Nicaragua: recommendations and observations addressed to the State Party.

<sup>1130</sup> IACtHR Resolution of 4 October 2022, Provisional Measures with respect to Nicaragua, Matter of 45 persons deprived of liberty in 8 detention centres with respect to Nicaragua.

<sup>1131</sup> GHREN interviews AAIV032, AAIV034, EEIV047.

<sup>1132</sup> GHREN interview EEIV047.

<sup>1133</sup> SPCT, CAT/OP/NIC/ROSP/1, 28 November 2022, Visit to Nicaragua: recommendations and observations addressed to the State party, para. 65.

<sup>1134</sup> IACtHR, Resolution of 4 October 2022, Provisional Measures regarding Nicaragua, Case of 45 persons deprived of liberty in 8 detention centres regarding Nicaragua, para. 161.

<sup>1135</sup> GHREN interview EEIV035. See also IACHR, Persons Deprived of Liberty in Nicaragua, 5 October 2020, OEA/Ser.L/V/II.Doc 287/20, para. 185.

<sup>1136</sup> GHREN interviews AAIV032, AAIV034, EEIVI042, AAIV047. See also IACtHR, Resolution of 4 October 2022, Provisional Measures regarding Nicaragua, Case of 45 persons deprived of liberty in 8 detention centres regarding Nicaragua.



collected information on injuries and trauma suffered in the context of detention, interrogation, and punishment, which included marks on the body due to burns, cuts, and loss of teeth. Also mentioned were gastrointestinal and dermatological problems due to inadequate food and lack of sanitation in police and prison facilities, high blood pressure due to lack of medication and stress suffered due to arbitrary detention, legal uncertainty, and ill-treatment,<sup>1137</sup> as well as sexually transmitted infections associated with sexual assaults suffered in police custody.<sup>1138</sup>

680. According to the testimony of a victim,

*I have sequels of torture in my ribs and eyes. My hands tremble, I have relapses, moments when I cannot get up, I have insomnia problems, delirium of persecution, I feel that I am being followed, that they are looking for me, I think that the police are looking for me. When my voice is raised I block. I am taking medication for stress, and anxiety, there are moments when I feel fragile, I don't want to be talked to or I have moments of rage. The doctor said I have a disorder because of everything that happened. I am afraid to express myself and to be with my wife.<sup>1139</sup>*

681. At the psychological level, both victims and specialists described symptoms of acute post-traumatic stress disorder, insomnia, recurrent distressing memories, panic attacks, anxiety, self-injury and suicidal tendencies, nightmares, stress, and depression. Victims identified additional problems such as difficulties relating to others and building trusting relationships, bouts of anger and sadness, and isolation.<sup>1140</sup> According to another victim,

*I have had anxiety problems, I can't sleep when dogs bark I think they are chasing me. I separated from my partner, I feel aggressive and I don't want to hurt anyone. I feel very angry, I feel bad when I see public officials, I think that it is partly their fault.<sup>1141</sup>*

682. The majority of released individuals have needed psychological support to deal with the emotional sequelae of torture and other cruel, inhuman, or degrading treatment or punishment suffered during their detention. Some of them have needed or continue to need medication to treat a variety of pathologies, such as anxiety, insomnia, or depression. Psychological support was often provided by civil society organizations present in the countries of exile, however, not all individuals have had the opportunity to be assisted by specialists. Several of the people interviewed reported that they are still trying to cope with the psychological after-effects of their experiences in the cells of El Chipote, police stations, and prisons in the country.<sup>1142</sup>

683. Regarding the 222 arbitrarily detained individuals who were expelled from the country in February 2023, it has not been possible to establish, at the time of writing this report, the extent of the aftermath of the violations and abuses suffered.

#### viii) Impunity

684. The GHREN found that the perpetrators of acts of torture and inhuman, cruel, or degrading treatment or punishment enjoyed general impunity. According to information received at the time of writing this report, these acts have not been subject to investigations or sanctions.<sup>1143</sup>

<sup>1137</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV007, EEIV009, EEIV012, EEIV015, EEIV016, EEIV024, EEIV045. See also UPPN RIDH and RIDHE Report.

<sup>1138</sup> Forensic medical reports on file with GHREN EEDOC230, EEDOC232, EEDOC235.

<sup>1139</sup> GHREN interview EEIV024.

<sup>1140</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV007, EEIV009, EEIV012, EEIV015, EEIV016, EEIV024, EEIV045.

<sup>1141</sup> GHREN interview EEIV045.

<sup>1142</sup> GHREN interviews EEIV004, EEIV005, EEIV006, EEIV007, EEIV009, EEIV015, EEIV016, EEIV024, EEIV045.

<sup>1143</sup> The GHREN collected testimonies from released detainees, witnesses, and family members. The Group also analysed reports from international organizations and human rights protection mechanisms, including the IACHR, OHCHR and CAT, as well as documentation made available to

685. It is important to highlight the deliberate and systematic obstruction of accountability processes by the authorities, and the omission by judicial authorities of their duty to protect detainees from torture and cruel treatment or punishment. For the most part, victims were first brought before a competent authority several days, even weeks, after their arrest, to hide the physical marks of torture.<sup>1144</sup> Additionally, the victims were prevented from informing their technical defence about it, since they were never given access to confidential meeting spaces. Even so, in some cases in which people presented evident signs of torture and cruel, inhuman, or degrading treatment or punishment during the hearings, the lawyers filed complaints that were ignored by the courts and suppressed from the hearing records.<sup>1145</sup> Similarly, victims were threatened with reprisals if they revealed information about torture and inhuman and degrading treatment or punishment during visits to the detention centres of their relatives. These conversations were monitored.

686. The Amnesty Law left without effect the charges against “all persons who have participated in the events that occurred throughout the national territory from 18 April 2018, until the date of entry into force of the [...] Law”.<sup>1146</sup> As analysed above, the ambiguous content of said Law was widely criticized as it could leave human rights violations in impunity, including cases of torture and excessive and lethal use of force that occurred in the context of the protests that began in April 2018.

687. The Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment stressed that to counter the risk of torture and other ill-treatment, States should establish minimum procedural guarantees, including immediate and adequate registration of any arrest and detention, the prohibition of holding any person in unofficial places of detention, and the right of detainees to prompt access to independent counsel and medical assistance, as well as to notify their relatives of their detention, and to challenge the legality of their detention before an independent court.<sup>1147</sup> The State of Nicaragua has not adopted such measures to prevent the occurrence of violations of the right to the integrity of persons. The lack of access to effective mechanisms of access to justice also failed to ensure that such cases could be investigated, punished, and redressed with due diligence.

688. In addition, Nicaragua ratified the Optional Protocol to the Convention against Torture in 2009, thereby committing itself to establish an independent national preventive mechanism and to allow monitoring visits to detention centres by the SPT. However, Nicaragua has not cooperated with the UN in the context of the review of its periodic reports and has refused, as of the close of this report, to cooperate with the Subcommittee’s planned visit to the country in 2023.<sup>1148</sup> At the regional level, the IACHR has indicated that Nicaragua is bound by all the international instruments to which it is a party and therefore must allow the monitoring mandates of the MESENI, which includes following up on compliance with the recommendations issued in its various mechanisms, the analysis and processing of cases and petitions, the supervision of its recommendations issued in the merits reports, and the analysis and active supervision of compliance with the precautionary measures in force.<sup>1149</sup>

*h) Cancellations of political parties, organizations, and media closures*

689. As part of its strategy to suppress dissidence, the Government also cancelled political organizations and parties and arbitrarily closed media outlets, causing the collapse of the associative and political space, and seriously affecting the right of the population to obtain truthful information.

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the Group by civil society organizations, including reports, expert opinions, medical and psychological reports, and photographic material corroborating these testimonies.

<sup>1144</sup> GHREN interviews EEIV004, EEIV006, EEIV014, EEIV018, EEIV024.

<sup>1145</sup> GHREN interviews EEIV014, EEIV025, EEIV029, EEIV032, EEIV039.

<sup>1146</sup> Amnesty Act, art.1.

<sup>1147</sup> Special Rapporteur Report, A/HRC/34/54 (14 February 2017), p. 6.

<sup>1148</sup> See Statement of the UN High Commissioner for Human Rights, 15 December 2022 on the Situation of Human Rights in Nicaragua, 15 December 2022.

<sup>1149</sup> See IACHR, Annual Report 2021, 8 November 2022, Chapter IV.b, Nicaragua, paras. 22–23.

i) *Regulatory* development to restrict civic and democratic space

690 The National Assembly adopted a series of norms that violated international human rights law. The Anti-Money Laundering Act, the Foreign Agents Act, and the Nonprofit Organizations Act imposed excessively onerous requirements on civil society organizations, disproportionately restricting the right to freedom of association.<sup>1150</sup> These laws were used to justify arbitrary cancellations of the legal personality of nonprofit organizations, based on their alleged non-compliance. Similarly, Law No. 1070 on the electoral reform, passed in May 2021, was used to restrict the exercise of the right to political participation, including to cancel three opposition political parties during the months leading up to the 2021 presidential elections.<sup>1151</sup> These laws also violated the rights to freedom of expression and opinion.

a Law against Money Laundering, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction.

691. The Anti-Money Laundering Law imposes a series of obligations on nonprofit organizations to prevent money laundering and terrorist financing.<sup>1152</sup> However, the extent of the requirements imposed on nonprofit organizations, and the discretion given to the authorities in this respect, affects the freedom of association of nonprofit organizations and discourages citizens from joining them.

b. Law No. 1040: Regulation of Foreign Agents Act.<sup>1153</sup>

692. The Foreign Agents Act defines “foreign agents”, who are considered regulated entities under the Law, as any “natural or legal person, Nicaraguan or of another nationality, who within Nicaragua receives funds, goods or any object of value coming directly or indirectly from foreign natural persons, governments, agencies, foundations, corporations or associations of any type or nature, who work for, receive funds from or respond to organizations belonging to or controlled directly or indirectly by foreign natural persons, governments or entities, except for the exceptions provided in this Act”.<sup>1154</sup>

693. The designation as “foreign agents” of any person or organization that receives funds from foreign governments, associations or foundations is stigmatizing, especially considering that the stated purpose of the Law is “*to establish the legal framework applicable to natural or juridical persons, nationals or of another nationality, who, responding to foreign interests and obtaining foreign financing, use those resources to carry out activities that result in interference by foreign governments, organizations or natural persons in the internal and external affairs of Nicaragua, threatening the independence, self-determination and national sovereignty, as well as the economic and political stability of the country*”.<sup>1155</sup> In this regard, the GHREN recalls that the Human Rights Council, in its resolution 22/6, urged States to ensure that no law criminalizes or delegitimizes human rights activities because of the geographical origin of their funding.<sup>1156</sup>

694. The Foreign Agents Act obliges “foreign agents” to register their organizations in the Foreign Agents Registry maintained by the Ministry of the Interior.<sup>1157</sup> Failure to comply with this obligation may be punished with the intervention of funds and assets, the imposition of fines, the cancellation of legal personality, the suspension of operations and

<sup>1150</sup> Anti-Money Laundering Act; Regulation of Foreign Agents Act, Law No. 1040, approved on 15 October 2020, published in *La Gaceta, Diario Oficial* No. 192 of 19 October 2020 (hereinafter “Foreign Agents Act”).

<sup>1151</sup> Amendments and Additions to Electoral Law No. 331 Act, Law No. 1070, approved on 4 May 2021, published in *La Gaceta, Diario Oficial* No. 81 of 5 May 2021 (hereinafter “Law No. 1070”).

<sup>1152</sup> Anti-Money Laundering Act, arts. 37–39.

<sup>1153</sup> Foreign Agents Act.

<sup>1154</sup> Foreign Agents Act, art. 3.2.

<sup>1155</sup> Foreign Agents Act, art. 1.

<sup>1156</sup> Human Rights Council, Protection of Human Rights Defenders, A/HRC/RES/22/6 (12 April 2013), para. 9.

<sup>1157</sup> Foreign Agents Act, art. 6.

with criminal prosecution.<sup>1158</sup> In addition, natural or legal persons registered as foreign agents must report any transfer of funds received directly or indirectly from foreign individuals, governments, organizations and other corporations, as well as to submit detailed and verifiable monthly reports of expenditures, payments, disbursements, hiring and other activities financed with such funds.<sup>1159</sup> Funds and donations received by “foreign agents” may not be used to finance activities that have not been previously declared to the competent authority.<sup>1160</sup>

695. The establishment of a mandatory registration system for organizations and associations that receive funds from abroad, to obtain and/or maintain legal personality, and be able to operate in the country, constitutes a restriction on the right to freedom of association. In this regard, the ICCPR states that the exercise of the right to associate freely may be subject only to such restrictions “which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.<sup>1161</sup>

696. The protection of State sovereignty is not among the interests outlined in the Covenant and, therefore, cannot be invoked as a justification for restricting the right to freedom of association.<sup>1162</sup> Nor is the argument that such restrictions are necessary to protect national security admissible since this would mean considering that a person or organization constitutes a threat to the security of the State merely because it receives funding from private agents, governments or foreign agencies. Such notion not only has no basis in international law, but also stigmatizes and criminalizes foreign funding of nonprofit organizations, associations, and groups of human rights defenders, which is a common practice in international cooperation aimed at the development and the promotion of human rights.<sup>1163</sup>

697. The Foreign Agents Act also provides that those foreign agents must abstain, under penalty of legal sanctions, from intervening in internal and external political issues, activities or topics, and that they may not finance movements, political parties, coalitions or political alliances or associations that carry out political activities in Nicaragua. In addition, natural persons acting as foreign agents may not be public officials, public employees or candidates for public office of any nature. This impediment ceases one year after it is accredited that the person has ceased to be a foreign agent.<sup>1164</sup>

698. The Law does not provide criteria to define what constitutes an intervention in the State’s “issues, activities or topics of internal and external policy”, generating legal uncertainty and leaving a wide margin of discretion to interpretation by State officials, which could result in the prohibition of engaging in any topic of social or general interest in the country, and disproportionately restrict the freedoms of expression, peaceful assembly, and political participation of individuals and associations.

<sup>1158</sup> *Ibid.*, art. 15.

<sup>1159</sup> *Ibid.*, arts. 9–10.

<sup>1160</sup> *Ibid.*, art. 11.

<sup>1161</sup> ICCPR, art. 22.2. See A/HRC/20/27, pp. 14–15.

<sup>1162</sup> In the view of Special Rapporteur Maina Kiai, “it cannot be claimed that such restrictions are necessary “in the interests of national security, public safety” or even “public order”. The claim that national security is threatened when an association receives funds from foreign sources is not only a misrepresentation and a spurious argument but is also contrary to international human rights law”. See Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39 (24 April 2013), pp. 10–12.

<sup>1163</sup> Under art. 2 of the ICCPR, States Parties undertake “to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. Article 11 of the ICESCR provides that States parties “will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent”. See A/HRC/23/39, paras. 20 and 31–33.

<sup>1164</sup> Foreign Agents Act, art. 14.

699. The Foreign Agents Act restricts the freedoms of NGOs, associations and other groups of human rights defenders, and generates onerous administrative burdens, including the obligation to issue detailed monthly reports. In practice, civil society organizations faced difficulties in complying with the requirements of the Law and reported numerous obstacles from the Ministry of the Interior in receiving reports, updating legal information, and incorporating official documentation.

700. The level of information required also raised concerns about the right to privacy and the protection of beneficiaries and partners. For example, sources interviewed by the GHREN linked to organizations reported that they were asked to provide lists of people who attended activities, received assistance, or participated in training programs. This generated concern among organizations that work under the principle of confidentiality to provide, among others, health assistance or services to victims of gender-based and sexual violence. On the other hand, organizations told the GHREN that they feared that the information shared could result in the criminalization of partners and participants in their activities.<sup>1165</sup>

701. According to individuals interviewed by the GHREN, the entry into force of the Law caused the Government to begin pressuring banks, freezing the accounts of organizations that did not comply with the requirements imposed by the law.<sup>1166</sup> Overall, the legislation and its practical application led to a situation that made it difficult, and in some cases, impossible for organizations receiving funds from abroad to operate in the country. This reduced the access of associations and organizations to external sources of funding, restricting their ability to seek, obtain and use resources, which is an integral part of the right to freedom of association and the right to defend human rights.<sup>1167</sup>

702. Difficulties in complying with the requirements of the Foreign Agents Act also caused several international nonprofit organizations not to register and leave Nicaragua.<sup>1168</sup> Others, such as PEN Nicaragua and the Violeta Barrios de Chamorro Foundation, suspended their operations in rejection of the Law before the deadline granted by the law to register existing organizations expired.<sup>1169</sup>

c. Law No. 1115 and Law No. 1127: Regulation and Control of Nonprofit Organizations General Act and its amendment.

703. Before the entry into force of Law No. 1115 in May 2022, the regulatory regime for nonprofit organizations was provided for in Law No. 147.<sup>1170</sup> Said Law established that the legal personalities of nonprofit organizations could only be cancelled by the National Assembly, after consultation with the Ministry of the Interior. Before cancellation, the Department of Registration and Control of Associations (*Departamento de Registro y Control de Asociaciones*) could impose administrative sanctions such as a fine and/or intervention for the period of time strictly necessary to correct irregularities.<sup>1171</sup>

<sup>1165</sup> GHREN interviews BBIV009, BBIV010.

<sup>1166</sup> GHREN interviews CCIV030, BBIV007, BBIV009, BBIV010; document BBD0C137 on file with GHREN.

<sup>1167</sup> See A/HRC/23/39, paras. 15–18 and 20; Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/22/6 (13 December 2012), para. 9; Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144 (8 March 1999), art. 13.

<sup>1168</sup> El País, “Organizaciones sociales de Nicaragua suspenden sus operaciones por la Ley de Agentes Extranjeros de Ortega”, 5 February 2021; “PEN, Nicaragua cierra por polémica ley promovida por Ortega”, 5 February 2021; DW, “We Effect se retira de Nicaragua por “ley de agentes extranjeros””.

<sup>1169</sup> <https://twitter.com/FundVioleta/status/1357730434201886722>;  
<https://twitter.com/chamorrocris/status/1357734693731467265>.

<sup>1170</sup> Nonprofit Legal Entities General Act, Law No. 147, approved on 19 March 1992, published in *La Gaceta, Diario Oficial* No. 102 of 29 May 1992 (hereinafter “Law No. 147”), art. 24.

<sup>1171</sup> Law No. 147, art. 22.

704. The possibility of correcting errors was not included in Law No. 1115, which repealed Law No. 147 in May 2022.<sup>1172</sup> On the other hand, Law No. 147 allowed that, once the legal personality of an organization was cancelled, its assets and shares could be given the destination foreseen in the constitutive act or its bylaws, being the transfer of the ownership to the State the solution, when nothing had been foreseen.<sup>1173</sup>

705. The original version of Law No. 1115 also established that both the granting and the cancellation of the legal personality of nonprofit organizations was the responsibility of the National Assembly.<sup>1174</sup> Under said Law, the cancellation of the legal personality of national nonprofit organizations was initiated either voluntarily through the request of the organization itself, or at the request of the Ministry of the Interior, through a legal opinion of the General Directorate of Registration and Control of Nonprofit Organizations (*Dirección General de Registro y Control de Organizaciones sin Fines de Lucro*, DGRC) requesting the cancellation.

706. On 16 August 2022, Law No. 1127, which amended some articles of Law No. 1115, entered into force.<sup>1175</sup> With the new reform, the power to cancel the legal personality of national nonprofit organizations passed to the Ministry of the Interior, upon request of the organization itself or of the DGRC of the Ministry itself. The cancellation is approved through ministerial agreement.<sup>1176</sup>

707. Law No. 1115, on the one hand, broadened the grounds for cancellation of the legal personality of nonprofit organizations and limited the destination of the assets of the cancelled organization, which will become State property except in cases of voluntary liquidation and dissolution.<sup>1177</sup> In other words, it established a penalty, although it is not articulated as such in the law, which is disproportionate as it applies to all the grounds for cancellation of the nonprofit organization. In this way, the *de facto* confiscation of the assets of nonprofit organizations has been institutionalized; this constitutes a violation of the right to property enshrined in Article 44 of the Constitution of Nicaragua.

<sup>1172</sup> Regulation and Control of Nonprofit Organizations General Act, Law No. 1115, approved on 31 March 2022, published in *La Gaceta, Diario Oficial* No. 66 of 6 April 2022 (hereinafter “Law No. 1115”), art. 21. For a detailed analysis of Law No. 1115, see OL Letter NIC1/22. 1115, see Letter OL NIC1/22 from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders, to the Government of Nicaragua (5 May 2022).

<sup>1173</sup> Law No. 147, art. 25.

<sup>1174</sup> Law No. 1115, arts. 20 and 47; Organic Law of the Legislative Branch, Law No. 606, approved on 8 October 2021, published in *La Gaceta, Diario Oficial* No. 58 of 25 March 2022 (hereinafter “Law No. 606”), art. 92.

<sup>1175</sup> Amendments and Additions to Law No. 1115, Regulation and Control of Nonprofit Organizations General Act and of Amendments to Law No. 522, Sports, Physical Education and Physical Recreation General Act, Law No. 1127, approved on 11 August 2022, published in *La Gaceta, Diario Oficial* No. 152 on 16 August 2022 (hereinafter “Law No. 1127”).

<sup>1176</sup> This amendment is in direct contravention of the provisions of the Organic Law of the Legislative Power, a superior law, which grants the National Assembly the power to grant and cancel legal personalities of for-profit organizations.

<sup>1177</sup> Under art. 47 of Law No. 1115 and its amendment, the following are grounds for cancellation: “1) Dissolution and liquidation; 2) When it was used for the commission of illicit acts; 3) When it was used to violate public order; 4) For hindering the control and surveillance of the NPO by the General Directorate of Registration and Control; 5) When they distort the objectives and purposes for which it was created, according to the constitutive act and its bylaws; 6) When they have at least one year of non-compliance before the enforcement authority, by not reporting financial statements and changes in the Board of Directors; 7) When its activities are contrary to the nature of the legal personality, including the profit motive; 8) For using the organisational scheme to promote destabilization campaigns in the country, supporting, facilitating and inciting the affectation of citizen security and the legitimate exercise of the human rights of Nicaraguan families; 9) For administrative sanction derived from non-compliance with the obligations or performance of prohibited actions in accordance with the provisions of this Act, its Regulations and Rules”.

708. This Law also expands the list of requirements for obtaining legal personality to include, among others, the presentation of a certificate of no objection from the Ministry of the Interior and the police record of the members that constitute the nonprofit organization.<sup>1178</sup>

709. Law No. 1115 also establishes a long list of obligations, excessively onerous and disproportionate, and susceptible to exhausting the limited resources of nonprofit organizations and affecting their capacity to carry out their activities. Among these, the open obligation to “provide the information required by the competent authorities on their objectives and purposes, bylaws, activities, beneficiaries, sources of national or foreign financing, donors, donations, patrimony, administrative and financial operations and use of public funds received, among others” stands out.<sup>1179</sup>

710. The Law also establishes that organizations must report to and obtain authorization from the DGRC before the execution of projects. Such requirement violates the freedoms of association and expression, by subjecting the execution of their legitimate activities to the approval of the Ministry of the Interior and granting the DGRC unlimited authority in this regard.<sup>1180</sup>

711. Law No. 1115 prohibits a series of actions without precision in key aspects, thus opening such regulation to improper or arbitrary use by public officials. Among others, it prohibits, without defining the activities, “to carry out direct or indirect activities that imply political proselytist action”, “to intervene in partisan political matters” or “to violate public order, to promote destabilization campaigns in the country”.<sup>1181</sup> The vagueness of such precepts allows the DGRC discretion in their interpretation and application, and has given rise to discriminatory and disproportionate harassment of nonprofit organizations working on politically sensitive issues, or which are critical of the Government or perceived as such.

712. According to the wording of Law No. 1115, once the DGRC, in the exercise of its supervision and control functions, deems that the nonprofit organization has failed to comply with the obligations outlined in the law itself or its regulations, has performed actions prohibited under the law or its regulations, or has obstructed the control functions of the authority,<sup>1182</sup> the representatives of the organizations are not granted access to a procedure that would allow them to correct errors, leading irremediably to the suspension or cancellation of the organization.<sup>1183</sup>

713. Compared to previous years, in 2022, and after the entry into force of Law No. 1115, there is a striking and disproportionate number of cancellations adopted both by the National Assembly, through Legislative decrees, and by the Ministry of the Interior, via ministerial agreements. Between 2010 and 2017, a total of 16 cancellation initiatives were recorded, all at the request of the organization itself.<sup>1184</sup> Between 2018 and 2021, there were 69 cancellations. From the beginning of 2022 to the date of writing this report, more than 3,144 national and international organizations have been cancelled.<sup>1185</sup>

714. Several UN experts addressed a joint communiqué to President Daniel Ortega outlining their concerns regarding possible violations of human rights and fundamental

<sup>1178</sup> Law No. 1115, art. 21.

<sup>1179</sup> Law No. 1115, art. 34.13. The obligation to verify the identity of all beneficiaries and/or the final destination of their donations may be too burdensome for small organizations that may lack the administrative and human resources to identify each beneficiary.

<sup>1180</sup> *Ibid.*, art. 34.25.

<sup>1181</sup> *Ibid.*, art. 35.

<sup>1182</sup> Law No. 1115, art. 37.

<sup>1183</sup> Arts. 38 and 40 of Law No. 1115 provide that the sanctions will be fines, intervention and suspension and that intervention may lead to suspension or legal opinion for the cancellation of the legal personality.

<sup>1184</sup> See Legislative Decree Initiatives Nos. 0179923, 20179089, 20168843, 20158604, 20158617, 20158595, 20158594, 20158463, 20148294, 20148147, 20136128, 20137819, 20127624, 20116788, 20106416 and 2016282.

<sup>1185</sup> OHCHR, “Crisis in Nicaragua: 2022 en hechos y cifras”, January 2023.

freedoms guaranteed by international law, as a result of the adoption and entry into force of Law No. 1115.<sup>1186</sup>

d. Law No. 1070: Law of reform and addition to the Electoral Law No. 331.

715. Article 51 of the Constitution of Nicaragua stipulates that the citizens have the right to elect and be elected in periodic elections and to run for public office. In Nicaragua, the right to political participation is also regulated by the Electoral Act, the Municipalities Act, and the Equal Rights and Opportunities Act.<sup>1187</sup> However, as discussed in Chapter 2 of this report, Nicaraguan electoral legislation disproportionately restricts the right to political participation.

716. In May 2021, the National Assembly passed Law No. 1070, which not only failed to respond to requests from civil society and the international community to adopt a legal framework that would guarantee free, fair, transparent, and observed elections,<sup>1188</sup> but further restricted electoral competition and the exercise of political rights.<sup>1189</sup>

717. The electoral reform expanded the causes of disqualification for the registration of candidacies, incorporating the provisions of the Foreign Agents Act and the Sovereignty Act.<sup>1190</sup> Law No. 1070 also prohibited political parties from “*incurring in acts that undermine independence, sovereignty, and self-determination, that incite foreign interference in internal affairs, demand the application of economic sanctions to the detriment of the State and call for military interventions*” or “*resorting to violence and any act that has the purpose or result of altering public order or impeding the regular functioning of the organs of public administration*”, under penalty of loss of legal personality.<sup>1191</sup>

718. Such cancellation criteria reproduce the official narrative that has been used by the authorities since April 2018 to stigmatize and criminalize real or perceived opponents. Taken together, these precepts would prevent or severely hinder the registration of candidacies of persons considered to be opponents of the Government, either because they participated in the 2018 demonstrations, which the Government labelled as a *coup d’etat*, or because they have expressed views favourable to the imposition of sanctions on Nicaraguan institutions and individuals, or opinions that could be interpreted as a call for foreign interference.

719. Law No. 1070 also established that political parties must request prior authorization from the National Police to hold demonstrations or rallies during the electoral campaign, granting the Police the power to authorize or not authorize such meetings within 48

<sup>1186</sup> Letter of the Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights of migrants; the Special Rapporteur on the rights to freedom of peaceful assembly and association; and the Special Rapporteur on the situation of human rights defenders to the Government of the Republic of Nicaragua, OL NIC 1/2022 (5 May 2022).

<sup>1187</sup> Municipalities Act, Law No. 40, published in *La Gaceta, Diario Oficial* No. 6 of 14 January 2013; Equal Rights and Opportunities Act, Law No. 648, approved on 14 February 2008, published in *La Gaceta, Diario Oficial* No. 51 of 12 March 2008.

<sup>1188</sup> Human Rights Council, Situation of human rights in Nicaragua – Report of the United Nations High Commissioner for Human Rights, A/HRC/42/18 (17 September 2019), para. 65.h; Human Rights Council, Situation of human rights in Nicaragua – Report of the United Nations High Commissioner for Human Rights, A/HRC/46/21 (11 February 2021), para. 71.b; Human Rights Council, Report of the Working Group on the Universal Periodic Review – Nicaragua, A/HRC/42/16 (5 July 2019), paras. 125.93 and 125.114; see also OAS General Assembly resolution, Restoring Democratic Institutions and Respect for Human Rights in Nicaragua through Free and Fair Elections, AG/Res. 2962 (L-O/20), in General Assembly, Fiftieth Regular Session, Declaration and Resolutions Adopted by the General Assembly, OEA/Ser.P AG/doc.5717/20 rev. 1, p. 191.

<sup>1189</sup> This reform was described by the OAS General Secretariat as a clear step backwards for the exercise of the political rights of Nicaraguans. OAS, “Nicaragua Report”, p. 9, available at: <https://www.oas.org/fpdb/press/Informe-Nicaragua-Elecciones-2021.pdf>.

<sup>1190</sup> Law No. 1070, art. 81.

<sup>1191</sup> Law No. 1070, arts. 63.13, 63.14 and 74.6.



hours.<sup>1192</sup> This requirement is incompatible with art. 21 of the ICCPR.<sup>1193</sup> Similarly, the general prohibition of demonstrations by groups not participating in the elections, contained in art. 95 of Law No. 1070, contravenes the right to freedom of assembly protected by international

j) *Cancellation of civil society organizations*

720. From November 2018 to 15 February 2023, Nicaraguan authorities dissolved almost half of all organizations registered with the Ministry of the Interior in Nicaragua. Indeed, at least 3,144 nonprofit organizations, out of the 7,227 registered in 2017, were cancelled during the period covered by the GHREN's mandate.<sup>1194</sup>

721. The GHREN's analysis indicates that the authorities have reportedly cancelled hundreds of associations in a selective manner. According to a study by the *El Diálogo* institute published in October 2022, although approximately 50 percent of the 2,000 organizations whose legal personalities were cancelled as of October 2022 were inactive, among the active organizations, the cancellations were concentrated on those with the greatest dynamism and reputation; this resulted in the closure of practically all of the organizations that carried out human rights work in Nicaragua.<sup>1195</sup> According to monitoring by the organization *Iniciativa Nicaragüense de Defensoras*, a total of 212 organizations with a feminist profile or with work in women's human rights were cancelled between November 2018 and 31 December 2022.<sup>1196</sup> Most of them (202) were subject to that sanction in 2022.

722. The GHREN met with representatives and members of seven Nicaraguan civil society organizations that were cancelled. All of their representatives reported that they did not receive advance notice of the cancellation, nor did they have the opportunity to challenge or file an appeal. The State seized the property, documents and equipment of some of the organizations.<sup>1197</sup>

i) *First closures after the outbreak of protests in 2018.*

723. Before April 2018, the National Assembly approved in a very timely manner cancellations of nonprofit organizations, in practically all cases the cancellations were made at the request of the organization concerned.<sup>1198</sup> However, at the end of 2018, by way of emergency processing, the National Assembly cancelled the legal personality of nine organizations that had been particularly critical of the Government: *Centro de Información y Servicios de Asesoría en Salud* (CISAS), *Centro Nicaragüense de Derechos Humanos* (CENIDH), *Instituto de Estudios Estratégicos y Políticas Públicas* (IEEPP), *Centro de*

<sup>1192</sup> Law No. 1070, arts. 89.1 and 81.2. Before the reform, the Electoral Act assigned the power to authorize demonstrations or rallies to the CSE (Electoral Act, art. 89).

<sup>1193</sup> The Human Rights Committee stated that having to seek permission from the authorities undermines the idea that peaceful assembly is a fundamental right. However, this is not the case where the notification regime amounts in practice to a system of prior notification and implicit or automatic authorization. See CCPR/C/GC/37, paras. 70–73.

<sup>1194</sup> OHCHR Bulletin January 2023, "Crisis in Nicaragua: 2022 en hechos y cifras".

<sup>1195</sup> *El Diálogo*, "La radicalización dictatorial en Nicaragua", October 2022, p.3. available at <https://www.thedialogue.org/wp-content/uploads/2022/11/nicaragua-radicalization-SP-draft11.pdf>.

<sup>1196</sup> Document AADOC158 on file with GHREN. Fourteen of these were expropriated, stripped or confiscated of their assets –real estate, equipment and furniture–. Among them, CISAS, Popol Na, CINCO, ILLS, the *Corriente Feminista*, the *Colectivo de Mujeres de Matagalpa*, the *Asociación de Mujeres de Jalapa contra la Violencia Oyanka*, the *Asociación de Mujeres Trabajadoras y Desempleadas María Elena Cuadra* (MEC), the *Fundación para la Autonomía y Desarrollo de la Costa Atlántica de Nicaragua* (FADCANIC), the *Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua* (CEJUDHCAN) and the *Fundación Puntos de Encuentro para la transformación de la vida cotidiana*.

<sup>1197</sup> GHREN interviews CCIV030; BBIV007; CCIV044, BBIV010, AAIV012, AAIV027, AAIV045.

<sup>1198</sup> Between 2010 and 2017, the National Assembly approved a total of 14 cancellations of nonprofit organizations. See National Assembly, "Repertorio de iniciativas legislativas", available at: <http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/NewBuscarIniciativas.xsp>.

*Investigación de la Comunicación* (CINCO), *Hagamos Democracia*, *Instituto para el Desarrollo y la Democracia* (IPADE), *Popol Na*, *Instituto de Liderazgos de Las Segovias* (ILLS), and *Fundación del Río*.<sup>1199</sup> Of these organizations, five were led by women.<sup>1200</sup> Notably, the first organization cancelled by the Government of Daniel Ortega on 29 November 2018 was CISAS, dedicated to the promotion of sexual and reproductive rights and led by feminist Ana Quirós.

724. The director of one of these organizations told the GHREN that, on 13 December 2018, an FSLN congressman claimed on television that “*it was a coup organization, that it financed the roadblocks and that its members were responsible for [a] massacre [of police officers]*”.<sup>1201</sup> According to the director, at 12:00 midnight, the police raided the organization’s facilities, and confiscated its assets, including all its documentation. The organization’s bank accounts were frozen. The organization’s premises and property were confiscated, including a private property of the director.<sup>1202</sup>

725. On 14 December 2018, the Ministry of the Interior published a press release that deepened the stigmatization of these organizations, stating that their cancellation was due to the fact that “*they failed to comply with the legal requirements for their operation, and that they violated the nature of their functions by having actively participated during the failed Coup d’Etat, promoting terrorism, hate crimes, and encouraging and celebrating the destruction of public and private properties, homes, businesses, and the assault on the human dignity of thousands of people and families, who were subjected to degrading and humiliating treatment with kidnappings, torture, and all kinds of threats to their lives, in absolute disrespect for their dignity and the human rights of all Nicaraguans*”. The communication added that the organizations had the resources to commit such violations and that, therefore, it resolved to cancel their legal personality and transfer their movable and immovable property and any other assets to the State administration for the creation of a “Fund for attention and integral reparation for the victims of terrorism”.<sup>1203</sup> According to the media and persons interviewed, the police took over the headquarters of the organizations.<sup>1204</sup>

<sup>1199</sup> Documents on file with GHREN CCDOC134, CCDOC135, CCDOC136. See also La Prensa, “Ministerio de Gobernación confisca bienes de ONG que han sido despojadas de su personería jurídica”, 15 December 2018, available at: <https://www.laprensani.com/2018/12/15/nacionales/2506013-ministerio-de-gobernacion-confisca-bienes-de-ong-que-fueron-despojadas-de-su-personeria-juridica>.

<sup>1200</sup> CISAS, CENIDH, ILLS, CINCO and Popol Na. Some of them were involved in the complaint against Daniel Ortega made by his stepdaughter, Zoliamérica Narváez Murillo, for sexual abuse, rape and sexual harassment. GHREN interview CCIV044.

<sup>1201</sup> Morrito is a municipality in Río San Juan where four policemen and a teacher were killed in a shootout.

<sup>1202</sup> GHREN interview CCIV030; documents on file with GHREN CCDOC134, CCDOC135. On 14 December 2018, the Ministry of the Interior published a press release stating that “the movable and immovable property and any other assets of the aforementioned organizations pass under the administration of the State of Nicaragua, for the creation of the Fund for Attention and Integral Reparation for the Victims of Terrorism”. Press release from the Ministry of the Interior on file with GHREN CCDOC136.

<sup>1203</sup> Press Release of 14 December 2018 from the Ministry of the Interior, on CCDOC134, CCDOC135; CCDOC136 on file with GHREN. See El 19 digital, “Crearán Fondo de Atención y Reparación Integral para las Víctimas de terrorismo”, 14 December 2018, available at: <https://www.el19digital.com/articulos/ver/titulo:85243-crearan-fondo-de-atencion-y-reparacion-integral-para-las-victimas-de-terrorismo> “*incumplieron los requerimientos legales para su funcionamiento, y que violentaron la naturaleza de sus funciones al haber participado activamente durante el fallido Golpe de Estado, promoviendo el Terrorismo, crímenes de odio, y alentando y celebrando la destrucción de Propiedades Públicas y Privadas, de Viviendas, Negocios, y de asalto a la Dignidad Humana de Miles de Personas y Familias, a quienes les fue infringido un trato denigrante, humillante con secuestros, torturas, todo tipo de amenazas a su Vida, en absoluto irrespeto a su Dignidad y a los Derechos Humanos de tod@s l@s nicaragüenses*”.

<sup>1204</sup> GHREN interviews BBIV007; BBIV008; BBIV009; CCIV030. Four of the cancelled organizations exhausted domestic remedies in Nicaragua and filed petitions with the IACHR: CENIDH, Fundación del Río, Popol Na and ILLS.

## ii). Closures under the Foreign Agents Act

726. One of the first consequences of the approval of the Foreign Agents Act at the end of 2020 was the cessation of the functions of two of the main organizations defending freedom of expression in the country: the Violeta Barrios de Chamorro Foundation and the Nicaraguan PEN Centre.<sup>1205</sup> Both organizations decided to close their doors. A former employee of the Barrios de Chamorro Foundation told the GHREN that “[the workers] understood [the decision], accepted it and supported it because I, as a Nicaraguan citizen, could not accept to declare myself as a foreign agent just for receiving money from abroad. There was consensus to close before submitting to this act”.<sup>1206</sup>

727. Throughout 2019, six draft Legislative Decrees for the cancellation of legal personalities were passed: one for insolvency and five for contravening the Nonprofit Legal Entities Act and the Anti-Money Laundering Act by not submitting their financial statements, as well as for hindering the control and surveillance of the Department of Registration and Control of Associations.<sup>1207</sup> The first was the only cancellation initiative adopted during the year and the remaining five were dismissed and archived.<sup>1208</sup> In 2020, a total of four initiatives of Legislative Decrees for the cancellation of NPOs were presented. Three of them were promoted at the request of an interested party and one on the grounds of violation of article 24 e) of Law No. 147 and articles 37 and 38 of the Anti-Money Laundering Law.<sup>1209</sup>

## iii) Massive closures of nonprofit organizations.

728. Starting in 2021, a phenomenon began by which several nonprofit organizations may be included in each of the legislative decrees for the cancellation of legal personality. During 2021, a total of 51 organizations were cancelled under five Legislative Decrees.

729. In August 2021, the Government began to use restrictive laws against international NGOs with a presence in Nicaragua. In the course of that month alone, the Ministry of the Interior revoked the registration of six of them in the NPO registry.<sup>1210</sup> The Ministry of the Interior invoked the Anti-Money Laundering Law and Law No. 147 as a legal basis, and adopted the cancellation by means of what appears to be an administrative resolution.<sup>1211</sup> In the case of international organizations, although there is often talk of cancellation of legal personality, in reality what was cancelled were the registrations and perpetual numbers in Nicaragua of the organizations, since the legal personality of these organizations is constituted in other countries.

730. In 2022, with the entry into force of Law No. 1115, a massive wave of cancellations of the legal personality of associations and civil society organizations began. The National Assembly adopted a total of 25 Legislative Decree initiatives for the cancellation of nonprofit organizations. This legislative period stands out not only for the increase in the number of initiatives, but also because most of them refer to a significant number of associations, ranging between 25 and 101 organizations in most of the Legislative Decrees, totalling at least 1450 organizations cancelled until the entry into force of the reforms contained in Law No. 1127. After this reform, cancellations were carried out by means of a

<sup>1205</sup> GHREN interview CCIV025; La Mesa Redonda, “PEN Nicaragua suspende operaciones en el país por Ley de Agentes Extranjeros”, 4 February 2021, available at: <https://www.lamesaredonda.net/pen-nicaragua-suspende-operaciones-en-el-pais-por-ley-de-agentes-extranjeros/>.

<sup>1206</sup> GHREN interview CCIV029.

<sup>1207</sup> Law No. 147, art. 13, letter f) and art. 24 e); Anti-Money Laundering Act, art. 38.

<sup>1208</sup> See Legislative Decree Initiatives of 2019 Nos. 20199510, 20199513, 20199514, 20199515 and 20199516.

<sup>1209</sup> See Legislative Decree Initiatives of 2018 Nos. 20180921 and 20181114; of 2019: 20199550; of 2020: 20209631, 20209637, 20209643 and 20209668.

<sup>1210</sup> Oxfam Intermont Foundation, Oxfam Ibis Foundation, Diakonia Sweden, National Democratic Institute for International Affairs, International Republican Institute and Helping Hands The Warren William Pagel M.D. Foundation.

<sup>1211</sup> Ministry of the Interior, Reg. 2021-02790, <https://alertas.directoriolegislativo.org/wp-content/uploads/2021/09/NIC-La-Gaceta-1608.pdf>.

Ministerial Agreement of the Ministry of the Interior, which cancelled organizations in blocks of up to 100 entities.

731. The cancellation decrees issued by the National Assembly invoked the alleged non-compliance of the associations with administrative and financial provisions, pursuant to the Anti-Money Laundering Act, the Foreign Agents Act, Law No. 1115, and Law No. 1127.<sup>1212</sup> In particular, the authorities alleged non-compliance by the organizations with administrative procedures related to the registration of the organizations and the receipt of funds from abroad, among other elements.

732. According to multiple and credible testimonies received by the GHREN, the cancellations of non-governmental organizations were preceded by arbitrary procedures on the part of State institutions, which hindered or prevented the presentation of the administrative documentation required by law,<sup>1213</sup> despite the organizations' efforts to present it in due time and form. Individuals reported that the Ministry of the Interior refused to receive documents, or did not provide acknowledgement of receipt, did not accept appeals for processing or did not resolve them, or rejected the documentation submitted due to formal defects or even spelling mistakes.<sup>1214</sup> In many cases, the cancellation of the organizations was accompanied by the dismantling of their offices, the taking over of their property, and sometimes the criminalization of their members, who were also victims of intimidation and other types of aggression.<sup>1215</sup>

733. Several members of the organizations that were cancelled reported to the GHREN that they also had difficulties in presenting the necessary documents to the competent authorities to officially close the organizations. According to witnesses, the documentation is neither accepted nor rejected, and the authorities do not leave any record of the attempt to comply with the process.<sup>1216</sup> One interviewee described it as "*a process that never ends*".<sup>1217</sup> This situation could expose human rights defenders to additional risks, as they could be subject to criminal and/or administrative proceedings against them for failing to comply with the relevant regulations.

734. The cancelled organizations cannot receive funds to operate and, therefore, their capacity for action became limited. Faced with the impossibility of continuing to work in Nicaragua, hundreds of the cancelled organizations were forced to close their doors or move abroad. This situation generated a new displacement of hundreds of civil society members who were forced to leave the country in 2022.

k) *Media closures*

735. In 2018 alone, the authorities closed the following media outlets: Radio Darío, Radio Amerrisque, NotiDalia, NotiWiwilí, NotiPantasma, Radio Stereo Apante, Radio Jerusalén, Radio Humedales, Radio Voz Juvenil, El Confidencial and 100% Noticias. According to information received by the GHREN, the police reportedly did not present search warrants or provide receipts for the confiscation of property from the affected media outlets.

<sup>1212</sup> Law No. 1115, Regulation and Control of Nonprofit Organizations General Act, published in *La Gaceta, Diario Oficial* No. 66 of 4 June 2022 (hereinafter "Regulation of Nonprofit Organizations Act"), art. 34, numerals 3), 7), 9), 24), 26), 26.1), 26.3), 27) and 28), and art. 47, numerals 4) and 6), and its Regulations; Anti-Money Laundering Act, art. 38, numeral 4; Regulation of Law No. 977, Act Against Money Laundering, Financing of Terrorism, and Financing of the Proliferation of Weapons of Mass Destruction, Executive Decree No. 15-2018, approved 27 September 2018, published in *La Gaceta, Diario Oficial* No. 190 of 3 October 2018, art. 14, numeral 1, literal a) and b) Regulation of Foreign Agents Act.

<sup>1213</sup> First by Law No. 147, and later with the increasing requirements established by the Foreign Agents Act, the Anti-Money Laundering Act and the Regulation of Nonprofit Organizations Act.

<sup>1214</sup> GHREN interviews BBIV007, BBIV008, AAIV027, AAIV012, AAIV045.

<sup>1215</sup> GHREN interviews BBIV007, BBIV008.

<sup>1216</sup> GHREN interviews AAIV012, AAIV014, AAIV027, AAIV035, AAIV045.

<sup>1217</sup> GHREN interview AAIV014.

736. According to information received by the GHREN, between September 2018 and February 2020, the Government prevented the privately-owned press from sourcing the materials needed to print newspapers. For 18 months, the General Directorate of Customs Services (*Dirección General de Servicios Aduaneros*) arbitrarily withheld ink and newsprint due to *El Nuevo Diario* and *La Prensa*, the last two independent newspapers in the country.<sup>1218</sup> In September 2019, *El Nuevo Diario* announced the suspension of its operations after 40 years of activity, citing “economic, technical and logistical difficulties that make its operation unsustainable”.<sup>1219</sup> In the first days of June 2021, the Government again embargoed the import of paper and ink with the result that, on 12 August 2021, *La Prensa* announced that it would cease to circulate due to lack of paper and would start reporting exclusively in digital format.<sup>1220</sup>

737. The GHREN received information regarding the cancellation of four media outlets – two national and two local – in 2019. In 2021, the facilities of *Confidencial* were raided and its assets confiscated, which resulted in the media outlet’s departure from the country.

738. In 2022, there was a spike in media closures. According to OHCHR, in 2022, the Government closed 26 national media outlets and three international media outlets.<sup>1221</sup>

739. In August 2022 alone, as part of a pattern of repression against the Catholic Church, TELCOR ordered the closure of several local channels belonging to the dioceses of Matagalpa and Estelí: TV Merced, Canal San José, Radio Hermanos, Radio Nuestra Señora de Lourdes, Radio Nuestra Señora de Fátima, Radio Alliens, Radio Monte Carmelo, Radio San José, Radio Católica de Sébaco, Radio Santa Lucía, Radio Esquipulas, and Radio Católica de Waslala.<sup>1222</sup> TELCOR argued that the stations in the diocese of Matagalpa did not have the required permits to operate. However, Monsignor Rolando Álvarez, bishop of Matagalpa and apostolic administrator of Estelí, and currently detained, publicly stated that he had submitted all the required documentation since 2016, but never received any confirmation or response from the authorities.<sup>1223</sup>

740. Also, in August of the same year, Radio Vos and RB3 “El Canal de la Zona Láctea”, in the department of Matagalpa; Canal NGTV3, in Nueva Guinea; Radio Darío and Radio

<sup>1218</sup> GHREN interviews CCIV020, CCIV009, CCIV027; Reporters Without Borders (RSF), “Los diarios independientes de Nicaragua, de nuevo abastecidos de papel. Un respiro momentáneo, denuncia RSF”, available at: <https://rsf.org/es/los-diarios-independientes-de-nicaragua-de-nuevo-abastecidos-de-papel-un-respiro-moment%C3%A1neo>.

<sup>1219</sup> <https://twitter.com/elnuevodiario/status/1177465402693046277?s=201>; see also France 24, “Cierra periódico de Nicaragua golpeado por embargo de papel y tinta del gobierno”, 27 September 2019, available at: <https://www.france24.com/es/20190927-cierra-peri%C3%B3dico-de-nicaragua-golpeado-por-embargo-de-papel-y-tinta-del-gobierno>.

<sup>1220</sup> GHREN interview CCIV020; see *La Prensa Gráfica*, “Nicaragua: La Prensa suspende edición impresa por bloqueo a papel”, 12 August 2021, available at: <https://www.laprensagrafica.com/internacional/Nicaragua-La-Prensa-suspende-edicion-impresa-por-bloqueo-a-papel-20210812-0012.html>; 100% Noticias, “Diario LA PRENSA y HOY dejan de circular, dictadura en Nicaragua secuestra papel”, 12 August 2021, available at: <https://100noticias.com.ni/nacionales/109384-diario-laprensa-hoy-secuestro-papel/>.

<sup>1221</sup> OHCHR, Oral Update 15 December, 2022.

<sup>1222</sup> GHREN interview CCIV003; *Boletín Ecológico*, “Monseñor Rolando Alvarez se refiere al cierre de emisoras de la Diócesis de Matagalpa”, 1 August 2022, see <https://www.youtube.com/watch?v=yOZL9Vizbd4&t=2s>; see also Vatican News, “Nicaragua: Cierran emisoras de la diócesis de Matagalpa”, available at: <https://www.vaticannews.va/es/iglesia/news/2022-08/nicaragua-el-gobierno-cierra-emisoras-de-la-diocesis-de-matagalp.html>; see also *Confidencial*, “La guerra de Daniel Ortega contra el periodismo: 54 medios cerrados, 8 September 2022, available at: <https://www.confidencial.digital/politica/54-medios-cerrados-guerra-daniel-ortega-periodistas-en-nicaragua/>.

<sup>1223</sup> *Ibid.*

Sky, in León; Radio La Guarachera, in Chinandega; Radio San Carlos, in Río San Juan; and Radio Stereo Fe, in Nueva Segovia, were cancelled.<sup>1224</sup>

741. The restrictions imposed by the Government also affected international media outlets. In September 2022, the Government of Nicaragua took CNN en Español off the air. In this regard, TELCOR issued a statement in which it indicated that the content transmitted by the channel CNN en Español contravened the Constitution of Nicaragua, the Sovereign Security Act, and ordered the authorized cable operators in the country to cease the transmission of the channel.<sup>1225</sup>

l) *Cancellation of political parties*

742. The GHREN concluded that, during the period under review, the CSE cancelled the legal personality of three political opposition parties in an arbitrary manner.

743. A few days after the approval of Law No. 1070, the CSE cancelled the legal personality of the *Partido de Restauración Democrática* (PRD) and the *Partido Conservador*. On 6 August, 2021, the CSE cancelled the *Ciudadanos por la Libertad* (CxL) party<sup>1226</sup> which, according to several sources, was to be the opposition's vehicle to run in the elections in a unified manner.<sup>1227</sup> The cancellation occurred four days after the registration of the candidacy presented by CxL.<sup>1228</sup> According to the resolution of the CSE, this party was cancelled because its president allegedly had applied for a citizenship card in an irregular manner. However, the CSE's notification accused the party of undermining national sovereignty, arguing that, with its actions, it had violated the Foreign Agents Law, the Sovereign Security Act, and the Sovereignty Act.<sup>1229</sup>

744. The GHREN analysed the cancellation resolutions issued by the CSE and concluded that they presented errors of substance and/or form (See Table 6).

Table 6  
**Cancellations of political parties during the period under review**<sup>1230</sup>

<i>Political party and date of cancellation</i>	<i>Recurring</i>	<i>Cause invoked</i>	<i>Legal analysis</i>
Democratic Restoration Party (PRD) 18 May	A group of evangelical pastors and pastoralists	The party president acted against Christian principles and the PRD statutes by allying himself with several organizations that make up	According to the party president, the appellants were not members of his party but members of the Peace Commissions of the Sandinista

<sup>1224</sup> Confidencial, “La guerra de Daniel Ortega contra el periodismo: 54 medios cerrados”, 8 September 2022, available at: <https://www.confidencial.digital/politica/54-medios-cerrados-guerra-daniel-ortega-periodistas-en-nicaragua/>.

<sup>1225</sup> See TELCOR's press release, available at: <https://www.el19digital.com/articulos/ver/titulo:132577-comunicado-de-telcor-ordenando-retirar-a-cnn-en-espanol-de-las-grillas-de-television>; as well as CNN's press release on the matter, available at: <https://cnnespanol.cnn.com/2022/09/22/gobierno-nicaragua-saca-del-aire-senal-cnn-espanol-orix/>.

<sup>1226</sup> Notification of the CSE resolution, document on file with GHREN CCDOC113.

<sup>1227</sup> GHREN interviews CCIV026, CCIV029, CCIV004, CCIV016, CCIV033, AAIV048, AAIV050. See also Journalism in Resistance, “Jóvenes analizan a CXL como un posible vehículo electoral en 2021”, 11 September 2020, available at: <https://www.youtube.com/watch?v=6JFwTzIw-qc>

<sup>1228</sup> DW en español, “La oposición nicaragüense registra a su primer candidato a la presidencia”, 2 August 2021, available at: <https://www.dw.com/es/la-oposici%C3%B3n-nicarag%C3%BCense-registra-a-su-primer-candidato-a-la-presidencia/a-58735251>.

<sup>1229</sup> Notification of the CSE resolution, document on file with GHREN CCDOC113; Confidencial, “CSE cancela personería jurídica de Ciudadanos por la Libertad”, 6 August 2021, available at: <https://www.confidencial.digital/politica/plc-pide-anular-la-personeria-juridica-del-partido-ciudadanos-por-la-libertad/>.

<sup>1230</sup> Analysis based on the cancellation resolutions of the three parties concerned, issued by the CSE, document the GHREN archive BBDOC112, BBDOC113, BBDOC114, BBDOC115, BBDOC116.

<i>Political party and date of cancellation</i>	<i>Recurring</i>	<i>Cause invoked</i>	<i>Legal analysis</i>
2021		<p>the opposition National Coalition; according to the appellants, these parties promote “anti-values” that do not correspond to evangelical principles.</p> <p>The CSE justifies its decision on the basis that “it has been possible to confirm as notorious and public facts that the [PRD] has made political alliances with associations and individuals on dates subsequent to 7 May, implying statutory changes that compromise its founding rationale”.<sup>1231</sup></p> <p>The CSE also referred to art. 59.3 of the Electoral Law, which foresees as a cause for cancellation the “self-dissolution of the political party or merger with another”.</p>	<p>Front, therefore they were not aggrieved and did not have standing to challenge.<sup>1232</sup></p> <p>The CSE affirmed that the legal representative of the party violated the party’s bylaws, having “divorced himself from the postulates that served as the seed for the constitution of the party”. However, the “biblical principles” referred to in the PRD statutes can be interpreted in different ways, so demonstrating their violation would require a detailed theological justification that would probably be incompatible with the right to freedom of religion and belief of PRD members, who would be denied the right to interpret their own founding “biblical principles”.</p> <p>The alliance signed on 16 May by the PRD with groups belonging to the National Coalition for the November elections does not constitute a self-dissolution or a merger.</p>
Conservative Party (CP)	19 May 2021	<p>The CSE based its resolution on art. 74.4 of Law No. 1070, which provides for the cancellation of parties for non-participation in elections.</p> <p>Said decision was recorded in the minutes submitted by the President of the Party to the Political Parties Attention Directorate of the CSE.</p>	<p>The failure to stand for elections was not yet a material fact at the date of the cancellation resolution, since it had been a temporary decision that could be confirmed or not, because the stipulated deadline for presenting candidacies had not expired.</p> <p>The PC Minutes stated that the party’s Council had approved not to take part in the electoral process, and that “the 110,000 voters who endorsed the PC in November 2016 will be</p>

<sup>1231</sup> Resolution of cancellation issued by the CSE, BBD0C113 and BBD0C114.

<sup>1232</sup> CNN, “Consejo Supremo Electoral de Nicaragua cancela personería a partido que servía de vehículo a una facción opositora”, 19 May 2021, available at: <https://cnnespanol.cnn.com/2021/05/19/consejo-supremo-electoral-de-nicaragua-cancela-personeria-a-partido-que-serviria-de-vehiculo-a-una-faccion-opositora/>.

<i>Political party and date of cancellation</i>	<i>Recurring</i>	<i>Cause invoked</i>	<i>Legal analysis</i>
			consulted, if they think differently the decision can be changed". <sup>1233</sup>
Citizens for Liberty (CxL) 6 August 2021	Representative of the Constitutionalist Liberal Party (PLC)	According to the resolution of the CSE, the CxL party was cancelled because its legal representative had made its application for a citizenship card in an anomalous manner.  However, in the notification sent to the president of the CxL party, the CSE accused the party of having undermined national sovereignty and violated the Foreign Agents Act, the Sovereign Security Act and the Sovereignty Act.	The application of Law No. 1055 as a cause for cancellation disproportionately restricts the right to political participation.  The resolution issued by the CSE does not elaborate on the facts considered to be in violation of the Sovereignty Act.

m) *Stigmatization, harassment and intimidation*

i) Stigmatization of critical voices and inflammatory discourse

745. Senior Government officials, representatives of public institutions, pro-government media and users of social networks have made use of inflammatory rhetoric that incites hatred against people perceived as opponents or critics of the Government.

746. Initially, the discourse of the authorities sought to minimize the social movement of April 2018. Thus, on 18 April, Rosario Murillo characterized the protest movement as “*tiny groups, those small, toxic souls, full of hate, they do not represent the feeling, the need for peace, work and affection of the Nicaraguan people*” and on 19 April she referred to “*tiny, petty, mediocre beings*”.<sup>1234</sup> As the protests continued, public discourse on the construction of the enemy began to take shape. Through the repetition of negative stereotypes and the defamation of the collective, a rhetoric of “us against the others” was sought to be generated.

747. To this end, the authorities invoked the love for the homeland, as well as traditional values and figures of religious language. In the words of Rosario Murillo: “*At all times, those who are there saying anything, manipulating the People, have launched themselves against the Churches, they launch themselves against the Churches, against the Pastors, against the Priests, against the Family, are those who at all times have wanted to turn Nicaragua into a field foreign to our way of being; promoters of abortion, promoters of*

<sup>1233</sup> Documents on file with GHREN BBD0C115, BBD0C116.

<sup>1234</sup> El 19 Digital, “Rosario en Multinoticias”, 20 April 2020, available at: <https://www.el19digital.com/articulos/ver/titulo:76084-rosario-en-multinoticias-edicion-especial-19-de-abril-del-2018>: “*grupos minúsculos, esas almas pequeñas, tóxicas, llenas de odio, no representan el sentimiento, la necesidad de paz, de trabajo y de cariño del pueblo nicaragüense*” ... “*seres pequeñitos, mezquinos, mediocres*”.



*forms of Life that do not correspond with our Culture, with our way of feeling, of thinking, of acting*".<sup>1235</sup>

748. Women's groups and feminists were also accused of being "abortionists", "traitors", and of attacking the family and life, and were singled out as people whose values are at odds with those of the pro-government group. For example, on 23 November 2018, two days after the National Police denied the request of organizations to commemorate the International Day of Non-Violence against Women,<sup>106</sup> Rosario Murillo told Channel 4:

*We, the Sandinista Women, of Social, Labour and Youth Movements, denounce the permanent extortion of these self-styled Feminist Movements, who have sought, obtained and continue to obtain abundant and illegitimate resources, to attack and destroy Nicaraguan Women and Families, whose true Battles they ignore, in their selfishness, vanity and self-interested blindness [...] we denounce these so-called Leaders, for their responsibility and involvement in the hate crimes committed against Women, Men, Youth and Families in our Nicaragua during the failed coup d'état attempt. We denounce and demand that Justice establish responsibilities and penalties for all those who have participated and still pretend to participate in the siege and harassment of Peace.*<sup>1236</sup>

749. In the same way, the Government proceeded to justify the violations and abuses committed, ascribing the responsibility for the acts of violence of 2018 to the opposition or perceived as such. From the beginning of the crisis, the Government maintained that the events of 2018 attended to an attempted *coup d'état* by the political "right-wing", with the support and financing of the United States.<sup>1237</sup> This narrative was reproduced and perpetuated through official communications of the Nicaraguan Government,<sup>1238</sup> by public officials at all levels, official media, and social media campaigns.

750. The Ortega and Murillo Government has sought to justify the violence exercised against the civilian population, as well as the policy of arbitrary detentions and

<sup>1235</sup> In turn, this description contrasts with the characterization of the Government's partisan group: "Those who do not take into account nor recognize the Miracle of Peace, and who throw themselves, with Souls that seem poisoned, perverting the Environment that with so much Faith, that Joyful, Safe Environment, that we all want and that with so much Faith and so much Dedication we have been reaching, infinite thanks to God, and by His Hand, all together in our Country". El 19 Digital, "Rosario en Multinoticias", 19 April 2018, available at: <https://www.el19digital.com/articulos/ver/titulo:76067-rosario-en-multinoticias-19-de-abril-del-2018>: "*Eso que no toman en cuenta ni reconocen el Milagro de la Paz, y que se lanzan, con Almas que parecieran envenenadas, pervirtiendo el Ambiente que con tanta Fe, ese Ambiente Alegre, Seguro, que todos queremos y que con tanta Fe y tanta Dedicación hemos venido alcanzando, gracias infinitas a Dios, y de Su Mano, todos juntos en nuestro País*".

<sup>1236</sup> Channel 4, "Compañera Rosario in Multinoticias", 23 November 2018, available at: <https://www.canal4.com.ni/companera-rosario-multinoticias-23-noviembre-2018>: "*Las Mujeres Sandinistas, de Movimientos Sociales, Laborales y de Juventud, denunciamos la permanente extorsión de estos Movimientos autodenominados Feministas, que han buscado, obtenido y siguen obteniendo abundantes e ilegítimos recursos, para atacar y destruir a las Mujeres y a las Familias nicaragüenses, cuyas verdaderas Batallas ignoran, en su egoísmo, vanidad y ceguera interesada [...] denunciamos a estas llamadas Líderes, por su responsabilidad e involucramiento en los crímenes de odio que se cometieron contra Mujeres, Hombres, Jóvenes y Familias en nuestra Nicaragua durante el intento fallido de Golpe de Estado. Denunciamos y exigimos que la Justicia establezca responsabilidades y penas para todas y todos los que han participado y todavía pretenden participar en el asedio y el acoso a la Paz*".

<sup>1237</sup> The GHREN found no evidence of any preconceived plan, planning, or usurpation of power by the individuals and groups that participated in the 2018 mass demonstrations. See Euronews en Español, "Oscar Valero responde a vuestras preguntas sobre la entrevista a Daniel Ortega", 31 July 2018, minute 10:55, available at: <https://www.youtube.com/watch?v=saErUvujQA8>; DW Español, "Entrevista exclusiva con Daniel Ortega", 9 September 2018, minute 2:30, available at: <https://www.youtube.com/watch?v=U8zxb6Lh7qs>.

<sup>1238</sup> El Digital 19, "OPINION: La Derecha golpista y la "solución final", 3 August 2018, available at <https://www.el19digital.com/articulos/ver/titulo:79840-opinion-la-derecha-golpista-y-la-solucion-final>.

discrimination against persons considered to be opponents, through the vilification of this group. Among other disqualifications, persons opposed to the Government or perceived as such have been labelled as “traitors to the Homeland”, “traitors”, “sellouts”, “wimps”, “chingastes”,<sup>1239</sup> “puchos”,<sup>1240</sup> “irresponsible”, “criminals”, “terrorists”, “vassals of the empires”, and “sons of bitches of Yankee imperialists”.<sup>1241</sup>

751. In the context of the violence caused by the operations to lift the roadblocks, the authorities and official and pro-government media described them as “roadblocks of death”. This idea has been reinforced over time, not only through discourse but also through the praise of the actions of the National Police.<sup>1242</sup> An example of this is the annual celebration in Carazo by FSLN members of “the liberation of the death roadblocks”, about the operation in which at least 38 people died.<sup>1243</sup>

752. Rosario Murillo has used terms that “animalized” the people who do not agree with or oppose the Government, equating them with insects or bacteria: “*They are termites that reproduce, fungi, bacteria that reproduce. But the soul of our people is bigger. Bigger than any termite. That insect is not the same as the soul and the human dimension of courage and greatness that our peoples have and in particular the Nicaraguan people, a heroic heritage that lives in us*”.<sup>1244</sup> Days later, Vice President Rosario Murillo compared real or perceived opponents to a plague that must be eliminated: “*We all know that the buildings, the houses, all that we erect [...] Suddenly we discover in the walls, nests of termites. And these termites want to get in, they want to destroy, they want to destroy our buildings. But we don't allow it! We always know how to effectively fight the pests, the insects, the termites, and not allow them to destroy what we built with such a good heart*”.<sup>1245</sup>

753. In the same sense, in a conference held during the election day of 7 November 2021, President Daniel Ortega referred to the opponents of his Government as “*sowers of Death*”,

<sup>1239</sup> Nicaraguan colloquial language refers to the remains or residues of food or some beverages.

<sup>1240</sup> Nicaraguan colloquial language to refer to the remains, residues, small amount left over of something.

<sup>1241</sup> See Statement by Rosario, Vice President of Nicaragua, after the Ceremony in Commemoration of the 199th Anniversary of the Independence of Central America in El 19 Digital, “Compañera Rosario Murillo: Nos abrazamos con patriotismo nunca con servilismo”, 15 September 2020, available at: <https://www.youtube.com/watch?v=uUwR7ttOArY>; El 19 Digital, “Salud y educación, prioridad del Gobierno Sandinista en 2021”, 22 October 2020, available at: <https://www.el19digital.com/articulos/ver/titulo:108639-salud-y-educacion-prioridad-del-gobierno-sandinista-en-2021>; Agencia EFE, “Hijos de perra de imperialistas yanquis: Ortega, a opositores presos”, 9 November 2021, available at: <https://youtu.be/CIIOA-hV0mQ>.

<sup>1242</sup> See, El 19 Digital, “Acto Central del 43 Aniversario de la Policía Nacional”, 29 September 2022, available at: <https://www.el19digital.com/articulos/ver/titulo:132786-acto-central-del-43-aniversario-de-la-policia-nacional-28-09-22>: “*Son comejenes [termitas] que se reproducen, hongos, bacterias que se reproducen. Pero es más grande el alma de nuestros pueblos. Más grande que cualquier comején. No es lo mismo ese insecto que el alma y la dimensión humana de coraje y grandeza que tienen nuestros pueblos y en particular el pueblo nicaragüense, patrimonio heroico que vive en nosotros*”.

<sup>1243</sup> El 19 Digital, “Carazo celebra liberación de los tranques de la muerte”, 8 July 2019, available at: <https://www.el19digital.com/articulos/ver/titulo:91929-carazo-celebra-liberacion-de-los-tranques-de-la-muerte>.

<sup>1244</sup> El 19 Digital, “Mismo invasor, mismos vendepatrias”, 6 October 2019, available at: <https://www.el19digital.com/articulos/ver/titulo:95035--mismo-invasor-mismos-vendepatrias>: “*Son comejenes [termitas] que se reproducen, hongos, bacterias que se reproducen. Pero es más grande el alma de nuestros pueblos. Más grande que cualquier comején. No es lo mismo ese insecto que el alma y la dimensión humana de coraje y grandeza que tienen nuestros pueblos y en particular el pueblo nicaragüense, patrimonio heroico que vive en nosotros*”.

<sup>1245</sup> El 19 Digital, “Compañera Rosario Murillo: Los pueblos sabemos construir victorias”, 10 October 2019, available at: <https://www.el19digital.com/articulos/ver/titulo:95216-companera-rosario-murillo-los-pueblos-sabemos-construir-victorias>: “*Todos sabemos que las edificaciones, las casas, todo eso lo levantamos [...] De repente descubrimos en las paredes, nidos de comején. Y ese comején quiere meterse, quiere destruir, quiere botar nuestros edificios. ¡Pero no lo permitimos! Siempre sabemos cómo combatir eficazmente las plagas, los insectos, los comejenes, y no permitir que destruyan lo que construimos con tan buen corazón*”.

“sowers of hatred”, “sowers of terror”, and “demons who do not want peace”. “In other countries, they even get the death penalty”, he said.<sup>1246</sup>

754. Many civil society actors were also subjected to targeted defamation and harassment campaigns through social networks, official media and pro-government media. At times, such campaigns preceded criminalization processes against the affected individuals. The GHREN has gathered information on members of political parties and movements, journalists, members of women’s organizations and members of the Catholic Church, among others, who have been victims of these campaigns.<sup>1247</sup>

755. Weeks before the arrest of Monsignor Álvarez, Willam Grigsby, director of the radio station *La Primerísima*, close to the Government, said in his broadcast “Sin Fronteras” (Without Borders) that several figures of the Catholic Church were “drunkards, drunks, delinquents, conspirators, sexual and child abusers”, and that criminal cases should be opened against them.<sup>1248</sup>

756. The GHREN has reasonable grounds to believe that the speeches described above were part of a State communication policy that included the issuance of directives to State officials on the information to be disseminated and the manner in which it should be articulated, as well as the implementation of campaigns on social networks, and media campaigns to defame and stigmatize opponents or persons considered as such, both individually and collectively, in collaboration with media and journalists aligned with the Government.<sup>1249</sup>

757. In October 2021, Meta, the company that owns Facebook and Instagram, announced that it had eliminated 1,300 fake accounts in Nicaragua, as well as 140 pages and 24 groups that, according to the company, were part of a “troll farm” linked to the Government and the FSLN. According to Meta’s report, the cancelled accounts would have been part of a network that implemented disinformation campaigns in favour of the Government of Nicaragua. According to the social media conglomerate, such campaigns were reportedly operated mainly by TELCOR employees, working from the postal service’s headquarters in Managua, while smaller groups of fake accounts were reportedly run from other Government institutions, including the CSJ and the INSS.<sup>1250</sup>

758. The propagation of the described discourse, repeated over time and amplified through the media and social networks, has contributed to generate a climate of disinformation and hostility towards voices critical of the Government, conducive to the commission of other violations and abuses against them, such as arbitrary detentions and acts of harassment and intimidation. Given the general context of repression of any opposition or criticism, and of impunity for attacks by the Government-aligned sector of the population against the non-aligned population, The GHREN considers that the discourse described above may also constitute incitement to violence.

759. The GHREN considers that the defamation and discrediting of members of civil society had a silencing effect, not only on the individuals who suffered directly, but on society in general. The analysed discourse exacerbated political polarization and contributed to the breakdown of the social fibre.

<sup>1246</sup> El 19 Digital, “Presidente Daniel Ortega: Pueblo de Nicaragua está votando por la paz”, 7 November 2021, available at: <https://www.youtube.com/watch?v=3QiPe3DkeFU>: “*sembradores de Muerte*”; “*sembradores de odio*”; “*sembradores de terror*”; “*demonios que no quieren paz*”; “*en otros países hasta la pena de muerte les aplican*”.

<sup>1247</sup> GHREN interviews CCIV001, CCIV005, CCIV007, CCIV0009, CCIV025, CCIV032; see CEJIL and IM-Defensoras, “Perseguidas por defender y resistir: Criminalización de mujeres defensoras de derechos humanos en Honduras, México y Nicaragua” (Nicaragua Chapter), 2022, p. 52.

<sup>1248</sup> Radio La Primerísima, available at: <http://youtube.com/watch?v=zU-rX2u1Wcw&t=3253s>, minutes: 13:20 (“one of the se delinquent priests”), 14:50 (“drunkard, confessed criminal”), 39:30 (on Monsignor Alvarez accusing him of being a “tranquero”, delinquents, conspirators, organizer of murders, they should be in jail - sexual abusers, child abusers, “open a criminal case” Alvarez is an alcoholic - Baez is a delinquent).

<sup>1249</sup> GHREN interviews CCIV007, CCIV009, CCIV020, BBIV012.

<sup>1250</sup> Meta, Informe de Comportamiento Inauténtico Coordinado – octubre 2021, October 2021.

## ii) Harassment and intimidation of opponents or perceived opponents.

760. The GHREN documented and analysed 47 acts of intimidation and harassment, in its multiple forms, against real or perceived opponents, including journalists, religious leaders, students, artists, members of political parties or movements, and members of civil society organizations. On at least 23 occasions, persons interviewed by the GHREN reported that these acts were committed by members of the National Police, and on another 24 occasions they indicated that they were carried out by people in civilian clothes, whom they identified as members of pro-government groups.<sup>1251</sup> On two occasions witnesses reported that both police forces and pro-government groups participated jointly.<sup>1252</sup>

761. The GHREN has reasonable grounds to believe that individuals and organizations opposed to the Government or perceived as such were subjected to intimidation, threats and surveillance by members of the National Police, public authorities at all levels, and by members of pro-government groups and members of local structures aligned with the FSLN such as the CPC, UVE and the Sandinista Youth, which, in some cases, acted in coordination with official State structures. These patterns of violations and abuses were constant throughout the GHREN's mandate, and were perpetrated both in the capital and in the different departments and regions of the country.<sup>1253</sup>

762. The people interviewed by the GHREN indicated that the CPCs, the local structures –such as the UVE and Sandinista Youth– and institutional structures –through the CLS and the unions– of the FSLN, played a fundamental role in the surveillance of the population. Officials from State institutions reported that the latter two maintained constant surveillance of the activities of people employed by the State, reporting on those who participated or did not participate in activities in support of the Government, and informing on people who expressed critical views towards the authorities.<sup>1254</sup>

763. The criminalization, stigmatization, threats and constant harassment of real or perceived opponents meant that not only could they not participate freely in the social and political life of the country, but they could not develop their lives in a normal way. In many documented cases, harassment of individuals included the loss of employment in the public sector.<sup>1255</sup>

764. The people interviewed by the GHREN expressed that they were afraid to leave their homes because of the constant surveillance they were subjected to. Fearing reprisals, some people were forced to constantly change their residence. Most of the people interviewed by the GHREN were forced to leave the country because of this situation. When the victims are women, these protection strategies are particularly disruptive to the lives of their children and close relatives due to the prevalent caregiving role that women assume in Nicaraguan families.

n) *Arbitrary deprivation of nationality and violation of the right to remain in one's own country.*

765. The State of Nicaragua has used arbitrary deprivation of nationality and restrictions on entering and leaving the country as a mechanism of punishment and as a threat against persons who are opponents or perceived as such.

<sup>1251</sup> Witnesses identified the individuals as “paramilitaries” or as members of the CPCs.

<sup>1252</sup> GHREN interviews CCIV001, CCIV003, CCIV007, CCIV008, CCIV009, CCIV013, CCIV014, CCIV017, CCIV018, CCIV020, CCIV023, CCIV027, CCIV032, CCIV033, AAIV010, AAIV019, AAIV050.

<sup>1253</sup> A report by the civil society platform *Monitoreo Azul y Blanco* registered 1,150 actions of harassment towards opponents or perceived as such during the period between 1 November 2020 and 30 April 2021. In the period analysed, the organization identified cases in 46 percent of the country's municipalities, and in all departmental capitals (including autonomous regions). See *Monitoreo Azul y Blanco*, “Hostigamientos: parte de la estrategia represiva del Estado de Nicaragua”, June 2021.

<sup>1254</sup> GHREN interviews BBIV005, BBIV006, BBIV012, BBIV013.

<sup>1255</sup> GHREN interviews BBIV001, BBIV006, BBIV013.

766. The GHREN documented patterns of violations and abuses of the rights of opponents or perceived opponents and their families in the context of migration processes or travel outside the country, perpetrated throughout the period under review, including unjustified detentions and interrogations,<sup>1256</sup> arbitrary confiscation of passports,<sup>1257</sup> the refusal to renew passports and to issue passports for children, and the denial of the right to leave and enter one's own country.<sup>1258</sup> The imposition of arbitrary immigration restrictions on children has also been reported as a tool to pressure human rights defenders, journalists and members of political movements.<sup>1259</sup>

767. A report prepared by four civil society organizations and analysed by this Group, noted having recorded at least 138 cases of people affected by undue migratory restrictions between 2018 and 2022, of which 43.7 percent were human rights defenders, activists, or family members of defenders.<sup>1260</sup>

768. The aforementioned violations pushed thousands of Nicaraguans to migrate or transit through unofficial crossing points, known as "blind spots" or "trochas", exposing them to serious risks.

### Case 3 Anexa Brendalee Alfred Cunningham

One such case is that of Nicaraguan activist and human rights defender Anexa Brendalee Alfred Cunningham who, since April 2022, serves as a member of the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) of the Human Rights Council. Ms. Alfred is an indigenous *Miskitu* woman, lawyer, with a long career in the defence of the rights of indigenous and Afro-descendant peoples in Nicaragua, having served, among others, as advisor to Territorial Governments and Indigenous Communal Governments in Nicaragua.

In July 2022, Ms. Alfred travelled to Geneva, Switzerland, to carry out her first official mission to the fifteenth session of the EMRIP. On 9 July 2022, at the end of her work in Geneva, the airline denied her boarding the plane to Nicaragua, informing her that the Government would not authorize her entry into the country.<sup>1261</sup> Despite repeated diplomatic efforts, including by the President of the Human Rights Council, Ms. Alfred has not been able to return to Nicaragua.<sup>1262</sup> The Government's decision violates Ms. Alfred's right to return to her country, as well as the Convention on Privileges and Immunities of the United Nations.<sup>1263</sup>

<sup>1256</sup> GHREN interviews CCIV017; CCIV013; CCIV018.

<sup>1257</sup> GHREN interviews EEIV032, EEIV039; CCIV007.

<sup>1258</sup> GHREN interviews CCIV007, CCIV017, CCIV018, CCIV021, CCIV032, CCIV045. As recognized in art. 13 of the Universal Declaration, everyone has the right "to liberty of movement and freedom to choose his residence within the territory of a State", as well as "to leave any country, including his own, and to return to his country". Art. 12 of the ICCPR adds that these rights may not be subject to restrictions except where such restrictions are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the Covenant.

<sup>1259</sup> GHREN interviews CCIV021, CCIV024, CCIV033, EEIV039.

<sup>1260</sup> UDJ, UDR, IM-Defensoras, IND, "Informe de actualización sobre la represión en Nicaragua con énfasis en el grave riesgo a la vida de las personas presas políticas", p. 5.

<sup>1261</sup> GHREN interview FFIV001.

<sup>1262</sup> See statement by HRC Chair, Ambassador Federico Villegas, during Interactive Dialogue with EMRIP experts during the 51<sup>st</sup> session of the HRC, 28 September 2022, available at: <https://media.un.org/en/asset/k1o/k1oi0npjam>.

<sup>1263</sup> Convention on the Privileges and Immunities of the United Nations, A/RES/22 (13 February 1946), art. VI, section 22, providing that expert (experts) "in the performance of missions of the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions, during the period of their missions, including the time necessary for travel in connection therewith".

769. The patterns described above worsened in February 2023, when the State of Nicaragua arbitrarily deprived 316 persons of Nicaraguan nationality, in a discriminatory manner and in violation of due process guarantees, leaving most of them stateless and violating their right not to be arbitrarily deprived of their nationality. Likewise, it sought to produce the civil death of persons through the elimination of birth records, confiscation of assets, and expulsion.

770. On 9 February 2023, the Government of Nicaragua expelled 222 detained persons – 189 men and 33 women – to the United States,<sup>1264</sup> by virtue of a deportation order issued by the Court of Appeals of Managua that declared them traitors to the homeland. These persons had been detained in the DAJ or El Nuevo Chipote, in District III of the National Police Division of Managua and in different prisons in the country.<sup>1265</sup>

771. The presiding magistrate of the Managua Court of Appeals' courtroom one read the deportation order which stated the following: "it was ordered [...] the immediate deportation of 222 persons sentenced for committing acts that undermine the independence, sovereignty, self-determination of the people, for inciting violence, terrorism, and economic destabilization, but also harming the supreme interests of the Nation, established in the legal system, international human rights conventions and treaties, altering peace, security and constitutional order".<sup>1266</sup>

772. The Managua Court of Appeals decision justified the deportation based on the objective of "protecting peace, national security, public order, health, public morals, the rights and freedoms of third parties".<sup>1267</sup> Although some of these grounds could justify in certain very limited cases the restriction of the right to remain in the country, the State did not provide a duly reasoned decision, nor did it prove in what specific way the permanence of the persons in the country poses a risk to peace, national security, public order, health, public morals, and the rights and freedoms of third parties. Said decision violates the right to remain in one's own country since it is neither reasonable nor reasoned, nor adjusted to the principles of legality, proportionality and non-discrimination.<sup>1268</sup>

773. The people were transported in buses to the Managua Air Force airport. Before getting off the vehicles, they were forced by Nicaraguan authorities to sign a paper giving their consent to leave the country. Not all persons were able to read the document before signing it; other testimonies indicated that the space for the destination was blank.<sup>1269</sup> Neither the expelled persons, their families nor their representatives were informed in advance of their expulsion. Individuals were informed of the stripping of their nationality upon arrival in the United States.

774. Parallel to the expulsion, on the same 9 February, the National Assembly adopted, by way of urgency, a constitutional reform and specific legislation to deprive persons

<sup>1264</sup> According to UDR information, the number of prisoners appearing on both the Mechanism for the Registration of Political Prisoners' list and the Government's list is 217.

<sup>1265</sup> As of 4 February, the GHREN was alerted to the imposition of accessory sentences to those already pronounced against many of these individuals. By virtue of these amendments, which were issued at the request of the Public Prosecutor's Office, the individuals were declared "traitors to the homeland" and, as such, they were imposed the perpetual loss of citizenship rights and/or perpetual disqualification to exercise public office in the name of or in the service of the State of Nicaragua, as well as to hold elected office. Documents on file with GHREN BBD0C196, BBD0C308 to BBD0C330. According to a specialized source consulted, the penalties of loss of citizenship and perpetual disqualification imposed do not exist in the Nicaraguan criminal system and are unconstitutional. GHREN interview BBIV027.

<sup>1266</sup> Document the GHREN's archive BBDCO307.

<sup>1267</sup> Resolution of the Court of Appeals of Managua of 8 February 2023.

<sup>1268</sup> CCPR/C/21/REv.1/Add.9, para. 21.

<sup>1269</sup> No copy of the document was left with the persons concerned. Testimonies collected that people's hands were still tied with cable ties when they were forced to sign. GHREN interviews AAIV048, AAIV049, AAIV0050, AAIV051, AAIV052.

declared traitors to the homeland of their nationality.<sup>1270</sup> According to this modification, article 21 of the Constitution is worded as follows: “*traitors to the homeland lose the quality of Nicaraguan citizen*”.<sup>1271</sup>

775. On 10 February, in a public speech, President Daniel Ortega described the 222 persons as “agents of foreign powers” and described their departure as a “banishment”.<sup>1272</sup> For his part, the president of the National Assembly confirmed that the different institutions and powers of the State worked in a synchronized manner, under the same order, to deport and deprive the people of their nationality.<sup>1273</sup>

776. In the days following their arrival in the US, some of the expelled persons requested their birth certificates through family members or legal representatives. To their surprise, the record of birth registration in the Civil Registry had been removed. Likewise, the surnames of at least some of the sons and daughters of the expelled persons were erased from their birth certificates.<sup>1274</sup> Such actions violate the right to identity of the people affected and have a significant impact on all areas of their lives, including assets and property in their name, immigration matters and procedures, and complex problems such as the establishment of filiation.<sup>1275</sup>

777. The sudden expulsion from the country, the arbitrary deprivation of their nationality and their disappearance from the civil registers generated a situation of uncertainty and anxiety for the 222 expelled persons, which in many cases exacerbated the traumas resulting from their detention in inhuman or degrading conditions, and from the torture they suffered.

778. On 15 February 2023, the Court of Appeals of the Managua district declared another 94 persons, residents in Nicaragua and abroad, traitors to the homeland and resolved to impose the loss of nationality and order the forfeiture of their assets in favour of the State.<sup>1276</sup> The forfeiture was executed immediately. Said order was issued without any

<sup>1270</sup> A day later, both the approval of the reform to article 21 of the Constitution, and the Regulation of the Loss of the Nicaraguan Nationality Special Act, Law No. 1145 (hereinafter “Loss of the Nicaraguan Nationality Special Act”), were published in *La Gaceta, Diario Oficial* No. 25, of 10 February 2023.

<sup>1271</sup> Canal 4 Nicaragua, “Transmisión especial desde la Asamblea Nacional de Nicaragua”, 9 February 2023, available at: <https://www.youtube.com/watch?v=2ztdV2jQKtY>. Document on file with GHREN BBD0C305. It should be noted that article 20 of the Constitution provides that “no national may be deprived of his or her nationality. The quality of Nicaraguan national is not lost by the fact of acquiring another nationality”.

<sup>1272</sup> Canal 4 Nicaragua, “Mensaje del Comandante Daniel y Compañera Rosario a las familias nicaragüenses”, 10 February 2023, available at: <https://www.youtube.com/watch?v=aacxInTB1DA> (min. 09:45).

<sup>1273</sup> He said, *inter alia*: “once the decision is made, there are some actions and an absolutely amazing process, we really have to recognize how all our colleagues from the different institutions acted with synchronization, under...as it should be, as is our model, under a single command, under a single order, in a very synchronized way, in such a way that nothing was leaked”. Canal 4 Nicaragua, “Doctor Gustavo Porras en la Revista En Vivo con Alberto Mora – 10 de febrero del 2023”, dated 10 February 2023, available at: [https://www.youtube.com/watch?v=hXW\\_HawQHvI](https://www.youtube.com/watch?v=hXW_HawQHvI).

<sup>1274</sup> GHREN interviews BBIV036, BBIV039, BBIV040. See Artículo 66, “Ortega quita apellidos a hijos de expresos políticos desterrados; a otros les niega entrega de pasaporte”, 4 March 2023, available at: <https://www.articulo66.com/2023/03/04/ortega-quita-apellido-hijos-exreos-politicos-desterrados-niega-entrega-pasaporte/>.

<sup>1275</sup> GHREN interview AAIV051. See also 100% Noticias, “Yubrank Suazo ya no se encuentra inscrito en el registro civil de Nicaragua”, 11 February 2023, available at: <https://100noticias.com.ni/politica/121867-expresos-politicos-yubrank-suazo-max-jerez-eeuu/>; 100% Noticias, “Excarcelados desterrados y borrados del Registro Civil aceptarán nacionalidad española, cónsul explica procedimiento”, 11 February 2023, available at: <https://100noticias.com.ni/politica/121874-ciudadania-espanola-expresos-politicos-nicaragua/>.

<sup>1276</sup> The resolution establishes that: “*the accessory penalties of absolute and special disqualification to hold public office, to perform public functions on behalf of or in the service of the State of Nicaragua, as well as to hold elected office and the loss of their citizenship rights in perpetuity are imposed on them; II. Pursuant to article 2 of Law No. 1145 [...] order the loss of Nicaraguan Nationality of all the aforementioned defendants; III. [...] the immobilization and confiscation in favour of the State of*

process to allow the individuals to exercise their right of defence. Among the persons targeted by this measure are journalists, clergymen, human rights defenders, writers, academics, former public officials, and feminists.<sup>1277</sup>

779. The GHREN concluded that the actions taken by the Judiciary, assisted by the Legislature, constituted arbitrary deprivations of nationality contrary to international human rights law and a collective expulsion in violation of the right to remain in one's own country.<sup>1278</sup> This notion is broader than the formal concept of nationality, since it is understood that the country whose nationality is withdrawn continues to be the "own country" by virtue of the person's special ties with that country, which prevent him or her from being considered a foreigner.<sup>1279</sup>

#### 4. Impacts on the civic and democratic space

780. The described conducts had serious impacts on the enjoyment and exercise of the right to participate in public affairs, to education and academic freedoms, and to freedom of expression and opinion, association and peaceful assembly, and freedom of thought, conscience and religion.

##### a) *Violations of the right to participate in public affairs*

781. The GHREN has identified serious violations and abuses of the right to participate in public life, including the right to be elected and to have access to public office. Although these occurred continuously throughout the entire period covered by his mandate, they increased exponentially during the months leading up to, during, and immediately following the November 2021 and 2022 electoral processes, and in particular the 2021 presidential elections. The IACHR also observed a 720% increase in requests for precautionary measures in 2021, compared to the previous year, which it linked to State repression in the context of the presidential elections.<sup>1280</sup>

782. During the months leading up to the 2021 elections, elements of the National Police or members of pro-government armed groups obstructed meetings of political parties and movements, intimidating participants. Witnesses interviewed by the GHREN consistently described how elements of the National Police conducted roadblocks and surveillance at party headquarters and other meeting places; threatened and interrogated people; searched participants and asked for their identification documents, sometimes to add their names to lists; and photographed people and their vehicles.<sup>1281</sup> One witness stated that "*during the searches there was excessive use of force towards the female comrades; they 'did violence to them'; at the time of the search; the search was too excessive*".<sup>1282</sup>

783. According to information received by the GHREN, pro-government armed groups were reportedly reactivated in concomitance with the pre-electoral political context of 2021, and harassed, intimidated and followed people involved in political parties and

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*Nicaragua of all the real property and companies that the defendants have registered in their favour is ordered [...]; IV. The aforementioned defendants are declared fugitives from justice. All of the above, with the purpose of guaranteeing social peace, legal security, independence, sovereignty, self-determination of the State of Nicaragua, and especially guarantees the protection of Nicaraguan society". See full list in Confidencial, "Despojan de nacionalidad y derechos ciudadanos, y confiscan a 94 nicaragüenses", 15 February 2023, available at: <https://www.confidencial.digital/nacion/despojan-de-nacionalidad-a-otros-94-nicaraguenses/>.*

<sup>1277</sup> *Ibid.*

<sup>1278</sup> The right to remain in one's own country follows from the right to enter one's own country under art. 13 of the Universal Declaration and art. 12, para. 4 of the ICCPR. See CCPR/C/21/REv.1/Add.9, para. 19.

<sup>1279</sup> See CCPR/C/21/REv.1/Add.9, para. 20.

<sup>1280</sup> IACHR, MESENI, "Informe de Balance", n.d., p. 2, available at: [https://www.oas.org/es/cidh/MESENI/pdf/2022\\_MESENI\\_InformeBalance.pdf](https://www.oas.org/es/cidh/MESENI/pdf/2022_MESENI_InformeBalance.pdf).

<sup>1281</sup> GHREN interviews CCIV001, CCIV004, CCIV005, CCIV006, CCIV016, CCIV019, CCIV026, CCIV029, CCIV034, CCIV056.

<sup>1282</sup> GHREN interview CCIV005.



movements.<sup>1283</sup> A witness told the GHREN of the arrival of members of pro-government armed groups at a political activity that was taking place in the interior of the country and added that “*they told us that they were going to kill us; a car of theirs waited for us with another car and they shot at us at the exit of the town [...]; we had to get to Juigalpa 25 km later [to get to safety], and they began to follow us*”.<sup>1284</sup>

784. In June 2021, a strong wave of criminalization and arbitrary detentions was unleashed against leaders and members of opposition political parties and movements. Thus, between 2 June and 24 July 2021, seven leaders of the political opposition, who had publicly expressed their willingness to run for the presidency of Nicaragua through a coalition that would run through the CxL party, were arrested: Cristiana Chamorro, Arturo Cruz, Félix Maradiaga, Juan Sebastián Chamorro, Miguel Mora, Medardo Mairena and Noel Vidaurre. Cristiana Chamorro was sentenced in March 2022 to eight years in prison for the crimes of money laundering and misappropriation and improper retention, under articles 238 and 282 and of the Criminal Code. The other six candidates were charged and convicted for conspiracy to commit undermining national integrity under Sections 410 and 412 of the Criminal Code, in relation to the Sovereignty Law. While Arturo Cruz and Noel Vidaurre were sentenced to 9 years in prison, Félix Maradiaga, Juan Sebastián Chamorro, Miguel Mora and Medardo Mairena were sentenced to 13 years in prison and disqualified from holding public office. The trials against these political leaders were short –lasting approximately seven days– and took place at the DAJ, without access to the press or the public.

785. There were also arrests of other individuals involved in the political opposition at the national and local levels. Between May and November 2021, the police arrested at least 60 people involved in the preparation of the electoral campaign within the ranks of the political opposition, including members of the CxL party, the UNAB movement, the Civic Alliance for Justice and Democracy, and the UNAMOS political party.

786. As previously explained, the adoption of Law No. 1070 in May 2021 restricted the right to political participation by incorporating the prohibitions contained in the Foreign Agents Law and the Sovereignty Law as grounds for disqualification for the registration of candidacies.

787. Between May and August 2021, the CSE cancelled three opposition political parties, including CxL party which was to be the vehicle of the political opposition to achieve a unitary candidacy for the presidential elections. On 2 August 2021, Oscar Sobalvarro and Berenice Quezada registered their candidacy for President and Vice President for the CxL party; however, the same was cancelled four days later. Parallel to the cancellation of the party, the Public Prosecutor’s Office also charged Ms. Quezada with alleged “acts that foment and incite hatred and violence”.<sup>1285</sup>

788. Thus, on 7 November 2021, elections were held without the participation of the opposition.<sup>1286</sup> During the election day of 7 November 2021, the organization *Urnas Abiertas* registered 285 facts of “political violence”<sup>1287</sup> in 14 departments and the 2

<sup>1283</sup> GHREN interviews CCIV004, CCIV019, CCIV034, CCIV056. See Monitoreo Azul y Blanco, “Hostigamientos: parte de la estrategia represiva del Estado de Nicaragua”, p. 20.

<sup>1284</sup> GHREN interview CCIV034.

<sup>1285</sup> Nicaragua Investiga, 26 July 2021, <https://www.youtube.com/watch?v=rKJVmE-qXOA> (min. 1:50); Confidencial, “El exjefe de la Contra, Óscar Sobalvarro, acepta postulación presidencial de AcxL”, 27 July 2021, available at: <https://www.confidencial.digital/politica/el-exjefe-de-la-contra-oscar-sobalvarro-acepta-postulacion-presidencial-de-acxl/>; document on file with GHREN CCDOC297; Press release from the Attorney General’s Office on the indictment against Ms. Berenice Quezada.

<sup>1286</sup> BBC news world, “Elecciones en Nicaragua: qué es el “zancudismo” del que acusan a los partidos que compiten con Ortega”, 4 November 2021, available at <https://www.bbc.com/mundo/noticias-america-latina-58953603>; the parties that participated were described by some of the witnesses interviewed by the GHREN as FSLN collaborationist parties, which would not represent the opposition; GHREN interview CCIV003.

<sup>1287</sup> Urnas Abiertas, “Noveno informe. Radiografía de una farsa electoral”, 22 November 2021, available at: <https://urnasabiertas.com/wp-content/uploads/2021/11/Informe-9-Urnas-Abiertas-7N.pdf>. The report does not define the term “political violence”; however, it records ten categories of incidents of

autonomous regions of the country. The form of political violence most registered by this organization was the presence of pro-government armed groups around and inside the voting centres, exercising a role of control and intimidation. Inhabitants of different municipalities reportedly recognized persons identified as members of pro-government armed groups as members of the polling stations.<sup>1288</sup> The GHREN also received information on pressure and coercion of public sector workers to attend activities carried out by the Government party and exercise their right to vote, to keep their jobs.<sup>1289</sup>

789. According to official CSE data, Daniel Ortega and the FSLN obtained 75 percent of the votes, and the ruling FSLN party won 75 seats out of the 90 that were contested.<sup>1290</sup> Several national and international voices denounced that the electoral process did not respect the minimum standards for democratic and transparent elections.<sup>1291</sup>

#### Case 4 UNAMOS political party

The UNAMOS party, formerly called *Movimiento Renovador Sandinista* (MRS), was founded in 1995.<sup>1292</sup> In June 2008, the CSE cancelled the legal personality of the MRS.<sup>1293</sup> UNAMOS has been known for its progressive social positions, particularly in favour of social rights, women's rights and LGBTI people's rights.<sup>1294</sup>

Because it was created as a dissident party of the FSLN, its members have been considered "traitors" of the revolution by President Daniel Ortega and Vice President Rosario Murillo.<sup>1295</sup> According to several testimonies collected by the GHREN, this "betrayal" is

political violence: police and "paramilitary" surveillance, arbitrary detentions, harassment, raids, illegal confiscations, immigration restrictions, threats, arrest warrants, and physical assaults.

<sup>1288</sup> Urnas Abiertas, "Informe al Comité de Derechos Humanos sobre el estado de cumplimiento del Pacto Internacional de Derechos Civiles y Políticos", pp. 18–19.

<sup>1289</sup> GHREN interviews CCIV010, CCIV046, BBIV012. See also Confidencial Digital, "Trabajadores del Estado: "Tuvimos que votar contra nuestra voluntad para que no nos despidan"", 9 November 2021, available at: <https://www.confidencial.digital/politica/trabajadores-del-estado-tuvimos-que-votar-contra-nuestra-voluntad-para-que-no-nos-despidan/>. It also received information about cases in which public workers were allegedly forced to send *selfies* with a stained finger as proof of having cast their vote. GHREN interview BBIV012; Confidencial Digital, "Manden una 'selfie' con el dedo manchado: la orden a trabajadores estatales", 4 November 2022, available at: <https://www.confidencial.digital/politica/manden-una-selfie-con-el-dedo-manchado-la-orden-a-trabajadores-estatales/>.

<sup>1290</sup> Swissinfo.ch, "Resultados electorales de Nicaragua dan al FSLN 75 escaños de 90 en Asamblea", 9 November 2021, available at: [https://www.swissinfo.ch/spa/nicaragua-elecciones\\_resultados-electorales-de-nicaragua-dan-al-fsln-75-esca%C3%B1os-de-90-en-asamblea/47094838](https://www.swissinfo.ch/spa/nicaragua-elecciones_resultados-electorales-de-nicaragua-dan-al-fsln-75-esca%C3%B1os-de-90-en-asamblea/47094838).

<sup>1291</sup> European Parliament, Situation in Nicaragua European Parliament Resolution of 16 December 2021 on the situation in Nicaragua (2021/3000(RSP)), P9 TA (2021) 0513, 16 December 2021, available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0513\\_ES.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0513_ES.pdf); OAS, Regional Assembly Resolution, AG/RES. 2978 (LI-O/21), para. 2 (in General Assembly, Fifty-First Regular Session, Proceedings, Vol. I, OEA/Ser.P/LI-O.2, p. 187); OAS, Nicaragua 2021 Elections Report, p. 16, available at: <https://www.oas.org/fpdb/press/Informe-Nicaragua-Elecciones-2021.pdf>.

<sup>1292</sup> The name of the party was changed on 17 January 2021.

<sup>1293</sup> CSE, Resolution of 11 June 2008. The MRS filed an appeal before the CSJ arguing the lack of motivation of that resolution; however, the appeal has not been resolved. The CSE's decision resulted in the MRS "not being able to participate independently in any type of election since then". Its members have participated in electoral contests under the banner of other parties. CEJIL, Nicaragua: "¿Cómo se reformó la institucionalidad para concentrar el poder?", 2017.

<sup>1294</sup> During the 2006 presidential elections, the Autonomous Women's Movement (MAM) decided to ally with the MRS based on five programmatic points; GHREN interview AAIV017. UNAMOS created several networks to work with specific population groups, including the women's network, the diversity network and the youth network. GHREN interviews AAIV039, AAIV050. See also <https://unamosnic.org>.

<sup>1295</sup> See, for example, the opinion of a UNAN Managua professor published on 22 November 2019 in "Visión Sandinista": "In the neoliberal period [...] it led some who called themselves leftists to betray the revolution. It was there that a group betrayed the FSLN and formed the MRS in the mid-1990s, when they renounced the revolutionary and anti-imperialist struggle [...]. They are those traitors who yesterday and today continue to ask the Yankee master for sanctions and damage to Nicaragua, as do

the reason for the particularly harsh repression against members of this political party, both during public demonstrations and later when they were arrested, detained or convicted.<sup>1296</sup>

The GHREN has documented at least five cases where UNAMOS leading persons were beaten, threatened, or arrested with use of force during public demonstrations in 2018.<sup>1297</sup> It has also documented arbitrary arrests and criminalization of individuals from the party who were detained, prosecuted, and convicted in 2021 and 2022. According to information received by the GHREN, 12 UNAMOS members were arrested in 2021, including former and current party leaders. Nine others were arrested between September and November 2022, mostly local leaders. Most of those arrested were charged with and/or convicted of the crime of undermining national integrity (article 410 of the Criminal Code).<sup>1298</sup>

Particularly serious was the detention and death of Hugo Torres, vice-president of the party and former “Commander One” of the Sandinista revolution, who died in February 2022 while detained in El Nuevo Chipote. The circumstances of the death were never duly clarified by the authorities of the prison system nor by the Public Prosecutor’s Office.<sup>1299</sup>

The GHREN received information on the particularly severe treatment to which the women leaders of UNAMOS were subjected during their detention at El Nuevo Chipote, which constituted cruel, inhuman or degrading treatment, and in some cases could constitute torture.

Finally, the GHREN documented five cases of family members of UNAMOS leaders detained in September 2022, in retaliation for not finding the people they wanted to detain, i.e. other party leaders.<sup>1300</sup>

790. The GHREN observed a similar dynamic, on a much smaller scale, around the November 2022 local elections.<sup>1301</sup> By that time, most of the leadership and politically active people were already in exile as a consequence of the events of 2021. The results of the 6 November 2022 municipal elections gave the FSLN victory in all 153 municipalities in the country. The UN High Commissioner for Human Rights, Volker Türk, stated before the Human Rights Council that “the preparation and holding of the November municipal elections had elements of an autocratic exercise”.<sup>1302</sup>

791. After the 2017 municipal elections, only 18 of the 153 mayoralties in the country were not administered by the ruling party. Between 2 and 4 July 2022, the Government *de facto* stripped the elected authorities of five mayoralties controlled by the opposition CxL party,

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political groups, Ong’s and businessmen” available at: <http://www.visionsandinista.net/2019/11/22/carlos-fonseca-contra-los-traidores-a-la-patria-y-a-la-revolucion/>; Moisés Absalón Pastora, “Detalles del momento: el enemigo de la humanidad, Nicaragua Sandino”, 27 October 2021, where he affirms that the MRS pretended to “assassinate” Sandinismo, available at: <https://nicaraguasandino.com/detalles-del-momento-el-enemigo-de-la-humanidad/>.

<sup>1296</sup> GHREN interviews CCIV006, CCIV010, CCI021, CCIV023, CCIV024, CCIV033.

<sup>1297</sup> GHREN interviews CCIV006, CCIV010, AAI050; photographic material on file with GHREN CCDOC167, CCDOC168, CCDOC169, CCDOC170, CCDOC171, CCDOC172, CCDOC173, CCDOC174, CCDOC175, CCDOC176, CCDOC177, CCDOC178, CCDOC179, CCDOC180, CCDOC181, CCDOC182, CCDOC183, CCDOC184, CCDOC185. See also La Prensa, “Nicolas Palacio, el primer agredido de abril”, May 6, 2018, available at: <https://www.youtube.com/watch?v=WqrOrC5C4x0>

<sup>1298</sup> Document on file with GHREN CCDOC285.

<sup>1299</sup> El País, “Muere el histórico comandante sandinista Hugo Torres, preso por el régimen de Ortega”, 12 February 2022, available at [https://elpais.com/internacional/2022-02-12/fallece-en-una-carcel-de-nicaragua-el-historico-comandante-sandinista-hugo-torres-preso-por-el-regimen-de-ortega.html?event\\_log=go](https://elpais.com/internacional/2022-02-12/fallece-en-una-carcel-de-nicaragua-el-historico-comandante-sandinista-hugo-torres-preso-por-el-regimen-de-ortega.html?event_log=go).

<sup>1300</sup> GHREN interviews CCIV025, CCIV006, EEIV003, AAI051, EEIV063.

<sup>1301</sup> Numerous acts of intimidation were reported during election day, with checkpoints set up around polling stations to track voters, as well as preventing people perceived as opponents of the Government from accessing polling stations.

<sup>1302</sup> Statement by UN High Commissioner for Human Rights Volker Türk to the Human Rights Council on the Situation of Human Rights in Nicaragua, 15 December 2022.

with the argument that this party no longer had legal personality. This circumstance was not foreseen in the electoral or municipal legislation as a cause for the removal of an administration elected by popular vote.<sup>1303</sup> According to sources consulted by the GHREN, members of the police, together with members of the FSLN, took over the mayor's office, appointed new FSLN mayors and put up the party's flag.<sup>1304</sup> These actions constitute a serious violation of the right to political participation, as they constitute an illegal removal of a legitimately elected authority.

b) *Violations and abuses of freedom of opinion and expression*

792. The GHREN identified serious violations and abuses of freedom of opinion and expression during the period covered by its mandate, with patterns that have evolved and intensified over time. The Group has reasonable grounds to believe that since April 2018, the Nicaraguan authorities have sought to silence journalists and independent media through smear and stigmatization campaigns; assaults, theft and illegal confiscation of equipment by the National Police and pro-government armed groups; acts of intimidation and harassment; censorship and closure of media outlets; criminalization and arbitrary detentions; warrantless raids of media facilities and confiscation of their property; and undue immigration restrictions.

i) *Stigmatization of the exercise of journalistic work*

793. Since April 2018, State officials, including high-ranking officials of the Executive Branch, made public statements that stigmatized and delegitimized the work of journalists and independent media outlets. Nicaraguan authorities publicly accused media and journalists critical of the Government of propagating "false news" and of working at the service of "colonialist" interests and the U.S. Government. This discourse was replicated by the official media *El 19 Digital*,<sup>1305</sup> as well as by other media outlets that throughout the crisis have followed the Government's discourse, and reproduced it through social networks.

794. On numerous occasions, Vice President Rosario Murillo disqualified the work of journalists critical of the Government, accusing them of disseminating false news or "fake news".<sup>1306</sup> This rhetoric was used to censor and criminalize the press, avoid criticism, and question the facts that were made known in national and international media, and through the reports of human rights mechanisms, about the human rights violations committed by the Government of Nicaragua. The GHREN considers that such discourse would be aimed at constructing an alternative narrative version of reality, aimed at justifying the actions of the Government and hindering accountability processes.

795. The stigmatization of journalists and media should also be read in the context of the adoption of the Cybercrime Law which, as detailed above, punishes criminally the dissemination of false news. In July 2021, Vice President Rosario Murillo warned journalists not to publish "false news" with "false doctors, with false prognoses, with false surveys", and threatened the media: "*media that we call chachalacos, chattering magpies,*

<sup>1303</sup> OHCHR, "Situation of human rights in Nicaragua", A/HRC/51/42 (12 September 2022), para. 7.

<sup>1304</sup> GHREN interviews CCIV026; CCIV047. See also Artículo 66, "Opositores: tomas de las alcaldías de CxL es "ilegal, ilícita e ilegítima"", 4 July 2022, available at: <https://www.articulo66.com/2022/07/04/asalto-alcaldias-cxl-nicaragua-ilegal-oposicion-nicaragua/>.

<sup>1305</sup> For example: *El 19 Digital*, "Movimiento de Comunicadores Patrióticos saluda el Día Internacional del Periodista", 8 September 2022: "we denounce the information transnationals and the traitors to the homeland who act as servants of the foreign policy of the North American empire and who are part of the aggressions against the dignified and sovereign peoples, who do not kneel before the master and who raise the flag of dignity, sovereignty and self-determination", available at: <https://www.el19digital.com/articulos/ver/titulo:132106-movimiento-de-comunicadores-patrioticos-saluda-el-dia-internacional-del-periodista>.

<sup>1306</sup> GHREN interview CCIV017. See: "Expediente Público, Rosario Murillo qualifies 2018 news as "theatre", but thousands of data disprove it", 14 April 2022, available at: <https://www.expedientepublico.org/rosario-murillo-califica-noticias-del-2018-como-teatro-pero-miles-de-datos-la-desmienten/>.

which are dedicated to singing only malignities, and well, we reiterate, everything is paid in life".<sup>1307</sup> As previously analysed, the Cybercrime Law has been used to detain, prosecute and convict journalists and individuals who expressed critical points of view to the Government.

ii) Assaults against journalists for carrying out their work

796. The GHREN analysed 25 cases of physical attacks on journalists during their work. The attacks examined by the Group occurred in the context of coverage of public demonstrations or political events, indicating that the journalists were targeted for the role they played in disseminating information and documenting and reporting on human rights violations and abuses committed in the context of demonstrations.<sup>1308</sup> The patterns identified by the GHREN in the cases analysed are consistent with the hundreds of cases of attacks on journalists publicly denounced since the beginning of the crisis.<sup>1309</sup>

797. According to information received by the GHREN, at least 11 journalists were attacked by members of the National Police, and 14 by members of pro-government armed groups.<sup>1310</sup> Attacks by pro-government armed groups were often accompanied by the illegal and intentional appropriation of journalistic equipment, including cell phones, cameras and video cameras.<sup>1311</sup> In at least two of these incidents, journalists reported that elements of the National Police were present at the scene during the aggression, but did not intervene.<sup>1312</sup> Female journalists were also subject to aggressions by the National Police, in some cases with a sexual or gender-based violence component.<sup>1313</sup>

798. The GHREN documented the case of a journalist who was shot and injured by an alleged member of an armed pro-government group while covering a demonstration in Managua on 23 September 2018.<sup>1314</sup> Likewise, the GHREN received information of a journalist who was killed on 21 April 2018 by a gunshot to the head while broadcasting live for the newscast *El Meridiano*,<sup>1315</sup> documenting protests in the coastal city of Bluefields.<sup>1316</sup>

<sup>1307</sup> Nicaragua Actual, "Murillo amenaza a médicos y periodistas independientes en la vida todo se paga", 7 July 2021, available at: <https://www.youtube.com/watch?v=6eXs6N6eZj8&t=133s>: "*medios de comunicación que nosotros llamamos chachalacos, urracas parlanchinas, que se dedican a cantar únicamente malignidades, y bueno, reiteramos, todo se paga en la vida*".

<sup>1308</sup> GHREN interviews CCIV048, CCIV014, CCIV032, CCIV027, CCIV056, CCIV017; photographic material on file with GHREN CCDOC106, CCDOC107, CCDOC108, CCDOC109, CCDOC110, CCDOC111, CCDOC112, CCDOC139.

<sup>1309</sup> GHREN interview CCIV013. See for example, Voces del Sur, Nicaragua Report, 9 January 2023, available at: <https://vocesdelsurunidas.org/wp-content/uploads/2023/01/DOC-20230108-WA0035.pdf>, documenting 703 cases of press freedom violations in Nicaragua during 2022, including cases of assaults against 86 victims; Voces del Sur, Press Freedom Violations Report, Nicaragua 2021, January 2022, available at: <https://vocesdelsurunidas.org/wp-content/uploads/2022/01/informe-de-violaciones-a-la-libertad-de-prensa-2021-1.pdf>, recording 702 cases of press freedom violations in Nicaragua during 2022, including cases of assaults against 171 victims.

<sup>1310</sup> Photographic material on file with GHREN CCDOC071, CCDOC072, CCDOC073, CCDOC092, CCDOC094, CCDOC095.

<sup>1311</sup> GHREN interviews CCIV014, CCIV017, CCIV027, CCIV032; photographic material on file with GHREN CCDOC106, CCDOC107, CCDOC108, CCDOC109, CCDOC110, CCDOC112.

<sup>1312</sup> GHREN interviews CCIV013, CCIV017, CCIV018, CCIV027.

<sup>1313</sup> GHREN interview CCIV001.

<sup>1314</sup> GHREN interviews CCIV013, CCIV017, CCIV027; photographic material on file with GHREN CCDOC094, CCDOC095.

<sup>1315</sup> OHCHR, Report 2018, para. 92.

<sup>1316</sup> GHREN interview CCIV027. See La Costeñísima, "La historia detrás del asesinato de Ángel Gahona", available at: <https://lacostenisima.com/2018/08/13/la-historia-detras-del-asesinato-de-angel-gahona/>; Reporters Without Borders (RSF), "RSF Pide que se abra una investigación por el asesinato de un periodista en Nicaragua" 4 May 2018, available at: <https://rsf.org/es/rsf-pide-que-se-abra-una-investigaci%C3%B3n-por-el-asesinato-de-un-periodista-en-nicaragua>. See also "Un periodista muere de un disparo en Nicaragua cuando transmitía las protestas", Agencia EFE, 22 April 2018, available at: <https://www.youtube.com/watch?v=lhRHvfTXxOI>; "La historia de Ángel Gahona, el periodista

## iii) Harassment and surveillance

799. Journalists and independent media professionals reported to the GHREN that members of the National Police and people in civilian clothes were permanently guarding the facilities of these media outlets. In addition, journalists were subject to surveillance by people dressed in civilian clothes, both in the streets and outside their homes.<sup>1317</sup> According to journalists interviewed by the GHREN, police officers, including special brigades of the DOEP, and plain-clothed persons wearing motorcycle helmets and showing no official identification, searched journalists' vehicles and asked for identification. Multiple witnesses reported that, during these searches, the officers reportedly used excessive force against the journalists and uttered insults and threats against them.<sup>1318</sup>

800. Between September and December 2018, elements of the National Police and people dressed in civilian clothes installed police checkpoints in the vicinity of Canal 100% Noticias, to search all persons entering and leaving its facilities. The police also set up checkpoints in the vicinity of the homes of at least two journalists considered to be opponents, forcing them to stop every day and be searched. During these searches, they were harassed and threatened.<sup>1319</sup>

801. The GHREN also collected testimonies of acts of intimidation and threats to journalists in the context of journalistic coverage, both in the capital and in the interior of the country. Several journalists reported that police officers had threatened them, warning them to “stop [screwing]”, that “if you continue [taking photos] you are dead man”, and making it clear that “we have a gun and the government is behind us”.<sup>1320</sup>

## iv) Actions of censorship and media closure

802. TELCOR played an instrumental role in censorship and media cancellations, through threats to its directors, the suspension of broadcasts, and the closure of media outlets.

803. The first censorship action documented by the GHREN occurred on 19 April 2018, just one day after the start of the protests, when the cable transmission of five television outlets –Canal 100% Noticias, Canal 12, Canal de Noticias de Nicaragua (CDNN23), Telenorte and Canal 51– was interrupted on orders from TELCOR. While the other channels returned to transmission a few hours later, Canal 100% Noticias remained off the air for six days.<sup>1321</sup>

804. According to information received by the GHREN, the then director of TELCOR, Orlando Castillo, summoned the director of 100% Noticias, to order him not to give so much coverage to the demonstrations, and to eliminate from the programming the programs *La Nación*, and *Café con Voz*, programs which were particularly critical of the Government. Upon the director's refusal, Castillo told him that if he did not comply with the regulator's instructions, he would have to “abide by the consequences”.<sup>1322</sup> The GHREN received information that Castillo had also pressured the management of a channel close to the Government. The call, described by a witness as threatening, asked the director not to

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aseinado en Bluefields”, La Prensa, 13 May 2018, available at: <https://www.laprensani.com/2018/05/13/suplemento/la-prensa-domingo/2418297-la-historia-de-angel-gahona-el-periodista-asesinado-en-bluefields>.

<sup>1317</sup> GHREN interviews CCIV013, CCIV014, CCIV018, CCIV033, CCIV032.

<sup>1318</sup> GHREN interviews CCIV013, CCIV014, CCIV018, CCIV032, CCIV056.

<sup>1319</sup> GHREN interviews CCIV013, CCIV014, CCIV018, CCIV033, CCIV032, CCIV056.

<sup>1320</sup> GHREN interviews CCIV013, CCIV014, CCIV027.

<sup>1321</sup> GHREN interviews CCIV013, CCIV014, CCIV018, CCIV023, CCIV032. See also TELCOR reportedly requested cable television operators to suspend retransmission of the channels. La Prensa, “Daniel Ortega saca de la televisión por cable a cuatro canales en Nicaragua” 19 April, 2018, available at: <https://www.laprensani.com/2018/04/19/nacionales/2406416-daniel-ortega-saca-del-la-television-por-cable-cuatro-canales-en-nicaragua>.

<sup>1322</sup> GHREN interviews CCIV018, CCIV032, CCIV056.

broadcast news about the protests if he did not want his license to broadcast to be withdrawn.<sup>1323</sup>

805. The GHREN received multiple and credible testimonies indicating that the censorship order had been issued by the President and the Vice President of the Republic. In this regard, it should be noted that TELCOR is a decentralized entity, under the direct sectorial control of the Presidency.

806. As part of the Government's strategy to silence journalists and independent media, the authorities ordered the closure of dozens of media outlets. In addition, restrictions were imposed that made the work of several media outlets impossible, including through censorship and preventing the private press from obtaining the materials necessary to print newspapers.

807. The GHREN also documented the raid by the National Police and the *de facto* confiscation of assets, equipment, documentation and real estate of three of the most important independent media outlets in the country: Confidencial, 100% Noticias and La Prensa.

808. The raids of Confidencial and 100% Noticias occurred in December 2018. In both cases, they were conducted in the evening hours. In the case of Confidencial, it was carried out in the absence of the staff or the legal representative of the media outlet. In the case of 100% Noticias, the raid by the National Police took place with violence on things, producing serious damage to the channel's equipment, and resulted in the arrest of three people.<sup>1324</sup> Confidencial was raided for the second time in May 2021, in a second location. During this raid, one person was detained on the premises. In August 2021, the facilities of La Prensa were *de facto* confiscated by the National Police, and subsequently reconverted into a cultural centre. In all three cases, these raids took place in the context of criminalization processes against journalists and managers of the affected media.<sup>1325</sup>

809. Such attacks generated a widespread climate of fear and self-censorship and forced at least 178 media professionals to leave the country between April 2018 and December 2022.<sup>1326</sup>

810. The violations described above not only affected journalists and media employees, but Nicaraguan society in general in its right to have access to pluralistic information.

v) Criminalization of journalists and independent media employees

811. Between May and August 2021, and only a few months before the elections, there were numerous arrests, interrogations and raids linked to media outlets, organizations and foundations working in the promotion and defence of freedom of press, expression and opinion. Such actions were carried out on the basis of the 2018 Anti-Money Laundering Law, and the Foreign Agents Law and Cybercrimes Law, both passed at the end of 2020.

812. In May 2021, the authorities initiated administrative and criminal investigations against the Violeta Barrios de Chamorro Foundation, one of the main organizations dedicated to the defence of press freedom in the country. As of 20 May, the Public Prosecutor's Office summoned 63 journalists, commentators, photojournalists, directors, executives and media collaborators for questioning as part of the investigation. These summons generated fear among media professionals, leading at least 25 of them –eight

<sup>1323</sup> GHREN interview CCIV023.

<sup>1324</sup> GHREN interview CCIV032, CCIV056, CCIV018.

<sup>1325</sup> GHREN interview CCIV033, CCIV032, CCIV056, CCIV020, CCIV009.

<sup>1326</sup> Voces del Sur, "Informe anual 2022. Año 2022 cierra con preocupante autocensura, marcada tendencia de agresiones a mujeres periodistas y más hostilidad gubernamental", 9 January 2023, p. 4, available at: <https://vocesdelsurunidas.org/wp-content/uploads/2023/01/DOC-20230108-WA0035.pdf>.

women and 17 men– to leave the country to protect their freedom and be able to continue reporting.<sup>1327</sup>

813. Parallel to the interrogations by the Public Prosecutor’s Office, journalists and pro-government media deployed a campaign of stigmatization and defamation against journalists and independent media. For example, a few days after his interrogation at the Public Prosecutor’s Office, a journalist was accused on William Grigsby’s program “Sin Fronteras”<sup>1328</sup> of having personally received USAid funds and of having irregularly transmitted them to La Prensa.<sup>1329</sup>

814. The organization Journalists and Independent Communicators of Nicaragua (*Periodistas y Comunicadores Independientes de Nicaragua*, PCIN) denounced that the interrogations carried out by the Public Prosecutor’s Office became the scene of threats and intimidation “with the aim of silencing”.<sup>1330</sup> The journalists denounced having been questioned for publications and investigations involving persons linked to public institutions and having been threatened by the Public Prosecutor’s Office with the application of the Cybercrime Law.

815. After the summons to the Attorney General’s Office, several journalists and workers of organizations that promote freedom of expression were subjected to blocking of their bank accounts, immigration detention of themselves and their families, and prohibition of communication with the rest of the investigated parties.<sup>1331</sup>

816. Despite the fact that much of the independent press has been forced to leave Nicaragua, the organization Voces del Sur documented the detention in 2021 of nine people linked to the media, including journalists, commentators and other media workers who have been convicted. As detailed below, the journalist and general manager of the newspaper La Prensa was also arrested on 14 August 2021 and sentenced to 9 years in prison for the crime of money laundering.

817. Several journalists in exile told the GHREN that the fear of reprisals had become more acute with the passage of time and with the appearance of new laws and processes of criminalization of communications professionals. One witness told the GHREN that “starting in 2020 [journalists] had to be calibrating whether to film in the street, [because] it is not safe; we had to go to hotels, and [even then] they send you to spy with people who are there watching who we were interviewing. We knew we were being watched”.<sup>1332</sup>

c) *Violations of the freedoms of association and peaceful assembly*

i) *Repression of the right to peaceful protest*

818. Since April 2018, the State of Nicaragua implemented a series of legislative and political measures, as well as repressive actions, to suppress the exercise of the right to peaceful protest. The GHREN has found serious violations of the right to freedom of peaceful assembly, including excessive use of force and extrajudicial killings in the context of peaceful demonstrations; stigmatization of social protest; criminalization of freedom of assembly, and arbitrary detentions in the context of demonstrations; and interference and intimidation in the context of peaceful assemblies.

819. The different forms of social protest that developed in Nicaragua since April 2018 were promoted for peaceful collective expression and are protected by the right to freedom

<sup>1327</sup> GHREN interviews CCIV001, CCIV009, CCIV017, CCIV020, CCIV021, CCIV025, CCIV027, CCIV029. See PCIN, Annual Report on Attacks on the Independent Press, 2021, p. 15, available at: <https://pcinnicaragua.org/2022/07/20/informe-anual-sobre-agresiones-2021%ef%bf%bc/>.

<sup>1328</sup> Journalist widely accused of being close to government authorities.

<sup>1329</sup> GHREN interview CCIV020.

<sup>1330</sup> PCIN, Informe anual sobre las agresiones a la prensa independiente, 2021, p. 16, available at: <https://pcinnicaragua.org/2022/07/20/informe-anual-sobre-agresiones-2021%ef%bf%bc/>.

<sup>1331</sup> GHREN interviews CCIV017, CCIV021, CCIV029, CCIV033.

<sup>1332</sup> GHREN interview CCIV017.



of peaceful assembly. This includes the right to hold meetings, sit-ins, strikes, marches, rallies, occupations, acts, or protests, both online and in public places.

820. Similarly, in the Nicaraguan historical and social context, the so-called “tranques” and barricades constitute a commonly used form of protest and therefore fall under the protection of the right to peaceful demonstration. In this sense, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association has considered the various forms of protest, including demonstrations, strikes, sit-ins, and peaceful occupations, as part of the exercise of the right to peaceful assembly and assembly.<sup>1333</sup>

821. Section IIIA of this report presents in detail the GHREN’s findings on the abuses and violations of the rights to life and physical integrity committed in the context of the protests between April and September 2018. The Group considered that the State of Nicaragua violated, by action and omission, the right to freedom of peaceful assembly. On the one hand, the Government used its political and legal power and made use of the State’s monopoly of force to repress the protesters. On the other hand, the State failed in its duty to facilitate, supervise, respect, and protect peaceful demonstrations from violence by third parties.

822. As described in that section, the GHREN has reasonable grounds to believe that the National Police committed extrajudicial killings in the framework of the repression of public demonstrations and that it acted in coordination and/or collusion with pro-government armed groups. The GHREN documented 40 extrajudicial killings in the framework of the protests between 19 April and 23 September 2018.

ii) Stigmatization of the exercise of the freedom to demonstrate

823. From the beginning of the protests in 2018, the authorities stigmatized, criminalized, and publicly disqualified the motives and the people who mobilized to participate in the demonstrations. As previously exposed, in various speeches and official communiqués, the Government and its high authorities characterized the protesters as internal enemies of the State and represented the 2018 protests as an attempted *coup d'état*.

824. At the end of September 2018, the Police held those calling for “illegal public rallies and mobilizations responsible for alterations to public order, offensive and criminal actions and aggressions that disrespect the right to work, security and life of Nicaraguan families”, and described the protests as “illegal displacements from which criminal, destructive and criminal actions have been promoted and are intended to be promoted”.<sup>1334</sup>

825. The National Police described the protests as “illegal”, based on a restrictive interpretation of Law 872 on the National Police which conditions the celebration of public events to the authorization of the same police. The police warned that the organizing entities or persons would be held responsible for any crime or violent act perpetrated during the protests.<sup>1335</sup> On 13 October of the same year, the Police issued a communiqué reiterating the prohibition to demonstrate and expressing that “no demonstrations or mobilizations will be allowed on public roads that do not have the due permission and accompaniment of the National Police”.<sup>1336</sup>

826. Following the ban on marches by the National Police in September 2018, all attempts to hold sit-ins, marches, or pickets organized by groups of people in opposition, or perceived as such by the Government, have been violently repressed by the National Police and by people dressed as civilians, akin to the Government. However, individuals attempted

<sup>1333</sup> See A/HRC/20/27, para. 12. Similarly, in its report on the situation of human rights defenders in the Americas, the IACHR made special mention of roadblocks, “cacerolazos” and vigils, as well as parades, congresses or sporting, cultural, artistic, etc. events. See, IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006.

<sup>1334</sup> National Police of the Republic of Nicaragua, Press Release No. 115, 28 September 2018, available at: <https://www.policia.gob.ni/?p=23327>; document on file with GHREN DDDOC073.

<sup>1335</sup> *Ibid.*

<sup>1336</sup> National Police of the Republic of Nicaragua, Communiqué, 13 October 2018, available at: <https://www.policia.gob.ni/?p=23782>.

to exercise their right to peaceful demonstration. The GHREN documented attempted demonstrations, flash mobs, and other forms of protests in public spaces that were prevented or dispersed by the National Police and members of pro-government groups through arbitrary arrests and the use of violence by riot control agents.

827. On 14 October, elements of the National Police riot unit used excessive and arbitrary force to disperse a demonstration called by the UNAB. According to MESENI, at least 50 people were detained. Some of them, mostly journalists, were released on the spot. The others, including social and political leaders, were released the following day.<sup>1337</sup> Photographic evidence analysed by the GHREN shows how members of the National Police dragged unarmed people on the ground, and how four policemen detained a woman who was not carrying a weapon.<sup>1338</sup>

828. In November 2018, the National Police denied UNAB's request to hold a demonstration in the framework of the International Day for the Elimination of Violence against Women. In its resolution, the Police indicated that among the applicants it had identified individuals who carry out "vandalism practices in commercial centres, with the sole objective of giving continuity to terrorist acts and to reactivate the tranques (roadblocks – blockades of roads and highways) with their coup purposes". The Police also argued that the UNAB "lacks legal personality and therefore cannot exercise rights or contract obligations according to our legal system".<sup>1339</sup> This last requirement was not necessary before 2018 and is excessively restrictive of the right to peaceful demonstration.<sup>1340</sup> On 23 November, in Matagalpa, the police prevented the "Carnival against violence" from taking place; this carnival had been organized for 20 years by local women's organizations.<sup>1341</sup>

829. Likewise, the GHREN analysed information on the marches called in March, July, and December 2019 in Managua. On 16 March, members of the opposition intended to demonstrate at three different points in the city of Managua: in front of the Pellas Building, in *Caminos de Oriente*, and La Colina. Police raids were carried out in these places, where more than 150 people were arrested.<sup>1342</sup> On the 30 of that same month, the UNAB called for a "national sit-in" (*sentada nacional*) which was also violently repressed by the police.<sup>1343</sup> The GHREN also verified and analysed photographs and videos of an express sit-in held on 12 December in front of the Intercontinental Hotel in Managua, where protesters were severely repressed by the National Police. The images show members of the police wearing

<sup>1337</sup> IACHR, Press Release "IACHR warns of a new wave of repression in Nicaragua", 18 October 2018, available at: <https://www.oas.org/es/cidh/prensa/comunicados/2018/223.asp>.

<sup>1338</sup> GHREN interviews CCIV006, CCIV027; photographic material on file with GHREN CCDOC074, CCDOC167, CCDOC168, CCDOC169, CCDOC170, CCDOC171, CCDOC172, CCDOC173, CCDOC174, CCDOC175, CCDOC176, CCDOC177, CCDOC178, CCDOC179, CCDOC180, CCDOC181, CCDOC182, CCDOC183, CCDOC184, CCDOC185.

<sup>1339</sup> National Police, Directorate of Public Security, Resolution 029-2018, November 23, 2018, signed by Commissioner General, Luis Fernando Barrantes Jiménez, Chief of the Public Security Division. See also 100% Noticias, "Excusa "balurde" de la Policía sandinista para negar permiso a marcha, dice articulación de mujeres", 23 November 2018, available at: <https://100noticias.com.ni/nacionales/94835-excusa-balurde-policia-marcha/>.

<sup>1340</sup> GHREN interview CCIV044.

<sup>1341</sup> GHREN interview AAI045. See also IMD, Urgent Alert, available at: <https://imdefensoras.org/2018/11/alertaurgente-nicaragua-el-estado-nicaraguense-vulnera-el-derecho-a-la-manifestacion-y-a-la-libertad-de-expresion-de-organizaciones-feministas-y-por-los-derechos-de-las-mujeres-en-visperas-del-dia/>.

<sup>1342</sup> GHREN interviews CCIV004, CCIV006. See also La Prensa, "Así te contamos la manifestación azul y blanco de este sábado y la represión ejercida por la policía orteguista", 16 March 2019, available at: <https://www.laprensani.com/2019/03/16/nacionales/2533920-en-vivo-marcha-por-los-presos-politicos-en-nicaragua>.

<sup>1343</sup> GHREN interview CCIV027; photographic material on file with GHREN CCDOC100, CCDOC101, CCDOC102, CCDOC103, CCDOC104, CCDOC105. See also El nuevo Diario, "Policía captura a manifestantes que participaban en sentada nacional en el sector de Metrocentro" 30 March, 2019, available at: <https://www.youtube.com/watch?v=F29Qkym8HrY>.

motorcycle helmets, as well as a disproportionate deployment of anti-riot police elements, in contrast to a small number of demonstrators who were peacefully gathered.<sup>1344</sup>

830. Finally, the GHREN collected information on the march on 25 July 2019, for the commemoration of the “National Student Day”. A group of nine students drafted a letter addressed to the National Police, informing of their intention to demonstrate.<sup>1345</sup> The National Police informed in a press conference that such a demonstration was not authorized, and accused the group of organizers of being “destabilizers of peace”. Despite the prohibition, the students decided to hold sit-ins at various points in Managua.<sup>1346</sup> These sit-ins were also repressed with rubber bullets, stun bombs, and tear gas.<sup>1347</sup>

831. Although the number of marches called was much lower than during the first phase of the socio-political crisis (between April and September 2018), opposition movements continued to organize public events until the end of 2020. After the arrests of 2021, and with the vast majority of the leadership of the social and political movements in exile, Nicaraguans stopped publicly expressing their dissent.

iii) Arbitrary restrictions on freedom of association

832. As described above, starting in 2021, a dynamic of massive cancellations of the legal personality of organizations began. The Group documented how the Ministry of the Interior stopped receiving documentation or constantly requested additional documents from the organizations, forcing them into non-compliance with their legal obligations. In this way, the authorities justified the cancellations, intervention, and subsequent liquidation of the assets of many of them in favour of the State.

833. The GHREN has reasonable grounds to believe that the cancellation of civil society organizations by the Government is arbitrary and is aimed at reconfiguring civic space and ensuring the State’s monopoly of community, development, and social assistance activities.<sup>1348</sup> The GHREN concluded that such actions were part of a strategy to reinforce the links of dependency and vulnerability to clientelist policies of the citizenry.

834. The massive closure of organizations has dealt a severe blow to freedom of association and pluralism in the country, which historically had a vibrant civil society participation in civic, humanitarian and human rights affairs.

835. The departure of international organizations, and the cancellation and closure of national nonprofit organizations, not only violates the right of association of the affected organizations but also has a great negative impact on the enjoyment of human rights by Nicaraguans. The cancelled organizations carried out important work in the defence of human rights, including the rights of children, women, LGBTIQ persons, indigenous and Afro-descendant peoples, and rural and peasant communities; the promotion of democracy;

<sup>1344</sup> GHREN interview CCIV027; photographic material on file with GHREN CCDOC140, CCDOC141, CCDOC142, CCDOC143, CCDOC144, CCDOC145, CCDOC146, CCDOC147, CCDOC148, CCDOC149, CCDOC150, CCDOC151, CCDOC152, CCDOC153, CCDOC154, CCDOC155, CCDOC156, CCDOC157, CCDOC158, CCDOC159, CCDOC160, CCDOC163, CCDOC164, CCDOC165, CCDOC166.

<sup>1345</sup> Letter from students addressed to the National Police, photographic material on file with GHREN CCDOC246, CCDOC247.

<sup>1346</sup> Interview CCIV004; photographic material on file with GHREN CCDOC242, CCDOC243; partial video of National Police press conference denying authorization for a demonstration on CCDOC248 on file with GHREN.

<sup>1347</sup> GHREN interview CCIV004; photographic material on file with GHREN CCDOC240, CCDOC024. See also DW in Spanish, “Policía de Nicaragua reprime marcha y deja varios heridos”, 26 July 2019, available at: <https://www.dw.com/es/polic%C3%ADa-de-nicaragua-reprime-marcha-y-deja-varios-heridos/a-49751605>.

<sup>1348</sup> GHREN interview CCIV038; a study that analysed 750 cancelled organizations and from these took a more specific sample of 55, concluded that the volume of funds implemented by them annually exceeded \$400 million. El Diálogo, “La radicalización dictatorial en Nicaragua”, October 2022, p.3. available at <https://the.dialogue.wpenginepowered.com/wp-content/uploads/2022/11/nicaragua-radicalization-SP-draft11.pdf>.

the development of the country and the provision of social and health services; environmental protection; charitable or humanitarian activities; as well as student and cultural affairs, among others. Also affected were some professional associations, as well as religious organizations and foundations.

836. For example, more than 200 women's organizations were cancelled.<sup>1349</sup> These organizations played a fundamental role in the care and protection of women victims of violence, or in the promotion of sexual and reproductive rights. The cancellation of many of these organizations has prevented them from continuing their activities, leaving the women they served with no possibility to denounce, seek assistance or protection. Information received by the GHREN indicates that, since 2018, civil society organizations, especially women's organizations can no longer accompany victims of violence to file complaints with institutions because they are considered opponents of the regime. A source reported that police officers dissuade women from going to women's organizations, arguing that "NGOs are already cancelled, that they no longer exist".<sup>1350</sup>

d) *Violations of the right to freedom of thought, conscience and religion*

i) Attacks on and criminalization of religious leaders and members of the Catholic Church

837. The GHREN noted that attacks and criminalization of members of the church institution occurred in April 2018 and continued throughout the period covered by the Group's mandate, with a sharp escalation in 2022.<sup>1351</sup>

838. The GHREN received information on 62 incidents against the Catholic Church in 2018, 88 in 2019, 85 in 2020, 54 in 2021, and 103 through the end of September 2022. The main patterns of attacks during the period of the Group's mandate have been threats, physical and verbal assaults, smear campaigns against lay and religious members of the Catholic Church, as well as surveillance and desecrations of temples.

839. A confidential report from a civil society organization delivered to the GHREN recorded 429 incidents or aggressions against religious institutions during the period from April 2018 to September 2022.<sup>1352</sup> According to the information received, 392 of the recorded incidents would correspond to attacks against the Catholic Church, while the remaining 37 incidents would have affected evangelical churches.<sup>1353</sup>

840. The Catholic Church played a fundamental role in the first period of the human rights crisis in Nicaragua. Due to its closeness with different sectors of civil society, and the strong roots of the Catholic religion in Nicaraguan society, President Daniel Ortega requested the Nicaraguan Episcopal Conference to act as a mediator of the national dialogue.<sup>1354</sup> Said dialogue began on 16 May 2018. However, it was definitively suspended on 10 July as a result of the attack suffered by several religious persons the previous day in Diriamba.<sup>1355</sup>

<sup>1349</sup> According to information transmitted to the GHREN by the IND, 29% of the feminist and/or women's rights organizations closed down were working for the right to live a life free of violence; another 22% for autonomy and rural development; 11% for the rights of indigenous and Afro-descendant women; and 8% for sexual and reproductive rights.

<sup>1350</sup> GHREN interview AAI012.

<sup>1351</sup> Document on file with GHREN CCDOC280.

<sup>1352</sup> The GHREN verified the methodology used to prepare the report. The organization requested confidentiality for security reasons.

<sup>1353</sup> Confidential report on file with GHREN CCDOC280.

<sup>1354</sup> France 24, "Nicaragua: President Daniel Ortega condemns violence and calls for dialogue", 1 May 2018, available at: <https://www.france24.com/es/20180501-nicaragua-dialogo-daniel-ortega-iglesia>.

<sup>1355</sup> The National Dialogue was inaugurated on 16 May 2018 but a week later, on 23 May, it was suspended by the mediators due to the evident impossibility of reaching an agreement. In mid-June, the dialogue table was briefly resumed, but was again suspended by the Episcopal Conference on 10 July, following violent acts committed against members of the congregation. See, on the 23 May suspension: Vatican News, "Obispos de Nicaragua suspenden el diálogo por falta de consenso", 24

841. On 9 July 2018, three important figures of the Catholic Church –Cardinal Leonardo Brenes (President of the Nicaraguan Episcopal Conference in that moment), Monsignor Silvio Báez and the Apostolic Nuncio Monsignor Waldemar Stanislaw Sommertag– were attacked by members of pro-government groups while on a visit to the city of Diriamba, in the department of Carazo. The purpose of the visit was to verify civil society’s claims of acts of violence committed by the National Police since the previous day, which had caused the death of several people. During the visit, the clergymen were locked in the Basilica of San Sebastian by armed pro-government groups.<sup>1356</sup> Two prelates of the Church were injured, as well as several journalists accompanying the visit.<sup>1357</sup>

842. The GHREN also investigated the attack on the Divina Misericordia Church in Managua on 13 July 2018, which resulted in two deaths, as well as damage from bullet holes, both outside and inside the church. Despite the fact that the target of this attack were students taking refuge in the building, and who were not directly related to the Church, the images reviewed by the GHREN<sup>1358</sup> show the significant damage caused by State violence in a space of worship belonging to the Catholic faith, including numerous bullet holes in the internal and external walls of the church, broken glass, and destruction by bullet impact of statues, works of art and religious images that were inside the temple.

843. The year 2022 was characterized by a sharp increase in attacks against religious freedoms, especially against members of the Catholic Church. It is important to highlight that not all members of the Catholic Church were persecuted, but only those who have spoken out in favour of respect for human rights, and have taken positions openly critical of the actions of the Government of President Daniel Ortega, have suffered reprisals.

844. In March 2022, the Government of Nicaragua withdrew the benevolence of Monsignor Waldemar Stanislaw Sommertag, Apostolic Nuncio in Managua since 2018, ordering him to leave the country immediately.<sup>1359</sup> The Nuncio had sought to mediate with the authorities on various human rights issues, including to protect the rights of persons imprisoned for political reasons and to ensure respect for freedom of religion and worship.<sup>1360</sup>

845. The GHREN investigated the expulsion of a group of 18 nuns from the Mother Teresa of Calcutta order on 5 July 2022. On that day, the nuns, who were carrying out charitable work with people living in poverty in the cities of Granada and Managua, were escorted to the southern border by two migration patrols, four civilian vehicles, two large minibuses, one small one, and a white jeep that, according to witnesses, belonged to “paramilitaries”.<sup>1361</sup> Subsequently, the authorities reportedly occupied the facilities of the Mother Teresa of Calcutta order in the city of Granada and in Managua, which were being used by the nuns to care for the elderly and to shelter girls who were victims of sexual violence.<sup>1362</sup> According to a person with direct knowledge of the incident, due to the speed with which the expulsion took place, the sisters had to accommodate the elderly quickly

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May 2018, available at: <https://www.vaticannews.va/es/iglesia/news/2018-05/obispos-nicaragua-suspenden-dialogo-nacional-por-falta-consenso.html>.

<sup>1356</sup> Confidencial, “Orteguistas asedian, hieren y roban a obispos y periodistas”, 9 July 2018, available at: <https://www.confidencial.digital/nacion/orteguistas-asedian-hieren-y-roban-a-obispos-y-periodistas/>.

<sup>1357</sup> CNN en español, “Nicaragua: agreden a monseñor Silvio José Báez, a otros religiosos y a periodistas en catedral de Diriamba”, 9 July 2018, available at: <https://edition.cnn.com/videos/spanish/2018/07/09/monsenor-silvio-jose-baez-herido-diriamba-nicaragua-protestas-daniel-ortega-dialogo-vo-panorama.cnn>.

<sup>1358</sup> Photographs on file with GHREN CCDOC186–CCDOC239; see also Nicaragua Investiga, “Crónica de un día BAJO FUEGO – Iglesia Divina Misericordia”, 14 July 2019, available at: [https://www.youtube.com/watch?v=pozhtd9\\_Oc8](https://www.youtube.com/watch?v=pozhtd9_Oc8).

<sup>1359</sup> In its communiqué, the Holy See called this unilateral decision of the Nicaraguan government serious and unjustified. Holy See, “Comunicato della Santa Sede”, 12 March 2022, available at: <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2022/03/12/0170/00365.html>.

<sup>1360</sup> GHREN interview CCIV039.

<sup>1361</sup> The GHREN verified and analysed photographic evidence showing the different vehicles used.

<sup>1362</sup> GHREN interviews CCIV008, CCIV027, CCIV045; photographic material on file with GHREN CCDOC075, CCDOC076, CCDOC077, CCDOC078, CCDOC079.

with other orders and charitable organizations, while the State took charge of the girls cared for in the children's home.<sup>1363</sup>

846. Beginning in August 2022, TELCOR closed 12 Church-related media outlets and the National Police raided and occupied with excessive use of force the *Divino Niño* Church in Sébaco. The GHREN documented the siege of the Matagalpa Church on 4 August 2022. Twelve members and workers of the Church, including Monsignor Rolando Alvarez, Bishop of Matagalpa, seven priests, two seminarians, a dean and a cameraman, were locked in the Church facilities from August 4 to 19. On that date, eight of these persons were apprehended; seven of them were transferred to the DAJ facilities, while Bishop Álvarez was held under house arrest.<sup>1364</sup> Bishop Alvarez was charged in December 2022 with the crime of undermining national security. The other detainees were charged in October with "organizing violent groups" and encouraging them to "carry out acts of hatred against the population" under the crime of undermining national integrity to the detriment of Nicaraguan society and the State of Nicaragua (arts. 410 and 412 of the Criminal Code). In January 2023, they were sentenced to ten years in prison for the crimes of undermining national integrity and propagation of false news.<sup>1365</sup>

847. On 10 February 2023, one day after refusing to be deported to the United States along with the 222 expelled political prisoners, Monsignor Rolando Alvarez was sentenced to 26 years and four months in prison. Monsignor Alvarez was found guilty of a series of crimes, including treason, undermining national integrity and spreading false news.<sup>1366</sup> The trial, initially announced for the end of March 2023, was immediately moved forward following Monsignor Alvarez's refusal to be deported, and was held in the absence of the defendant and his defence attorney.<sup>1367</sup> In his speech on 9 February 2023, President Daniel Ortega stated that Monsignor Álvarez was transferred to La Modelo prison after failing to abide by the decision of the Nicaraguan State.<sup>1368</sup> Given the patterns of human rights violations documented in this report at La Modelo Prison and other places of detention, the Group has serious concerns about the risk of Monsignor Alvarez being subjected to torture and inhuman, cruel or degrading treatment or punishment.

ii) Restriction of the right to manifest one's beliefs

848. The GHREN received information on surveillance of religious leaders by members of the National Police and other government agencies, including in temples and during the celebration of masses.<sup>1369</sup> The GHREN also recorded four attacks during religious celebrations, including two attacks during the celebration of anniversary masses of people who died during the protests.

849. According to a report by Christian Solidarity Worldwide (CSW), the most frequently reported violations of religious freedom in 2022 were threats and harassment by government officials, FSLN sympathizers, and members of pro-government armed groups, who in many cases acted in concert.<sup>1370</sup>

<sup>1363</sup> GHREN interview CCIV045.

<sup>1364</sup> GHREN interview CCIV057; list of religious freedom arrests file in the GHREN's archive CCDOC282.

<sup>1365</sup> France 24, "Nicaragua condena a cuatro sacerdotes por "conspirar" contra el Estado", 27 January 2023, available at <https://www.france24.com/es/am/C3%A9rica-latina/20230127-nicaragua-culpables-sacerdotes-conspirar-estado>.

<sup>1366</sup> El País, "Condenado a más de 26 años de cárcel el obispo Rolando Álvarez, símbolo de la resistencia frente a Ortega", 10 February 2023, available at <https://elpais.com/internacional/2023-02-10/el-regimen-de-ortega-condena-a-mas-de-26-anos-de-carcel-al-obispo-rolando-alvarez.html>.

<sup>1367</sup> GHREN interview CCIV070.

<sup>1368</sup> El Digital 19, "Álvarez, se negó a acatar la decisión del Estado nicaragüense", 9 February 2023, available at <https://www.el19digital.com/articulos/ver/titulo:136810-alvarez-se-nego-a-acatar-la-decision-del-estado-nicaraguense>.

<sup>1369</sup> GHREN interviews CCIV003, CCIV039, CCIV045; CSW, "Nicaragua, a civil society under siege", p. 3.

<sup>1370</sup> CSW, Nicaragua, a civil society under siege, 2022.

850. A witness interviewed by the GHREN stated that several members of her church told her that “I no longer go to mass because pro-government people come and take photos and record videos to see who is going”.<sup>1371</sup> Another witness affirmed that “*what is happening in the churches is that the priests are being intimidated, visited by the police, state personnel come to the masses to find out if they are saying something against the state. In the beginning they did it more discreetly, now they even come with the uniforms of the State institutions [...] The priests are very careful about what they say in a homily. Now you can't even comment because they understand that everything goes against them*”.<sup>1372</sup>

851. Referring to a prelate of the Catholic Church, a person interviewed by the Group commented that “he is a man under surveillance; in front of the church there are always police; five months ago, he went to [a visit], they asked for his ID card, they took him out of the car. It is underhand repression, which does not want to be very visible but which exists”.<sup>1373</sup>

852. The GHREN also received information about the prohibition of various manifestations of worship, including processions. One witness stated that “*we have been prohibited the right to express ourselves as religious, and the right to processions. The police are not giving authorizations, they do not allow you to go to the neighbourhoods with an image. They have taken back these traditions and taken them for themselves, they bring out parallel images. This is done by the police*”.<sup>1374</sup> CSW documented at least five events where the National Police prevented religious processions in various parts of the country.<sup>1375</sup>

e) *Right to education and academic freedom*

i) Retaliation against students, professors and university institutions

853. The Government of President Daniel Ortega and Vice President Rosario Murillo has also restricted the right to education and academic freedom. Students, professors, teachers, educational centres and other student spaces have been the target of continuous attacks since the protests of 2018, in which students played a fundamental role. The partisanship and control of universities and educational guilds by the Government and groups related to it increased the persecution of students and professors considered opponents to the Government, who were labelled as “internal enemies” and generated an “academic death”.

854. As a result, hundreds of young people have had to go into exile and take refuge in other countries; many had to leave their studies or were expelled from universities for exercising their right to association and peaceful assembly. All of them have been denied the right to free and independent education and to exercise active citizenship as the basis of democracy. According to information compiled by the GHREN, in 2018 at least 80 students were arbitrarily expelled from their universities, a number that reached at least 250 arbitrary expulsions in the following years.<sup>1376</sup>

855. In section III.A of this report, the GHREN presents its findings on abuses and violations of the rights to life and physical integrity committed in the context of the protests between April and September 2018. As described in that section, young people, many of them students, were the majority of the victims killed and injured during the protests, arbitrarily detained and subjected to judicial proceedings that did not respect due process, and in some cases were victims of torture and cruel, inhuman or degrading treatment or punishment.

<sup>1371</sup> GHREN interview CCIV039.

<sup>1372</sup> GHREN interview CCIV045.

<sup>1373</sup> GHREN interview CCIV039.

<sup>1374</sup> GHREN interview CCIV045.

<sup>1375</sup> CSW, Nicaragua, a civil society under siege, 2022, p. 5 and document on file with GHREN CCDOC282.

<sup>1376</sup> GHREN interviews CCIV058, CCIV060, CCIV066.

856. During the 2018 protests, the universities were a refuge for hundreds of demonstrators, to protect themselves from the repressive action of the State. Universities such as UCA, UNA, UPOLI, UNI, UNA-Managua, among others, were scenarios of collective demonstration, improvised health centres to treat injured people, and homes for young people who could not return home because of the persecution in their homes and their families.<sup>1377</sup> The disproportionate action of the National Police forces and armed pro-government groups caused, in some cases, serious damage to university facilities.

857. The GHREN has received information about the cancellation of academic years and scholarships, the prohibition to enrol, and the refusal by academic authorities to provide academic certificates that would allow students to validate their studies in other private universities in Nicaragua or abroad. A former dean of a university interviewed by the GHREN reported that the order received was: “*there is no academic record*”, [...] “*they did not deliver it*” responding “*why not, go complain wherever you want*”.<sup>1378</sup>

858. According to the organization Aula Abierta, in 2019, the University Council of the UNA suspended more than 40 students, whose scholarships were cancelled and their right to enrolment denied, alleging that the students committed acts of “very serious indiscipline”.<sup>1379</sup> This was corroborated by a witness interviewed by the GHREN who stated that, as of 2018, students who participated in protests were disciplinarily investigated for “very serious misconduct”. In many cases, students were unable to continue studying but continued to be charged tuition.<sup>1380</sup>

859. The GHREN also learned about patterns of unjustified dismissals of teachers who supported students during the 2018 demonstrations or who spoke out against measures adopted by the Government of Daniel Ortega.

860. A report prepared by the organization Aula Abierta and analysed by the GHREN states that, as of July 2018, 13 UNAN-Managua professors were dismissed; by August 2018, there were already 25 dismissed professors.<sup>1381</sup>

861. According to one of the witnesses interviewed by the GHREN, university academic personnel who participated in the protests were also investigated and prosecuted in labour courts. This included professors from the medical school who were defending the right of their students to demonstrate, and who had attended to the injured.

862. The situation of students and professors requires further investigation, especially concerning academic freedoms and the co-optation of university spaces by groups linked to the ruling party.

ii) Control of university spaces

863. The GIEI Nicaragua concluded that the university environment is strongly controlled by the Government and that the “closure of political spaces within the University and within the student movement, in particular, was one of the triggers for the massive protests that began in April and for the participation of students in them”.<sup>1382</sup>

864. According to a person interviewed by the GHREN, who had managerial functions in a higher education institution, since before 2018 “*discussions on university autonomy began and a strategy of dismantling the model of independence of public universities and*

<sup>1377</sup> Aula Abierta, “Resumen ejecutivo: ilegalización de las universidades en Nicaragua como una violación a la libertad académica, la autonomía universitaria y el derecho a una educación de calidad”, February 2022, document on file with GHREN CCDOC311.

<sup>1378</sup> GHREN interview CCIV040.

<sup>1379</sup> Aula Abierta, “Informe: Los universitarios como grupo en situación específica de vulnerabilidad en contextos de restricción del espacio cívico, Caso Nicaragua”, 2022, para. 82.

<sup>1380</sup> GHREN interview CCIV040.

<sup>1381</sup> Aula Abierta, “Informe: Los universitarios como grupo en situación específica de vulnerabilidad en contextos de restricción del espacio cívico, Caso Nicaragua”, 2022.

<sup>1382</sup> GIEI Nicaragua Report.



attacks against private universities was promoted. [...] The regime needs to control public and private universities".<sup>1383</sup>

865. According to information gathered by the GHREN, students are currently controlled by UNEN,<sup>1384</sup> a pro-government university organization controlled by the FSLN, and teachers by the teachers' union.<sup>1385</sup> According to several witnesses, in recent years, through UNEN and the National Council of Universities (*Consejo Nacional de Universidades*, CNU), a policy of fear has been established in the universities, including through surveillance of classes, threats, harassment and pro-government political proselytizing on university campuses.<sup>1386</sup>

iii) Cancellation of legal entities and closure of universities

866. The GHREN received information indicating that beginning in 2018, budget cuts began to be recorded to certain higher education institutions, especially those that hosted protests in 2018.

867. Universities that were occupied during the protests were cancelled, as is the case of UPOLI in February 2022.<sup>1387</sup> This university was used by students to protect themselves from attacks by security forces and pro-government armed groups for more than 50 days.<sup>1388</sup>

868. By the end of 2022, according to the organization Aula Abierta, the legal personalities of 14 universities in Nicaragua had been cancelled, among them: Universidad Hispanoamericana (UHISPAM), UPOLI, Universidad Católica Agropecuaria del Trópico (UCATSE), Asociación Universidad de Estudios Humanitarios (UNEH), Asociación Universidad Popular de Nicaragua (UPONIC) and Asociación Universidad Paulo Freire (UPF).<sup>1389</sup> In addition, other foreign universities were cancelled: Fundación Universidad de Mobile Latinoamérica Campus (FUMLAC), Florida International University, Michigan State University, Corporación Universidad de Mobile, Fundación Universidad Particular en Ciencias del Mercado, Asociación Universidad Thomas More (UTM), Asociación Universidad Centroamericana de Ciencias Empresariales (UCEM), and Wake Forest University.<sup>1390</sup> The CUN took control of the cancelled universities.

<sup>1383</sup> GHREN interview CCIV040.

<sup>1384</sup> National Union of Students of Nicaragua; according to several witnesses it is a clearly pro-government student organization.

<sup>1385</sup> GHREN interviews CCIV040, CCIV004, CCIV019.

<sup>1386</sup> GHREN interviews CCIV062, CCIV066, CCIV068, CCIV069; Aula Abierta, "Resumen ejecutivo: ilegalización de las universidades en Nicaragua como una violación a la libertad académica, la autonomía universitaria y el derecho a una educación de calidad" February 2022, para. 31, document on file with GHREN CCDOC311.

<sup>1387</sup> *Ibid.* para. 8.

<sup>1388</sup> UPOLI was cancelled in February 2022. *La Gaceta, Diario Oficial* No. 24, 7 February 2022. In December 2021, the first cancellation of a university, the *Asociación Universidad Hispanoamericana* (UHISPAM), was carried out for not reporting financial statements for the year 2020 and not submitting information on its funding sources. See initiative of Legislative Decree for the Cancellation of the *Asociación Universidad Hispanoamericana* (UHISPAM); Swiss Info, "Cancelación de universidad en Nicaragua deja a miles con carrera inconclusa", 21 December 2021, available at: <https://www.swissinfo.ch/spa/nicaragua-educaci%C3%B3n-cancelaci%C3%B3n-de-universidad-en-nicaragua-deja-a-miles-con-carrera-inconclusa/47209766>.

<sup>1389</sup> Aula Abierta, "Resumen ejecutivo: ilegalización de las universidades en Nicaragua como una violación a la libertad académica, la autonomía universitaria y el derecho a una educación de calidad", February 2022, paras. 8 and 15; document on file with GHREN CCDOC311; supplementary information document on file with GHREN CCDOC310.

<sup>1390</sup> *Ibid.* See *La Gaceta, Diario Oficial* No. 22 of Thursday, 3 February 2022, available at: <http://digesto.asamblea.gob.ni/consultas/util/pdf.php?type=rdd&rdd=Agejfao5IhM%3D> "The 07 Universities, mentioned above failed to comply with their obligations under the Laws that regulate Nonprofit Organizations, in Nicaraguan territory (Law No. 147, Law 977 and its Regulations), by not reporting for more than 10 years: 1. Financial Statements according to fiscal periods, with detailed

869. The cancellation of the universities has affected an estimated 18,000 to 25,000 students, who were left without access to university education. This situation especially affected the Caribbean Coast and rural areas of the country.<sup>1391</sup> The universities' assets have become the property of the State. The cancellations were based on the application of articles 13 and 21 of Law No. 147 on nonprofit legal entities and article 38 of the Anti-Money Laundering Law.

iv) Regressive legal reforms and co-optation of university institutions

870. In 2022, through Law No. 89, the General Education Law was modified, and the Law of Autonomy of Higher Education Institutions was added,<sup>1392</sup> granting greater powers to the CNU and excluding the UCA, an institution that had maintained a critical stance against the policies of President Daniel Ortega. The National Polytechnic University (UNP), formerly the UPOLI, the Francisco Luis Espinoza Pineda National University, formerly the Catholic University of the Dry Tropics (UCATSE), and the Ricardo Morales Avilés National Multidisciplinary University, which absorbed the Paulo Freire University (UPF, now state-owned), were also incorporated into the CNU.

871. According to article 58 of Law No. 89, the CNU was granted the power to intervene in universities on certain grounds, including non-compliance with rules and regulations issued by the CNU and the National Council for Evaluation and Accreditation (*Consejo Nacional de Evaluación y Acreditación*, CNEA), as well as for complaints related to abuse of the powers conferred by the law and its constitutive instrument. The CNU, in coordination with the CNEA, was also granted the power to “supervise” and “intervene” in the profiles and study plans of undergraduate, graduate and postgraduate academic programs of higher education institutions.

872. The reform also established that the directors of the institutes and academic and research centres of the member universities of the CNU “will be appointed by the University Council upon the proposal of the dean”.

873. A senior university official stated that these measures have restricted academic and research freedom and have promoted the election of university directors based on subjective and partisan criteria.<sup>1393</sup> The then UN High Commissioner for Human Rights, Michelle Bachelet, stated at the time before the Human Rights Council her concern for the cancellation of the legal personality of universities, and for the reform of the Law of Autonomy of Higher Education Institutions, which represents a new threat to academic freedom and university autonomy in Nicaragua.<sup>1394</sup>

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breakdowns of Income, Expenses, Balance of Proof, Detail of Donations (origin, provenance and final beneficiary), violating Article 14 paragraph b) of the Regulations of Law 977. 2. Prior donations from abroad, before the Department of Associations. 4. 4. Lack of identity documents of its Directors, Legal Representative in Nicaragua and providers of funds, in breach of Article 38, numeral 2 of Law 977”.

<sup>1391</sup> GHREN interviews CCIV059, CCIV064, CCIV062. See Confidencial, “Más de 18 000 estudiantes afectados por confiscación de seis universidades”, 9 February 2022, available at: <https://www.confidencial.digital/nacion/mas-de-18-000-estudiantes-afectados-por-confiscacion-de-seis-universidades/>.

<sup>1392</sup> Law No. 1114, Law of Amendment to Law No. 582, General Education Law and of Amendment and Addition to Law No. 89, Law of Autonomy of Higher Education Institutions, of 31 March 2022, published in *La Gaceta, Diario Oficial* on 6 April 2022, available at: <http://legislacion.asamblea.gob.ni/Indice.nsf/e9401134d79412cc06257d02006fe1d8/a659df4fbee4bb080625881c006e5944?OpenDocument>.

<sup>1393</sup> GHREN interview CCIV040.

<sup>1394</sup> Statement by the UN High Commissioner for Human Rights Michelle Bachelet to the Human Rights Council on the Situation of Human Rights in Nicaragua, 16 June 2022.

## C. Gender dimensions

874. The GHREN concluded that human rights violations and abuses against opponents or persons perceived as such had specific gender dimensions and differentiated impacts. Violations took on specific expressions and had specific components depending on the gender of the victims, as a result of the general discriminatory environment based on gender and sexual orientation. These expressions included the use of different forms of sexual violence, sexist or homophobic insults or disqualifications, and threats based on motherhood.

875. In addition, it was found that some women were specifically victimized due to various intersecting reasons: for being women, feminists, government critics, having important political leadership, and being considered “traitors” to the Sandinist party (for having split from Daniel Ortega’s *Sandinismo* and founded alternative movements within the Sandinista current). Some women, especially victims’ relatives, were also targeted due to their activities in demanding justice, including for fatal victims and people imprisoned for political reasons.

876. On the other hand, women’s movements and organizations were also subjected to defamation and massive closures. These actions have generated significant setbacks in women’s rights, especially due to the weakening of organizations working on women’s rights and the closure of organizations that provided vital support to women and girls victims of violence, health assistance, including sexual and reproductive health, and women’s political and socioeconomic empowerment activities.

877. Several gender-related aspects have characterized recent political and social developments in Nicaragua and contribute to contextualizing and understanding the repressive acts documented in the report. Likewise, the gender perspective allows comprehending the differentiated explanatory factors of human rights violations (their causes, motivations and mechanisms of facilitation and orientation), as well as their consequences and impacts (harm) on women, men and people of different genders, sexual orientations, gender expressions and sexual characteristics.

878. This section complements and deepens the gender-specific aspects of human rights violations examined in the previous sections. It also analyses the differentiated impact of these violations on women, men and LGBTI persons.

### 1. Background

879. Formally speaking, Nicaragua is generally considered advanced in terms of gender equality, particularly at legislative level and for women’s political participation.<sup>1395</sup>

880. Article 27 of the Nicaraguan Constitution states that “all persons are equal before the law and have the right to equal protection” and the Criminal Code prohibits all forms of discrimination, including on the basis of sex or sexual orientation.<sup>1396</sup> In the last 15 years, several legal instruments have been adopted or reformed to give effect to constitutional norms. Among them, the Equal Rights and Opportunities Law, also known as “Law 50/50”,

<sup>1395</sup> In the 2022 annual report presented by the World Economic Forum, Nicaragua is ranked seventh in the global gender parity index. See World Economic Forum, *Global Gender Gap Report 2022*, Insight Report, July 2022, available at: [https://www3.weforum.org/docs/WEF\\_GGGR\\_2022.pdf](https://www3.weforum.org/docs/WEF_GGGR_2022.pdf). World Bank reports rate Nicaragua with a score of 86.3 out of 100 in the Women, Business and the Law Index for 2021 (<https://wbl.worldbank.org/content/dam/documents/wbl/2021/snapshots/Nicaragua.pdf>) and 4 out of 6 on a scale for gender equality (<https://data.worldbank.org/indicator/IQ.CPA.GNDR.XQ?locations=NI>). The National Assembly elected in November 2021 has a female representation of 50.6 percent. National Assembly, “La mujer nicaragüense destaca en todos los espacios de la Asamblea Nacional”, 15 March 2022, available at: <https://noticias.asamblea.gob.ni/la-mujer-nicaraguense-destaca-en-todos-los-espacios-de-la-asamblea-nacional>.

<sup>1396</sup> See, for example, art. 36 and 140 *bis* of the Criminal Code.

adopted in 2008;<sup>1397</sup> the 2008 reform of the Criminal Code, which decriminalized the crime of “sodomy”;<sup>1398</sup> and the Comprehensive Law against Violence against Women (Law No. 779), adopted in 2012.<sup>1399</sup> In 2009, the Office of the Special Ombudsperson for Human Rights for Sexual Diversity was created as part of the Ombudsperson Office for the Defence of Human Rights and, in 2013, the Ministry of Women.<sup>1400</sup> It should also be noted that the Government of Nicaragua has implemented several initiatives in favour of women’s rights and family unity,<sup>1401</sup> and that many State institutions are currently headed by and/or employed women.<sup>1402</sup>

881. Despite these legal and public policy advances, reforms aimed at ensuring formal gender equality have not resulted in gender equality in material terms. According to CEDAW’s analysis, confirmed by interviews with experts conducted by the GHREN,<sup>1403</sup> widespread “patriarchal attitudes and [...] deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men within the family and in all spheres of society at large”<sup>1404</sup> persist in Nicaragua.

882. Likewise, the impact of the initiatives announced by the Government have been limited. For example, the Women’s and Children’s Specialized Police Stations (*Comisaría de la Mujer y la Niñez*) were deactivated in 2016, only to be reopened throughout 2022.<sup>1405</sup>

<sup>1397</sup> Law No. 648, Equal Rights and Opportunities Law, published in *La Gaceta, Diario Oficial* No. 51 of 12 March 2008. Among other measures, it establishes the promotion of “a proportional percentage between women and men for national, regional, municipal and Central American Parliament elected positions, as well as in the integration of decision-making bodies of the public administration and of the Regional and Municipal Governments” (art. 9).

<sup>1398</sup> IACHR, Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas, OAS/Ser.L/V/II.rev.2 Doc. 36, 12 November 2015, para. 61.

<sup>1399</sup> National Assembly, Law No. 779, Comprehensive Law on violence against women and amendments to Law No. 641, Criminal Code, approved on 26 January 2012, and published in *La Gaceta, Diario Oficial* No. 35 of 22 February 2012.

<sup>1400</sup> National Assembly, Law No. 832, Law to amend and add to Law No. 290, Law on the Organization, Competence and Procedures of the Executive Branch, approved on 12 February 2013, published in *La Gaceta, Diario Oficial* No. 28 of 13 February 2013.

<sup>1401</sup> For example, the Government of Nicaragua has reopened specialized Police Stations for women (*Comisaría de la Mujer*) and published a booklet on women’s rights called “*Cartilla Mujer, Derechos, Leyes y Mecanismos de denuncia para prevención del Femicidio*”, which is being disseminated throughout the country and is available at: <https://www.minim.gob.ni/storage/documents/WHkzsDUji5U9wHk730FOOMQxvza7cxJsyElOqsxZ.pdf>.

<sup>1402</sup> According to World Bank figures, in 2014, women accounted for 53.7 percent of those employed in mid- to high-level positions in Nicaragua. See <https://genderdata.worldbank.org/countries/nicaragua/>. In 2022, 58.8 percent of ministerial positions were held by women. Véase <https://documents1.worldbank.org/curated/en/099217307022219663/pdf/IDU049aedaf00d6da041fa08959084a3b4b5d6a5.pdf>.

<sup>1403</sup> GHREN interviews AAIV005, AAIV024, AAIV017.

<sup>1404</sup> CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Nicaragua, CEDAW/C/NIC/CO/6 (Feb. 2, 2007), para. 11. See also the recent report of the Committee on Economic, Social and Cultural Rights which underscores its concern at “information received that gender stereotypes remain entrenched in society, hindering women’s enjoyment of economic, social and cultural rights”. Committee on Economic, Social and Cultural Rights, Concluding observations on the fifth periodic report of Nicaragua, E/C.12/NIC/CO/5 (11 November 2021), para. 19.

<sup>1405</sup> In 2016, the functions of the Women’s Specialized Police Stations were transferred to the DAJ of the National Police, and the government cancelled the contract of the social workers and psychologists who worked there. Mary Ellsberg, “20 años después de la revolución que provocó “Confites en el infierno”, *Envío Digital*, issue 470, May 2021, available at: <https://www.envio.org.ni/articulo/5904>). Vice President Rosario Murillo blamed women’s organizations for the closure of the Specialized Police Stations, and for promoting abortion from these institutions: “[b]ecause they were going around in disguise promoting abortion, from the Women’s Police Stations, and this is absolutely true, it is a denunciation that we are making until now because they dare to talk about women, the same who want to end the life of girls or boys before they are born, and they used the Women’s Police Stations to promote these bad practices”. *El 19 Digital*, “*Comisaría de la Mujer en Nicaragua sirven*

According to information received by the GHREN, these Police Stations do not have personnel specialized in the attention of women and girls victims of violence.<sup>1406</sup> Furthermore, the coordination that existed between public institutions and civil society organizations, particularly women's organizations, was discontinued.<sup>1407</sup>

883. In addition to the above, a series of legal reforms and public policies recently adopted entails a regression in the development of women's and people of sexual diversity's rights. In 2006, the FSLN supported the abrogation of so-called "therapeutic" abortion, thereby prohibiting all forms of voluntary termination of pregnancy.<sup>1408</sup> In recent years, the National Assembly adopted a series of legislative, institutional, and public policy reforms promoting traditional forms of the family,<sup>1409</sup> susceptible to generate situations of greater vulnerability for women. For example, a year after its adoption, Law No. 779 was modified,<sup>1410</sup> introducing mediation for crimes related to violence against women with sentences inferior to five years in prison,<sup>1411</sup> and restricting the crime of femicide only to intimate partner relationships.<sup>1412</sup> These measures were strongly criticized by the women's and feminist movement.<sup>1413</sup> On the other hand, the reform to the Family Code did not contemplate same-sex marriage as LGBTI groups had demanded.<sup>1414</sup>

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para defender la vida", 16 September 2020, available at: <https://www.el19digital.com/articulos/ver/titulo:107399-comisarias-de-la-mujer-en-nicaragua-sirven-para-defender-la-vida>. According to the National Police, as of 14 December 2022, 175 Women's Police Stations had been inaugurated throughout the country: <https://www.policia.gob.ni/?p=96594>.

<sup>1406</sup> GHREN interviews AAIV005, AAIV004, AAIV033.

<sup>1407</sup> GHREN interviews AAIV012, AAIV040.

<sup>1408</sup> International human rights bodies have described laws criminalizing abortion as discriminatory and as an obstacle to women's access to medical care. They have recommended that States eliminate all punitive provisions for women who have undergone abortions. These bodies have also requested that States allow abortion in certain cases. See OHCHR, Sexual and Reproductive Health and Rights Information Series: Abortion; Committee on the Elimination of Discrimination against Women, Concluding Observations on Peru, CEDAW/C/PER/CO/7-8 (2014), para. 36; Declaration on Sexual and Reproductive Health and Rights: ICPD Beyond 2014 Review (2014). See also Karen Kampwirth, Abortion, Antifeminism, and the Return of Daniel Ortega: In Nicaragua, Leftist Politics?, in *Latin American Perspectives*, Issue 163, Vol. 35, No. 6, November 2008, 122–136, p. 123.

<sup>1409</sup> GHREN interviews AAIV005, AAIV004, AAIV033, AAIV017. For example, Decree No. 42-2014 states that "social policies seek to strengthen the Family through strategies and actions that promote the rescue and strengthening of values in order to achieve harmonious relationships of collaboration, complementarity and equity between women and men in the households". Executive Decree No. 42-2014, Regulation to Law No. 779, Comprehensive Law against Violence against Women of Amendments to Law No. 641, Criminal Code Law, approved on 30 July 2014, published in *La Gaceta, Diario Oficial* No. 143 of 31 July 2014.

<sup>1410</sup> Law No. 846, Law amending article 46 and adding articles 30, 31 and 32 of Law No. 779, Comprehensive Law against violence against women and reforms to Law No. 641 "Criminal Code", published in *La Gaceta, Diario Oficial* No. 185 of 1 October 2013. The Law had been challenged through several appeals before the Supreme Court of Justice, which, in August 2013, declared it constitutional, but issued objections on the prohibition of mediation. The reform was adopted with only four votes against. Azahálea Solís, "La Ley 779 tiene una larga historia de lucha y su reforma envía a la sociedad un mensaje muy negativo", *Envío Digital*, Number 380, November 2013, available at: <https://www.envio.org.ni/articulo/4770>.

<sup>1411</sup> The elimination of mediation had been a persistent demand of the women's movement (Mary Ellsberg, "20 años después de la revolución que provocó "Confites en el infierno"", *Envío Digital*, issue 470, May 2021). Art. 46 of Law No. 779 specified that no mediation was authorized in the crimes indicated therein, without exception. Law No. 846 opened the door to mediation for nine crimes for which the penalty is under five years of imprisonment, considered as "less serious".

<sup>1412</sup> This reform was carried out through Decree No. 42-2014 and through Law No. 1058. This second reform slightly modifies the new definition of femicide and institutes life sentence for that crime if some aggravating circumstances are constituted. See <https://www.confidencial.digital/nacion/ley-779-lleva-tres-reformas-y-cada-una-la-aleja-mas-de-combatir-violencia-machista/>.

<sup>1413</sup> GHREN interviews AAIV005, AAIV024, AAIV004, AAIV033, AAIV017.

<sup>1414</sup> See Family Code.

884. Regarding the LGBTI population, the non-application of existing legislation has been reported,<sup>1415</sup> as well as the persistence of *de jure* or *de facto* restrictions.<sup>1416</sup> Several people interviewed by the GHREN agreed that Nicaragua had not made sufficient efforts for the full recognition of the LGBTI population, which continues to be marginalized in Nicaraguan society.<sup>1417</sup>

885. Another fundamental element to consider is the relevance of the women’s movement (in all its heterogeneity) in Nicaragua, which has been a critical voice against President Daniel Ortega and Vice President Rosario Murillo. Historically linked to the Sandinista struggles, it acquired a political and social force autonomous from the FSLN, and has broad, solid and active territorial bases, connected through networks.<sup>1418</sup>

886. These aspects have been reflected both in the dynamics of social protests and in the patterns of human rights violations documented by the GHREN in this report.

## 2. Extrajudicial executions

887. As documented in Chapter III.A, most of the lethal victims of the different phases of the crackdown that took place from 2018 onwards were men. Between April 18 and 23 September 2018, the number of women killed in the context of the protests was 15 or 16, depending on the sources consulted. Two of them were members of the National Police.<sup>1419</sup> There is little information regarding the circumstances of these deaths.<sup>1420</sup>

888. Among the reported cases of women killed in the context of the protests, the case of a Brazilian medical student from the American University stands out. She was shot in the chest while driving through a Managua neighbourhood on her way home. The following day, on 23 July 2023, she died of her wounds at the Military Hospital in Managua. A man, identified as a “paramilitary” by family members and as a private security guard by the authorities,<sup>1421</sup> confessed being the perpetrator. On 1 August 2018, a preliminary hearing was held, in which the suspect admitted the facts, and was subsequently found guilty without the need for further evidence, and sentenced to fifteen years in prison.<sup>1422</sup> According to a complaint filed with the IACHR, the legal representation of the victim’s mother did not have access to the complete file. In July 2019, the convicted person benefited from the Amnesty Law, being pardoned and released.<sup>1423</sup> The IACHR admitted the case for processing on 3 October 2022.

889. The gender analysis of the violations against the right to life and physical integrity is incomplete due to the impossibility of obtaining precise information on the profile of the

<sup>1415</sup> Document on file with GHREN AADOC070

<sup>1416</sup> For example, homosexual families were excluded from the Family Code.

<sup>1417</sup> GHREN interviews AAIV003, AAIV039.

<sup>1418</sup> GHREN interviews AAIV005, AAIV024, AAIV017.

<sup>1419</sup> On the other hand, the Mesa Nacional LGBTIQ+ reported eight murders of LGBTI people during the protests (seven gay and one lesbian) and added that the bodies of three of them were found after several days of disappearance. Document AADOC163 on file with GHREN. The GHREN was unable to verify the conditions of these deaths.

<sup>1420</sup> Nicaraguan sociologist Elvira Cuadra explains that: “[t]he femicides of these women have remained invisible and silent to such an extent that there is little information about them. There are several reasons for this: the number of women murdered is lower than the number of men murdered, there has been no investigation by independent human rights organizations, and “the families of the victims are afraid of the reprisals they could suffer”. Elvira Cuadra Lira, “Quebrar el Cuerpo, Quebrar el Alma”, CETCAM (2022). The GHREN has received information from various sources according to which, currently, cases of deaths and disappearances, particularly of women, are not reported due to the fear of family members. GHREN interviews EEIV002, AAIV012.

<sup>1421</sup> IACHR, Report No. 254/22 Petition 2432-18, Admissibility Report of Raynéia Gabrielle Da Costa Lima Rocha and her mother María José Costa, OEA/Ser.L/V/II Doc. 258, 3 October 2022.

<sup>1422</sup> *Ibid.*

<sup>1423</sup> *Ibid.* See also Confidencial Digital, “CIDH Analizará el fondo del caso impune de la estudiante brasileña Raynéia Lima”, 26 November 2022, available at: <https://www.confidencial.digital/nacion/cidh-analizara-el-fondo-del-caso-impune-de-la-estudiante-brasilena-rayneia-lima/>.

people injured during the months of social protest.<sup>1424</sup> The information available to the GHREN on the exact number of injured or wounded, the identity of the victims, and the circumstances of these events has been limited.

890. The fact that most of the people killed during the repression in the context of the protests have been men could be explained considering different elements. In the first place, the social protest movement massively involved the entire population; like men, women actively participated and, on several occasions, occupied leadership and organizational roles. However, the role played by women in the context of the protests was, in many cases, affected by traditionally, culturally, and socially established roles and activities, reproducing gender stereotypes linked to care. As a result, some women tended to engage in activities that were less visible and therefore less exposed to attacks. In many cases, women had greater responsibilities in health posts and in the collection of medicines and food, taking care of the preparation and distribution of food, while leading the accompaniment of victims and their families in the search for protection and justice.<sup>1425</sup>

891. Second, male protesters more often occupied the front line and more frequently and directly confronted state security forces and pro-government armed groups, placing them in a position of greater vulnerability. For example, the GHREN received direct source information describing how young men tended to go forward in confrontations with security forces. According to this testimony, *“people spread the word: ‘By the stadium they are shooting, don’t come closer.’ But since no one can stop the adrenaline of the boys, they went ahead of the march”*.<sup>1426</sup>

892. While the women’s and feminist movement did not appear as a protagonist during the protests, it quickly organized through its networks to support the demonstrators. As the GIEI Nicaragua reported, *“women have developed the fundamental role of supporting the struggle in terms of organization, logistics and in demanding justice”*.<sup>1427</sup> Moreover, since April 2018, women of all ages took a leading role in demanding justice for their children, grandchildren, husbands, brothers, or dead relatives. It was also mostly women who went to police stations to obtain information on detainees and who visited detainees in detention centres.

893. Their efforts in searching for the bodies of the deceased, filing complaints before the Public Prosecutor’s Office for the death of their relatives,<sup>1428</sup> and carrying out activities aimed at preserving victims’ memory, have turned these women into a special target of repression, through harassment, surveillance, threats, illegal detentions and/or gender violence. As a result, some of them were forced into exile.<sup>1429</sup>

894. Efforts to commemorate the memory of the deceased have been consistently impeded by the National Police or individuals sympathetic to the Government.<sup>1430</sup> For example, according to information received by the GHREN, on 19 April 2021, the Police threatened a group of victims’ mothers who were participating in the commemoration of the third anniversary of the protests, and confiscated from them several books commemorating

<sup>1424</sup> In its 2021 report, the IACHR has reported more than 2,000 people injured in Nicaragua since April 2018. IACHR, Annual Report 2021, Chapter IV.b. Nicaragua, OEA/Ser.L/V/II. Doc. 64 rev. 1, 26 May 2022, para. 3. The GHREN has not had access to date to a sex- and gender-disaggregated list of injured persons, which would allow for further such gender analysis.

<sup>1425</sup> GHREN interviews AAIV031, AAIV017, AAIV033, AAIV045.

<sup>1426</sup> GHREN interview AAIV002.

<sup>1427</sup> GIEI Nicaragua report, p. 331.

<sup>1428</sup> According to information provided to the GHREN, CENIDH supported the filing of 22 complaints with the Public Prosecutor’s Office for violent deaths that occurred during the protests. None of these were responded to or resulted in investigations. GHREN interview AAIV043.

<sup>1429</sup> GHREN interview AAIV044. See also IACHR, Resolution 4/2020, Precautionary Measure No. 1191-19, Elizabeth Velásquez and her next of kin regarding Nicaragua, 15 January 2020; Resolution 60/2021, Precautionary Measure No. 1191-19, Francis Valdivia and her next of kin regarding Nicaragua (Expansion), 7 August 2021.

<sup>1430</sup> GHREN interview AAIV044.

their murdered sons.<sup>1431</sup> According to information transmitted to the IACHR, the following day, in Estelí, the police violently detained a member of the Mothers of April Association, along with her mother and others. They were preparing to participate in a mass in memory of a close relative who died in April 2018. For that reason, they were detained and, once at the Estelí Police station, the women were required to undress and to do naked squats in front of female and male Police officers, who interrogated and threatened them. They were released the same night. This incident was preceded by several acts of harassment and persecution that justified the IACHR to grant precautionary measures to these people and their families.<sup>1432</sup>

### 3. Arbitrary detentions and torture and other cruel, inhuman or degrading treatment or punishment

895. According to the IACHR, from April 2018 to 31 December 2022, at least 2,018 people were arbitrarily deprived of their liberty.<sup>1433</sup> An internal registry of the Mesoamerican Women Human Rights Defenders Initiative has identified that more than 300 women human rights defenders have been detained during that time period.<sup>1434</sup> On 9 February 2023, 33 women previously arbitrarily detained in police stations and in centres of the National Prison System were deported to the United States and deprived of their nationality.<sup>1435</sup> The information made available to the GHREN indicates that eight of them were in the DAJ, three in the District III station of the National Police of Managua, seven in the SPN La Esperanza, two were detained in house arrest, and the rest were in prisons outside the capital.<sup>1436</sup>

896. The GHREN received information regarding discrimination based on the sex of female detainees, as well as on their gender identity or sexual orientation in the Prison System and in the DAJ. In particular, four transgender women were held in male detention centres.<sup>1437</sup> One woman, a political opponent and member of UNAMOS, was detained throughout her imprisonment in the DAJ's men's wing, probably because of her sexual orientation.<sup>1438</sup>

897. The GHREN was able to identify that, in the first moments of apprehension, during interrogations and/or during the detention itself, different forms of sexual violence (rape, sexual torture, sexual touching, forced nudity) were used against women, men and transgender persons, particularly during the first phases of the repression.<sup>1439</sup> The frequency and methods employed show a pattern of intentional and organized behaviour.

898. The different forms of sexual violence used constitute a form of extreme violence, whose expressive dimension is reinforced by the prevailing macho and patriarchal culture in Nicaragua. The choice of sexual violence as a method of torture or cruel, inhuman or

<sup>1431</sup> Mesoamerican Women Human Rights Defenders Initiative, "Nicaragua: Policías rodean a madres de víctimas de abril de 2018, las hostigan y les decomisan libros conmemorativos de sus hijos asesinados", 20 April 2021, available at: <https://im-defensoras.org/2021/04/alerta-defensoras-nicaragua-policias-rodean-a-madres-de-victimas-de-abril-de-2018-las-hostigan-y-les-decomisan-libros-conmemorativos-de-sus-hijos-asesinados/>.

<sup>1432</sup> IACHR, Resolution 60/2021, Precautionary Measure No. 1191-19, 7 August 2021. In 2029, the IACHR also granted precautionary measures to other members of the Mothers of April Association.

<sup>1433</sup> Data provided by the IACHR to the GHREN.

<sup>1434</sup> Document AADOC169 on file with GHREN.

<sup>1435</sup> GHREN interview AAIV053; document AADOC166 on file with GHREN. Of these 33 women, 29 had been recognized as political prisoners by the Mechanism for the Recognition of Political Prisoners, Monthly List of Political Prisoners, December 2022 – January 2023, available at: <https://presasypresospolicosnicaragua.org/lista-mensual-de-personas-presas-politicos/>. At the time of writing, the Mechanism recognizes one woman still detained for political reasons in Nicaragua.

<sup>1436</sup> The information corresponding to eight women detainees is not disclosed in the above-mentioned list of the Mechanism.

<sup>1437</sup> Document on file with GHREN AADOC071. These women were later released.

<sup>1438</sup> GHREN interviews AAIV026, AAIV032, AAIV034, AAIV048, AAIV052.

<sup>1439</sup> GHREN interviews EEIV004, EEIV006, EEIV015, EEIV024, EEIV035, EEIV045, EEIV047, AAIV028, AAIV008, AAIV010, AAIV019, AAIV039.



degrading treatment or punishment is not accidental, but has an expressive or instrumental gender dimension. In this sense, the use of sexual violence is a manifestation of “more systemic and complex problems”<sup>1440</sup> of gender inequality. This shows a desire to exert control, power and domination over the body and life of the victims, to deconstruct them and reduce them to a devalued and submissive position.

899. In addition to torture, humiliations such as the use of gender-based insults or threats during arrests, interrogations and detentions have been reported. For example, women deprived of their liberty were subjected to insults and labelled as “whores”, “bad mothers”, “lazy women”, “damned bitches”.<sup>1441</sup> This type of behaviour represents a clear expression of patriarchal and stereotypical views of women’s role in society, and in particular the belief that women should not participate in demonstrations or political events, but stay at home “to take care of their children and families”.<sup>1442</sup>

900. In turn, during interrogations, several women detainees reported the use of their families, particularly their sons and daughters, as mechanisms of pressure and threats connected to motherhood which, in some cases and in combination with other practices and factors, reached the threshold of psychological torture. “We are going to take your daughter away from you”; “we are going to rape her” were expressions used during interrogations, according to information received by the GHREN.<sup>1443</sup>

901. Detained persons were also denigrated because of their sexual orientation. In the context of the arrests, the police frequently used the expression “cochón” or “cochona” and other denigrating expressions to refer to LGTBI persons.<sup>1444</sup> The GHREN was also able to document a particular viciousness towards LGBTI people through various forms of sexual and gender-based violence.<sup>1445</sup>

902. The persons detained in the context of the human rights crisis were submitted to discriminatory conditions. Like men, women were segregated and some of them were subjected to harsh conditions of detention. Contrary to the Bangkok Rules, which require States to take into consideration the specific needs of women and LGBTI detainees –in particular transgender women–, as well as the specific challenges and impacts that their detention may entail, no attention was paid to the specific needs of women with young children, pregnant women and single mothers. On the contrary, the separation of women detainees from their children was used as a method of punishment. Request to change prison for house-arrest for sick women or women with young children were systematically ignored or rejected.<sup>1446</sup>

903. The pattern of violations to which the women political leaders detained in the DAJ were subjected, especially those belonging to UNAMOS, was particularly severe and seemed intended not only to humiliate and break them, but also to silence political voices with particular characteristics: being opponents, women, and feminists.<sup>1447</sup>

904. A member of a victims’ organization described the impact the arrest of these women political leaders had on the country:

<sup>1440</sup> See UN, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk - Addendum: Mission to Mexico, E/CN.4/2006/61/Add.4 (13 January 2006), para. 7.

<sup>1441</sup> Document on file with GHREN AADOC084; GHREN interviews AAIV002, AAIV010.

<sup>1442</sup> GHREN interviews EEIV010, AAIV020, AAIV041; document on file with GHREN AADOC084.

<sup>1443</sup> Document on file with GHREN AADOC084; GHREN interviews, AAIV047, AAIV048, AAIV050.

<sup>1444</sup> Depending on the context, the word “cochón” or “cochona” can have an injurious or derogatory connotation towards homosexual or perceived homosexual people or, conversely, it is used in an affectionate way among people in the LGBTI community. Karen Kampwirth, *LGBTQ Politics in Nicaragua: Revolution, Dictatorship, and Social Movements*, Tucson, The University of Arizona Press (2022), p. 6; GHREN interviews AAIV008, AAIV039.

<sup>1445</sup> GHREN interviews AAIV008, AAIV039.

<sup>1446</sup> GHREN interviews EEIV025, EEIV048.

<sup>1447</sup> Confidential testimony the GHREN’s archive AADOC034, AADOC035, AADOC036, AADOC037, AADOC038, AADOC039, AADOC040, AADOC041, AADOC042, AADOC043; GHREN interviews EEIV011, AAIV032, AAIV034, AAIV047, AAIV048, AAIV050, AAIV052.

*When the women of UNAMOS and [another political leader] were arrested, there was a change in our struggle. It was a very strong blow when those women were arrested. It was something that was felt organizationally in all the struggles, not so much because they were from UNAMOS but for who they are, as women activists, as people [...] It was felt in the organization; a vacuum was left. Whenever we had any activity, or when something happened within the organization, those women gave answers to the families, to the mothers, etc. When they were taken away, there was no voice, there was no leadership in other people because women were always the leaders. Since June 2021, a loneliness was felt [...].<sup>1448</sup>*

905. These women spent the entire duration of their detention, i.e. twenty months, held alone in cells –one of them spent 14 months in total isolation–, without the possibility of communicating with anyone.<sup>1449</sup> The DAJ guards watched over their cells 24 hours a day to ensure that they could not talk to each other. Three of the women were permanently detained in dark cells, causing them lasting vision problems. None had access to reading or writing materials.<sup>1450</sup> During their first year at El Chipote, they were subjected to constant interrogation, several times a day. One of them described the interrogations as “the only human contact” she had.<sup>1451</sup> Two of them had sons or daughters and were not allowed to have any kind of communication with them, either by telephone or letters, nor were they allowed to receive photos or drawings of them, for more than a year.

#### 4. Closing of the civic and democratic space

906. According to concordant testimonies collected by the GHREN, feminist leaderships, women’s organizations and groups –in all their diversity– have been a particular target of the attacks directed against civil society. Since the 1990s, the women’s movement has acquired an autonomous political and social force and has been, long before 2018, a critical voice of the presidential couple.<sup>1452</sup> This opposition has converted women’s organizations and their members into a special aim of the repression, since before 2018.<sup>1453</sup> Several historical factors seem to explain this situation.

907. Historically linked to the Sandinista revolution, the women’s movement in Nicaragua acquired a political and social force autonomous from the FSLN, and developed broad, solid and active territorial bases. Added to this evolution is the gradual distancing of relations between the women’s movement and the Sandinismo, especially with President Daniel Ortega and Vice President Rosario Murillo. Several people interviewed by the GHREN consider that the case of Zoilamérica Narváez Murillo was a particular milestone in this process.<sup>1454</sup> Women’s organizations took up the defence of Daniel Ortega’s stepdaughter, who denounced the sexual violence she was subjected to by her stepfather. The 2006 abortion reform, supported by the FSLN, marked another milestone in this rift. The same year, during the presidential elections, the Autonomous Women’s Movement (MAM) decided to ally with the Sandinista Renovation Movement party (MRS, currently UNAMOS).<sup>1455</sup>

<sup>1448</sup> GHREN interview AAI044.

<sup>1449</sup> As a result, one of them had her vocal cords affected for more than six months.

<sup>1450</sup> GHREN interviews EEIV025, EEIV011, AAI032, AAI034, AAI047, AAI048, AAI050, AAI052.

<sup>1451</sup> Document on file with GHREN AADOC035; GHREN interviews AAI032, AAI050.

<sup>1452</sup> GHREN interviews AAI005, AAI024, AAI017. See also Karen Kampwirth, *LGBTQ Politics in Nicaragua: Revolution, Dictatorship, and Social Movements*, The University of Arizona Press, 2022, p. 271, citing Edmundo Jarquín, *Construcción Democrática Revertida y Pervertida*, in *El Régimen de Ortega: ¿Una nueva dictadura familiar en el continente?* 17–64, Edited by Edmundo Jarquín C, Managua: PAVSA.

<sup>1453</sup> In 2007, nine women defenders were investigated by the General Prosecutor’s Office for apology for the crime of abortion and complicity in the crime of rape (following a case of a 9-year-old girl known as the “Rosita case”); in 2009, two feminist organizations were accused of being linked to organized crime. Document AADOC161 on file with GHREN.

<sup>1454</sup> GHREN interviews AAI005, AAI024, AAI004, AAI017, AAI033.

<sup>1455</sup> GHREN interview AAI017.

908. Another determining factor is the broad and solid territorial bases of the women's movement. Until the massive cancellation of civil society organizations in 2021 and 2022, these territorial representations were active and connected through networks. As underlined by the GIEI Nicaragua, "They have worked as a consolidated network, with the ability to act jointly when the circumstances so require and have become a political actor both in the struggle for women's rights and in the defence of civil rights. Therefore, they have been able to lead important mobilizations in recent years to question the government and society as a whole".<sup>1456</sup> Continuing this historical tradition, since April 2018, women have actively participated in the protests and in the movements demanding respect for human rights and justice for the victims.

909. According to an activist interviewed by the GHREN, the feminist and women's movement has been "seen by the government as 'the enemy' and its members as 'traitors of the revolution'".<sup>1457</sup> In the face of this, President Daniel Ortega and Vice President Rosario Murillo lashed out against the movement in various ways.

910. Feminist leaders, women human rights defenders, and women's organizations have been specific targets of repression, including through the arrest and criminalization of numerous women leaders and human rights defenders. The Mesoamerican Registry of Aggressions against Women Human Rights Defenders has identified 123 cases of criminalization of women human rights defenders since the beginning of the crisis.<sup>1458</sup>

911. Stigmatization and discrediting campaigns have been documented through social networks and pro-government media<sup>1459</sup> against women's organizations, labelling them as "abortionists", "terrorists", "traitors" or "coup plotters". Vice President Rosario Murillo has also accused feminists of being upper-class intellectuals, unrelated to ordinary women, and has even defined them as "contra" (anti-Sandinista guerrillas).<sup>1460</sup> For example, on 23 November 2018, Vice President Rosario Murillo stated that:

*We, Sandinista women, from social, labour, and youth movements, denounce the permanent extortion of these self-proclaimed feminist movements, which have sought, obtained, and continue to obtain abundant and illegitimate resources to attack and destroy Nicaraguan women and families, whose real battles they ignore, in their selfishness, vanity, and self-interested blindness.*<sup>1461</sup>

912. Vice President Rosario Murillo added that:

*We, the Sandinista women of social, labour and youth movements, denounce these so-called leaders for their responsibility and involvement in the hate crimes committed against women, men, youth and families in our Nicaragua during the failed coup attempt. We denounce and demand that justice establish responsibilities and punishment for all those, men and women, who have participated and still pretend to participate in the siege and harassment of peace, the right to work, the*

<sup>1456</sup> GIEI Nicaragua Report, p. 331.

<sup>1457</sup> GHREN interview AAIV024.

<sup>1458</sup> Document on file with GHREN AADOC050.

<sup>1459</sup> CEJIL and IM-Defensoras, "Perseguidas por defender y resistir: Criminalización de mujeres defensoras de derechos humanos en Honduras, México y Nicaragua" (Nicaragua Chapter), 2022, p. 52.

<sup>1460</sup> Dan La Botz, *What went wrong? The Nicaraguan Revolution: a Marxist Analysis*. Boston: Brill (2016), p. 329.

<sup>1461</sup> El 19 Digital, "Compañera Rosario en Multinoticias", 23 November 2018, available at: <https://www.el19digital.com/articulos/ver/titulo:84317-companera-rosario-en-multinoticias-23-de-noviembre-del-2018>: "Las mujeres sandinistas, de movimientos sociales, laborales y de juventud, denunciamos la permanente extorsión de estos movimientos autodenominados feministas, que han buscado, obtenido y siguen obteniendo abundantes e ilegítimos recursos, para atacar y destruir a las mujeres y a las familias nicaragüenses, cuyas verdaderas batallas ignoran, en su egoísmo, vanidad y ceguera interesada".

*right to family and life, inalienable rights of women, men, youth and families in our Nicaragua.*<sup>1462</sup>

913. In another speech, the Vice President stated:

*Feminist organizations, different [NGOs] that receive juicy donations from abroad and that in Nicaragua work with children or women in their development, should reflect on their positions and support for this terrorism that attacks not only the source of income of working and peasant families, but also attacks, as in the case of Masaya, the public hospital with pregnant women and newborn children.*<sup>1463</sup>

914. Associated with this stigmatization process, women’s organizations have denounced patterns of harassment and surveillance by the authorities, particularly by the National Police and pro-government armed groups, towards women human rights defenders.<sup>1464</sup> These acts are sometimes accompanied by the taking of photographs of them or their family members, including their children. This situation generates a constant sensation of anxiety “because they and their families live with the feeling that at any moment a police presence could lead to an arrest”.<sup>1465</sup> The digital environment also constituted a very effective channel of harassment.<sup>1466</sup>

915. The case of a woman agronomist, photographer, and feminist from Matagalpa, is representative of such harassment. She was arbitrarily detained in 2018 and released in March of the following year. She recounted that immediately upon her return to Matagalpa after her release, she began to be the victim of constant harassment and threats by people she identifies as “paramilitaries”, who kept watch over her house and her movements. She was also a victim of hatred campaigns on social networks, where people were invited to report her to the authorities. The harassment was of such magnitude that she opted to move out of her house. In 2020, her Facebook profile was hacked and modified to make it appear that she had passed away. The page read “in memory of [victim’s name]”. The victim interpreted this as a threat. Other social media campaigns used her photo, circulated it, and invited people to keep an eye on her and give any information about her whereabouts. People harassed her on social networks for being a feminist leader: they insulted her with terms such as “cochona” and threatened to rape her. She also received threatening text messages, telling her that they knew what time her daughter came in and out of school, and threatening to harm the child. An inscription on the wall of the house where her family lived read “plomo” (lead). As a result of this harassment, she decided to go into exile.<sup>1467</sup>

916. Repression against the feminist movement has also been reflected in the closure of organizations. According to the registry of the IND, 212 –national or local– organizations dedicated to women’s human rights or with a feminist profile were cancelled from 2018 to

<sup>1462</sup> Ibid.: “Las mujeres sandinistas, de movimientos sociales, laborales y de juventud, denunciamos la permanente extorsión de estos movimientos autodenominados feministas, que han buscado, obtenido y siguen obteniendo abundantes e ilegítimos recursos, para atacar y destruir a las mujeres y a las familias nicaragüenses, cuyas verdaderas batallas ignoran, en su egoísmo, vanidad y ceguera interesada”.

<sup>1463</sup> El 19 Digital, “Nicaragua: trabajadores se organizan y expulsan golpistas de sus fábricas”, 25 June 2018, available at <https://www.el19digital.com/articulos/ver/titulo:78298-nicaragua-trabajadores-se-organizan-y-expulsan-golpistas-terroristas-de-sus-fabricas>: “Las organizaciones feministas, diferentes [ONGs] que reciben jugosas donaciones del exterior y que en Nicaragua trabajan con niños o mujeres en su desarrollo, deberían reflexionar por sus posiciones y respaldo a ese terrorismo que ataca, no solo la fuente del ingreso de las familias obreras y campesinas, sino también atacan, como el caso de Masaya al hospital público con mujeres embarazadas y niños recién nacidos”.

<sup>1464</sup> The Mesoamerican Registry of Aggressions against Women Human Rights Defenders has identified that, since 2018, at least 1975 aggressions have been committed against women human rights defenders.

<sup>1465</sup> Document on file with GHREN AADOC050.

<sup>1466</sup> The Mesoamerican Registry of Aggressions against Women Human Rights Defenders documented 122 digital aggressions against women defenders between 2018 and 2022.

<sup>1467</sup> GHREN interview AAIV010; documents AADOC110, AADOC114, AADOC117 on file with GHREN.

December 2022 (see Table 7).<sup>1468</sup> Out of the nine organizations cancelled in November and December 2018, five were led by women.<sup>1469</sup> Moreover, it is noteworthy to highlight that the first organization invalidated on 29 November 2018, was the *Centro de Información y Servicios de Asesoría en Salud* (CISAS), dedicated to the promotion of sexual and reproductive rights<sup>1470</sup> and led by feminist Ana Quirós. Ninety five percent of these cancellations of women’s rights organizations or feminist profile (202) occurred in 2022.<sup>1471</sup>

917. Other organizations that requested their certificates of legality were unable to obtain it because the Department of Registration and Control of Non-Profit Associations (DRCA) refused to receive financial reports and/or updates from their boards of directors.<sup>1472</sup> Fourteen women’s rights organizations were expropriated, stripped or confiscated of their assets (real estate, equipment and furniture): CISAS, Popol Na, CINCO, ILLS, the *Corriente Feminista*,<sup>1473</sup> the *Colectivo de Mujeres de Matagalpa*,<sup>1474</sup> MEC, FADCANIC, the *Fundación Puntos de Encuentro para la Transformación de la Vida Cotidiana*, and CEJUDHCAN.

Table 7

**Women’s organizations cancelled on the basis of the legislation applied**

<i>Regulations</i>	<i>Cancellations</i>	<i>Confiscations/expropriations</i>
Law No. 147	61	12
Law No. 1115	68	2
Law No. 1127	83	0
<b>Total</b>	<b>212</b>	<b>14</b>

918. Some cases are representative of the particular and continuous harassment that women human rights defenders and feminists were subjected to.

919. For example, on 18 April 2018, during the first protests, a member of the *Articulación Feminista de Nicaragua* and the Political Council of UNAB was beaten by members of pro-government armed groups while protecting a woman whose cell phone they tried to snatch. Between May and November 2018, the offices of CISAS, the non-profit organization she headed, as well as her home, were subject to surveillance by men in civilian clothes. On 23 November 2018, the feminist participated in a press conference in Managua with representatives of women’s organizations, denouncing the refusal by the National Police of a permit to organize a demonstration for 25 November, the International

<sup>1468</sup> Document on file with GHREN AADOC158

<sup>1469</sup> CISAS, CENIDH, ILLS, CINCO and Popol Na.

<sup>1470</sup> Cancellation Decree No. 8487 of 3 December 2018 was published in *La Gaceta, Diario Oficial* No. 234.

<sup>1471</sup> Document on file with GHREN AADOC050.

<sup>1472</sup> GHREN interviews AAIV027, AAIV012, AAIV045; document the GHREN’s archive AADOC157. See Expediente Público, “Violencia estatal en Nicaragua: La guerra abierta de Ortega-Murillo contra el feminismo”, 8 September 2020, available at: <https://www.expedientepublico.org/violencia-estatal-en-nicaragua-la-guerra-abierta-de-ortega-murillo-contra-el-feminismo/>.

<sup>1473</sup> Document on file with GHREN AADOC074 See also Artículo 66, “Policía de Nicaragua se toma instalaciones de la Corriente Feminista”, 8 July 2022, available at: <https://www.articulo66.com/2022/07/08/confiscacion-la-corriente-feminista-ong-canceladas-nicaragua/>. Its director was prevented from returning to Nicaragua on 1 July 2022, when she was about to take a plane back to the country.

<sup>1474</sup> See Confidencial, “Policía Nacional asalta edificio del Colectivo de Mujeres de Matagalpa”, 1 September 2022, available at: <https://www.confidencial.digital/nacion/policia-nacional-asalta-edificio-del-colectivo-de-mujeres-de-matagalpa/>. The Matagalpa Collective of Women filed an appeal before the Supreme Court of Justice on 27 October 2021, invoking the unconstitutionality of the decree ordering the cancellation of its legal status. The Supreme Court rejected it as “notoriously improper” on 25 January 2022. GHREN interviews AAIV167, AAIV168; document on file with GHREN AAIV045.

Day for the Elimination of Violence against Women.<sup>1475</sup> The following day, the defender received a summons to go to the General Directorate of Migration and Alien Affairs (*Dirección General de Migración y Extranjería*, DGME). When she went there, employees of that state agency notified her that her Nicaraguan nationality had been withdrawn.<sup>1476</sup> She was handcuffed and taken to El Chipote prison, where she was notified of another expulsion order and of the prohibition to enter the country for five years. The defender was deported to Costa Rica that same day.<sup>1477</sup> CISAS was the first organization cancelled by the National Assembly in 2018.<sup>1478</sup> Its assets were confiscated.<sup>1479</sup> The activist integrates the list of the 94 people who were stripped of their Nicaraguan nationality in February 2023, although that measure had already been applied against her four years earlier.

920. For their part, LGBTI organizations and their members have been subjected to violence, discrimination and persecution since 2018. In 2019, the Mesa Nacional LGBTI published a report denouncing the smear campaigns resulting in harassment and threats against LGBTI leaders and persons from April 2018 to 31 January 2019.<sup>1480</sup>

## 5. The impact of repression on women and their environment

921. Women's organizations, associated in different territorial networks, have played a fundamental role in the care and protection of women victims of violence, or in the promotion of health, particularly sexual and reproductive rights. Sources consulted explained that some of the services provided had been coordinated, years ago, with State institutions, such as the National Police, the IML, the Public Prosecutor's Office or the Ministry of Health, and that they referred cases to each other for attention.<sup>1481</sup> The cancellation of many of these organizations by the Nicaraguan State prevents them from continuing their activities, which necessarily impacts the lives and safety of women and their families.

922. According to international human rights law, the State of Nicaragua has a duty of due diligence to prevent, investigate, sanction and repair acts of violence against women.<sup>1482</sup> According to the IACtHR case-law, this due diligence obligation is enhanced in cases of violence against women.<sup>1483</sup> Through the massive cancellation of organizations

<sup>1475</sup> See <https://www.frontlinedefenders.org/es/case/deportation-ana-quiros>

<sup>1476</sup> She was naturalized Nicaraguan in the late 1990s.

<sup>1477</sup> GHREN interview CCIV044.

<sup>1478</sup> According to information received by the GHREN, it was reproached CISAS and its members of "denaturalizing the objective of its legal personality" and using it as "an organisational scheme to manage, receive, channel and facilitate funds to alter public order and carry out destabilizing acts in the country". Decree cancelling the legal personality of Centro de Información y Servicio de Asesoría en Salud, CISAS, Decree A.N. No.8487 approved on 29 November 2018, published in *La Gaceta, Diario Oficial* No. 234 of 3 December 2018; GHREN interview CCIV044. See Onda Local, "Asamblea Nacional cancela a personería jurídica a CISAS", 29 November 2018, available online at <https://ondalocalni.com/noticias/538-asamblea-nacional-cancela-personalidad-juridica-a-cisas/>.

<sup>1479</sup> Its facilities were *de facto* occupied on 13 December 2018, by the National Police. They came to be used by the Ministry of Health. GHREN interview CCIV044; photograph on file with GHREN CCDOC301; see also *La Prensa*, "Régimen inaugura un centro de adición en las instalaciones del Cisas", 5 March 2021, available at: <https://www.laprensani.com/2021/03/05/nacionales/2793101-dictadura-inaugura-un-centro-de-adiccion-en-las-instalaciones-del-cisas>.

<sup>1480</sup> Document on file with GHREN AADOC071.

<sup>1481</sup> GHREN interviews AAIV012, AAIV040, AAIV045. However, since before 2018, it is reported that state institutions began to prohibit collaboration with women's organizations. Azahalea Solís, "Law 779 has a long history of struggle, and its reform sends society a very negative message", *Envío* number 380, November 2013.

<sup>1482</sup> Declaration on the Elimination of Violence against Women, 20 December 1993, art. 4(c); Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará", 9 June 1994, art. 7(b).

<sup>1483</sup> See, among other cases, IACtHR, *Case of González et al. v. Mexico*, Judgment, 16 November 2009, para. 282; *Case of Veliz Franco et al. v. Guatemala*, Judgment, 19 May 2014, para. 139; *Case of Vicky Hernández v. Honduras*, Judgment, 26 March 2021, paras. 98 et seq. The Court has stressed that "in light of the specific obligations under the Convention of Belém do Pará, in cases of violence against women, States must take comprehensive measures that are enforced with due diligence and

dedicated to the care and protection of women, the State has contributed to increasing the vulnerability of this population group to possible acts of violence, including those perpetrated by third parties.

923. For example, civil society organizations, and especially women's organizations, can no longer accompany women victims of violence to file complaints with the justice system because they are considered "opponents to the regime". Sources reported that the Police dissuade women from going to women's organizations<sup>1484</sup> arguing that "the NGOs are already cancelled, [...] they no longer exist, [...] they should no longer be listened to".<sup>1485</sup> "Defending human rights is being completely against the regime", reflects one woman defender.<sup>1486</sup>

924. The context of polarization and distrust prevailing in the country contribute to discouraging women from filing complaints:

*There is no option for women, they cannot file a complaint because they know it will not proceed. It used to happen before; however, now it will depend on who their aggressor is and his political position. There are no conditions given at the institutional level for the defence, for the complaint.*<sup>1487</sup>

925. According to several reliable sources, the impact of the closure of these entities is significant for women and is reflected in the increase in acts of violence against women. Official information available on the prevalence of different forms of violence against women is currently limited.<sup>1488</sup> However, although partial, figures from the Institute of Forensic Medicine, updated to August 2022, show an increase in medico-legal expertise for sexual violence between January and August 2022 compared to the same period in 2021 – 467 in 2022 compared to 417 in 2021–. Out of the examinations performed, 419 were of women –the majority between 0 and 38 years of age– and 48 for men –41 of whom were children between 0 and 12 years old–.<sup>1489</sup>

926. The incidence of violence within the family is reported as decreasing –from 780 to 737 cases between 2021 and 2022–, which could be explained by the distrust of women to report acts of violence. As for the violent deaths of women, the same Institute only reports the practice of thanatological examinations on women, without specifying in what context they are carried out.<sup>1490</sup> The organization *Católicas por el Derecho a Decidir*, for its part, has reported a steady increase in femicides between 2018 and 2021 –from 61 to 71– with a sharp increase in frustrated femicides.<sup>1491</sup> In 2022, the organization reported 57 cases of femicides in Nicaragua and 220 frustrated femicides.<sup>1492</sup>

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possess an appropriate protective legal framework, which is enforced effectively, and prevention policies and practices that allow it to act effectively to address complaints", IACTHR, *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, Judgment, 28 November 2018, para. 180.

<sup>1484</sup> GHREN interviews AAIV012, AAIV045.

<sup>1485</sup> GHREN interview AAIV012.

<sup>1486</sup> *Ibid.*

<sup>1487</sup> *Ibid.*

<sup>1488</sup> Only the Institute of Forensic Medicine publishes figures on its website, updated to August 2022.

<sup>1489</sup> Institute of Forensic Medicine, Department of Statistics, Statistical Bulletin, August 2022, Year 15, Vol. 168, p. 5, available at: [https://www.poderjudicial.gob.ni/pjupload/iml/pdf/boletin\\_agosto\\_2022.pdf](https://www.poderjudicial.gob.ni/pjupload/iml/pdf/boletin_agosto_2022.pdf).

<sup>1490</sup> *Ibid.*

<sup>1491</sup> Elvira Cuadra Lira, "Quebrar el cuerpo, quebrar el alma: la reconfiguración de las violencias hacia las mujeres en Nicaragua 2018-2022", Centro de Estudios Transdisciplinarios de Centroamérica, 2022, p. 32. Contrary to official institutions, the figures of *Católicas por el Derecho a Decidir* are governed by the initial definition of the criminal type of femicide in Law No. 779 of 2012 (which does not include violent deaths of trans women). This partly explains the discordance in the figures. For example, in 2020, the police reported 11 cases of femicides while the non-governmental organization counted 69. <https://www.confidencial.digital/nacion/ley-779-lleva-tres-reformas-y-cada-una-la-aleja-mas-de-combatir-violencia-machista/>

<sup>1492</sup> See <https://www.articulo66.com/2023/01/17/nicaragua-cerro-el-2022-con-casi-70-femicidios-reporta-organizacion-feminista/> and <https://www.confidencial.digital/nacion/ultimo-femicida-de-2022-tenia-ocho-dias-liberado-por-ortega-y-murillo/>.

927. Several sources informed the GHREN of their concern regarding the liberation of men convicted for violence or abuse against women during the different waves of prisoner releases decreed by the Government. These liberations represent a danger not only for the women who reported their violence, but also for the women defenders who assisted and accompanied the victims during the process.<sup>1493</sup>

928. As a result of the repression, the threats they have received or the fear of reprisals, some women defenders or opponents have had to hide, go into exile, or not leave their homes. These protection strategies, in addition to impacting their lives, especially affect the lives of their children and close relatives, considering the caring role that women assume within Nicaraguan families.

929. The expulsion of 222 detainees in February 2023 from Nicaragua resulted in the separation of many families. The Mechanism for the Recognition of Political Prisoners in Nicaragua reported that 72 of the 222 persons expelled were mothers or fathers of underage girls and boys, many of whom continue to reside in Nicaragua.<sup>1494</sup> The deprivation of Nicaraguan nationality of 316 persons, residing in Nicaragua and abroad, as well as the elimination of their data from the Civil Registry are measures with significant consequences, *de jure* and *de facto*, for family reunification. Similarly, the confiscation of property and freezing of assets of the 316 persons declared traitors to the homeland place them and their families in situations of high vulnerability.

930. Repression against women defenders and leaders also has a collective impact on the communities where women defenders work, both as an exemplifying and dismantling character. It has consequences in particular on the political participation of women and their social fabric. “*We don’t know where to turn to, we no longer have a point of reference*”, are expressions heard by women human rights defenders.<sup>1495</sup>

#### **IV. Crimes against humanity**

931. The GHREN has reasonable grounds to believe that from April 2018 and up to the time of closing of this report, there has been a widespread and systematic attack against part of the civilian population in the Republic of Nicaragua. The attack was and continues to be executed through prohibited and inhumane methods that have been developed, implemented, and improved over time. The GHREN also has reasonable grounds to believe that the direct and indirect perpetrators of the attack had knowledge of and intentionally committed the violations, abuses, and crimes documented in this report.

932. The attack meets all the elements to establish a finding of crimes against humanity. The crimes against humanity committed in Nicaragua include: murder, imprisonment, torture, including sexual violence, other cruel, inhuman or degrading treatment, and deportation. The GHREN has reasonable grounds to believe that the crimes against humanity were committed in the context of a discriminatory policy for political reasons, intentionally implemented from the highest levels of the Government of Daniel Ortega and Rosario Murillo against part of the Nicaraguan civilian population, constituting a *prima facie* case of crimes against humanity of persecution on political grounds.

##### **A. Norm of International Law**

933. The international community of States accepts and recognizes the international prohibition of crimes against humanity as a peremptory norm of general international law

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<sup>1493</sup> GHREN interviews AAIV004, AAIV012, AAIV033. According to press information, the last femicide that occurred in 2022 was at the hands of a man who had been released eight days previously after receiving the benefit of “convivencia familiar” on 23 December 2022. See <https://www.confidencial.digital/nacion/ultimo-femicida-de-2022-tenia-ocho-dias-liberado-por-ortega-y-murillo/>

<sup>1494</sup> <https://twitter.com/MPresasPresosNi/status/1625261446442496002>.

<sup>1495</sup> GHREN interview AAIV045.



(*jus cogens*).<sup>1496</sup> As such, the prohibition reflects and protects fundamental values of the international community, is hierarchically superior to other international law norms, and is universally applicable.<sup>1497</sup> It does not admit agreement to the contrary,<sup>1498</sup> is not subject to any statutory limitations,<sup>1499</sup> and does not permit the invocation of any circumstance precluding wrongfulness.<sup>1500</sup> Moreover, it is superior to domestic legislation<sup>1501</sup> and shall be applied regardless of the official status of the person who might have committed the unlawful acts (immunity *ratione materiae*).<sup>1502</sup>

<sup>1496</sup> ICTY, *Prosecutor v. Zoran Kupreškić, et al.*, Case No. IT-95-16-T, Judgment, 14 January 2000 (Kupreškić, Trial Judgment), para. 520. See also ICC, Appeals Chamber, *Prosecutor v. Omar Hassan Ahmad Al-Bashir*, Case No. ICC-02/05-01/09-397-Anx1, Judgment in the Jordan Referral re Al-Bashir Appeal, 6 May 2000 (Kupreškić, Trial Judgment), Judgment in the Jordan Referral re Al-Bashir Appeal, 6 May 2000. ICC-02/05-01/09-397-Anx1, Judgment in the Jordan Referral re Al-Bashir Appeal, 6 May 2019, Joint Concurring Opinion of Judges Eboe-Osuji, Morrison, Hofmański and Bossa, paras. 207, 429. At the regional level, see *Almonacid-Arellano, et al. v. Chile*, Judgment, para. 99; *Herzog, et al. v. Brazil*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 15 March 2018, Series C no. 353 (*Herzog, et al. v. Brazil*, Judgment), para. 221. See also A/74/10, commentary no. 5 to the ILC draft preamble, para. 45. The UN General Assembly has taken note of the draft articles by resolution 74/186 (18 December 2019), A/RES/74/186, para. 2(a). The ILC had previously stated that among the peremptory norms of general international law that are clearly accepted and recognized, is the prohibition of crimes against humanity, Commentary No. 5 to ILC Draft Article 26, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission, Fifty-third Session (23 April-1 June and 2 July-10 August 2001), A/56/10, Supplement No. 10, para. 77.

<sup>1497</sup> Conclusions Nos. 2 and 23, Annex(c) of the ILC Draft Conclusions, Draft Conclusions on peremptory norms of general international law (*jus cogens*), 73rd session (18 April-3 June and 4 July-5 August 2022), A/77/10, Supplement No. 10, para. 44. The Draft Conclusions represent as they stand a recommendation of the ILC.

<sup>1498</sup> A/77/10, conclusion No. 3; Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331 (entered into force on 27 January 1980), art. 53 *in fine*.

<sup>1499</sup> Nicaragua acceded on 3 September 1986 to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 754 UNTS 73 (entered into force on 11 November 1970), according to Decree No. 189, Accession to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, approved on 8 May 1986, published in *La Gaceta, Diario Oficial* No. 92 of 9 May 1986. The Convention was published in *La Gaceta, Diario Oficial* No. 159 of 29 July 1986. According to Article IV of the Convention, States Parties undertake to adopt the necessary legislative measures to ensure that the statute of limitations does not apply to crimes against humanity. The regional jurisprudence of the Inter-American system and national jurisprudence in Latin America coincide in considering that there is no statutory limitation that applies to crimes against humanity under international law. See A/74/10, para. 6 of draft article 6; commentary No. 35 *in fine* to para. 6 of draft article 6. See also IACtHR, *Almonacid-Arellano, et al. v. Chile*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 26 September 2006, Series C no. 154 (*Almonacid-Arellano, et al. v. Chile*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 26 September 2006, Series C no. 154 (*Almonacid-Arellano, et al. v. Chile*, Judgment), para. 153. See also, ECtHR, *Aslakhanova, et al. v. Russia*, Application nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10, Judgment, 18 December 2012 (*Aslakhanova, et al. v. Russia*, Judgment), para. 237.

<sup>1500</sup> A/77/10, conclusion No. 18.

<sup>1500</sup> *Almonacid-Arellano, et al. v. Chile*, Judgment, para. 153. See also, *Aslakhanova, et al. v. Russia*, Judgment, para. 237.

<sup>1501</sup> See *Furundžija*, Trial Judgment, para. 155.

<sup>1502</sup> ICJ, Case Concerning the Arrest Warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*), Judgment, 14 February 2002, ICJ, Reports 2002, 3-34, p. 25, para. 61. See also draft article 7(1)(b) and the related commentary no. 20 of the ILC, Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction, 73rd Session (18 April-3 June and 4 July-5 August 2022), A/77/10, Supplement No. 10, para. 68. The draft articles represent in their present state a first draft. In addition, there is no immunity of a sitting Head of State under customary international law from an international court, according to Special Court for Sierra Leone (SCSL), *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-I, Decision on immunity from jurisdiction, 31 May 2004, para. 53; *Prosecutor v. Omar Hassan Ahmad Al-Bashir*, Case No. ICC-02/05-01/09-397-Anx1, Judgment in the Jordan Referral re Al-Bashir Appeal, 6 May 2019, para. 114, including immunity

934. Crimes against humanity are gross violations of the fundamental norms of international human rights law.<sup>1503</sup> They are serious acts that cause harm to human beings by attacking what is most essential to them: their life, liberty, physical well-being, health, and/or dignity.<sup>1504</sup> They are acts that, by their extent and gravity, exceed the tolerable limits for the international community, which must demand their punishment.<sup>1505</sup> They are acts that transcend the individual because when they attack the individual, humanity itself is attacked and negated.<sup>1506</sup> In this sense, it is the concept of humanity as a victim that characterizes the crimes against humanity.<sup>1507</sup>

935. These acts are universally recognized as criminal and considered to be of international concern because they infringe upon protected legal interests of the international community.<sup>1508</sup> These are not isolated or random acts of individuals, but rather are a deliberate attack on a civilian population.<sup>1509</sup> The prevention of these crimes is promoted by ending the impunity of the perpetrators.<sup>1510</sup>

936. Crimes against humanity refer, par excellence, to the risk of basing the political organization of a society on a monopoly of territorial power. This risk materializes when the monopoly of power transforms administrative and territorial control into an attack on the fundamental norms of international human rights laws that protect the persons subject to its control and its coercive resources.<sup>1511</sup> Regarding the State's monopoly of power, this transformation involves the perversion of the powers that constitute the *raison d'être* of the State, which has been described in international jurisprudence as "criminal governmental policy,"<sup>1512</sup> by the late Judge Cassese as "system criminality,"<sup>1513</sup> and by the late Judge Cançado Trindade, as "crimes of the State".<sup>1514</sup>

937. The State and its agents are accountable to the international community because of this risk of the perversion of powers.<sup>1515</sup> Accordingly, the international prohibition of crimes against humanity is a derogation of national sovereignty.<sup>1516</sup> Crimes against humanity are not simply crimes but, according to the UN War Crimes Commission, require the intervention of States other than the State on whose territory the crimes were committed, or whose citizens have been victims of the crimes.<sup>1517</sup> Crimes against humanity allow for the interference with and overriding of State sovereignty.<sup>1518</sup> They are a violation of a *jus cogens* norm, which limits the sovereignty of the State vis-à-vis the human

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*ratione personae*, per Joint Concurring Opinion of Judges Eboe-Osuji, Morrison, Hofmański and Bossa, para. 66.

<sup>1503</sup> Commission of Experts on the former Yugoslavia, Interim report of the commission of experts established pursuant to Security Council resolution 780 (1992), S/25274, annex I, para. 49; Commission of Independent Experts on Rwanda, Preliminary report of the commission of independent experts established in accordance with Security Council resolution 935 (1994), S/1994/1125, annex, para. 118.

<sup>1504</sup> ICTY, *Prosecutor v. Dražen Erdemović*, Case No. IT-96-22-T, Sentencing Judgment, 29 November 1996 (*Erdemović*, Sentencing Judgment), para. 28.

<sup>1505</sup> *Erdemović*, Sentencing Judgment, para. 28.

<sup>1506</sup> *Ibid.*

<sup>1507</sup> *Ibid.*

<sup>1508</sup> See Chapter I.B.2.

<sup>1509</sup> *Tadić*, Trial Judgment, para. 653.

<sup>1510</sup> See A/74/10, preambular para. 6 and preambular commentary no. 7.7 to the preamble.

<sup>1511</sup> See Richard Vernon, What is a crime against humanity? 10 J. Pol. Phil. 231-249 (2002), p. 243.

<sup>1512</sup> *Kupreškić* Trial Judgment, para. 553.

<sup>1513</sup> ICTY, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A and IT-94-1-Abis, Judgment in sentencing appeals, 26 January 2000, Separate opinion of Judge Cassese, para. 14.

<sup>1514</sup> IACtHR, *Goiburú, et al. v. Paraguay*, Judgment (Merits, Reparations and Costs), 22 September 2006, Series C No. 153, Reasoned opinion of Judge A.A. Cançado Trindade, paras. 6, 42 et seq.

<sup>1515</sup> Christian Tomuschat, The Legacy of Nuremberg, 4 J. Int. Crim. Justice 830-844 (2006), p. 840.

<sup>1516</sup> *Ibid.*, p. 838.

<sup>1517</sup> See United Nations War Crimes Commission (UNWCC), History of the United Nations War Crimes Commission and the Development of the Laws of War, HM Stationery Office, London 1948, p. 179.

<sup>1518</sup> *Ibid.*, p. 193.

person.<sup>1519</sup> Crimes against humanity are a category of “last resort,” needed to publicly manifest the international community’s disapproval.<sup>1520</sup> They do not require the connection of citizenship with the responsible State.

## B. Elements of the international criminal offense

938. Crimes against humanity constitute a list of prohibited acts, which are committed as part of a widespread or systematic attack, directed against any civilian population, and with the perpetrators’ knowledge of the attack and actions as part of the attack. These are the essential and contextual elements that distinguish crimes against humanity from domestic crimes, placing individual acts in the general context of arbitrary and violent power. It is only within this general context that the act is transformed into a crime against humanity.<sup>1521</sup>

939. The concept of crimes against humanity, as formulated in the London Charter,<sup>1522</sup> establishes the international criminal responsibility of individuals associated with a state apparatus for committing international crimes against “*any civilian population*,” which includes its own citizens.<sup>1523</sup> The protection arising under international law is not dependent on the nationality of the victim; it is the victim’s own humanity that demands and justifies the criminalization of such acts under international law.<sup>1524</sup> Hence the definition of crimes against humanity.

940. There have been several definitions of crimes against humanity in international instruments following the formulation of the London Charter.<sup>1525</sup> While the customary international law status of the international prohibition of crimes against humanity is now self-evident,<sup>1526</sup> even outside an armed conflict,<sup>1527</sup> the elements of the international crime are not.<sup>1528</sup>

<sup>1519</sup> *De iure condendo*, see United Nations War Crimes Commission (UNWCC), War Crimes News Digest No. XVIII, Supp., Oct. 1, 1946, p. 4, filed with the ITM under F. 775: Eugène Aronéanu, *Le crime contre l’humanité*, 8 NRDIP 369-418 (1946), p. 418.

<sup>1520</sup> The Special Group for Serious Crimes of the Dili District Court, sitting in the District Court of Dili in the Democratic Republic of Timor-Leste (UNTAET Chambers), *Prosecutor v. Inacio Oliveira, et al.*, Case No. 12/2002, Judgment, 23 February 2004, p. 11.

<sup>1521</sup> Oberster Gerichtshof für die Britische Zone in Strafsachen (OGH StS), *Weller Case*, Judgment of 10 October 1949, in: *Entscheidungen des Obersten Gerichtshofes für die Britische Zone in Strafsachen*, Vol. 2 1949/50 (OGH StS 2), de Gruyter, Berlin & Hamburg 1950, paras 149–153, p. 151.

<sup>1522</sup> Charter of the International Military Tribunal, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 8 August 1945, 82 UNTS 279 (entered into force 8 August 1945), art. 6(c); UNWCC, *History of the United Nations War Crimes Commission and the Development of the Laws of War*, HM Stationary Office, London 1948, p. 193. Also, based on the definition of crimes against humanity in Article 2(1)(c) of Control Council Law No. 10, see US Military Tribunal, Nuremberg, *United States v. Josef Altstoetter, et al.*, Opinion and Judgment, 4 December 1947, in: Case 3, *United States v. Altstötter* (“The Justice Case”), *Trials of War Criminals Before the Nürnberg Military Tribunals Under Control Council Law no. 10*, Vol. 3, U.S. Government Print. Office, Washington DC 1951, 954–1177, pp. 973 and 979.

<sup>1523</sup> *Tadić*, Trial Judgment, para. 635. The Spanish version of the original English version of the ICTY Statute omits the translation of the term “*any*”; compare ICTY Statute, art. 5. Something similar happens with the Spanish versions of the other Statutes of the International Criminal Tribunals.

<sup>1524</sup> See reasoning in ICTY, *Prosecutor v. Dražen Erdemović*, Case No. IT-96-22-A, Judgment, 7 October 1997, Joint separate opinion of Judge McDonald and Judge Vorah (appendix), para. 21.

<sup>1525</sup> In line with the ILC, the term “international instrument” should be understood to have a broader meaning than a simple legally binding international agreement but limited to instruments elaborated by States or international organizations, such as the UN. See A/74/10, comment no. 44 to draft article 2 of the IDC. On the contextual elements of crimes against humanity in international instruments and jurisprudence, see A/74/10, commentary nos. 2–36.

<sup>1526</sup> *Tadić*, Trial Judgment, paras. 4, 623. This is evidenced by its inclusion in all statutes and other instruments of international criminal law and its wide application by international tribunals.

<sup>1527</sup> ICTY, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, Decision on the defence motion for interlocutory appeal on jurisdiction, 2 October 1995 (*Tadić*, Interlocutory Appeal), paras. 140-141; Extraordinary Chambers in the Courts of Cambodia (ECCC), *Prosecutor v. Kaing Guek Eav alias Duch*, Case No. 001/18-07-2007/ECCC/TC, Judgment, 26 July 2010 (*Duch*, Trial Judgment), para.

941. In defining the elements of the international crime, the GHREN has relied on well-established sources of international law and, within this framework, on judicial decisions.<sup>1529</sup> Article 7 of the Rome Statute, in view of Article 10 of the Statute,<sup>1530</sup> does not limit the scope of the meaning of crimes against humanity in customary international criminal law.<sup>1531</sup> Trial Chamber II of the ICC has noted, based on Article 31(3)(c) of the Vienna Convention on the Law of Treaties,<sup>1532</sup> that the methodology of interpretation of Article 7 “requires reference to the jurisprudence of the *ad hoc* Tribunals and other courts on the matter,” where such jurisprudence identifies a rule of customary international law, to inform their decisions.<sup>1533</sup> These International Criminal Tribunals have, in turn, relied on precedents in international jurisprudence as evidence of existing law on crimes against humanity.<sup>1534</sup>

### C. Widespread or systematic attack against a civilian population

942. Only the context of a widespread or systematic attack against a civilian population transforms a prohibited act into a crime against humanity.<sup>1535</sup> Its international wrongfulness relies on the functional connection between the prohibited acts (murder; deportation;

292; see also European Court of Human Rights (ECtHR), *Korbely v. Hungary*, ECtHR Grand Chamber (no. 9174/02), Judgment, 19 September 2008 (*Korbely v. Hungary*, Judgment), para. 82.

<sup>1528</sup> See A/74/10, examples in comments nos. 37–46 to draft article 2.

<sup>1529</sup> See Chapter I.E. For the basis of the UN Criminal Tribunals, see *Kupreškić*, Trial Judgment, para. 540.

<sup>1530</sup> Rome Statute, art. 10: “Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute”.

<sup>1531</sup> It is not clear to what extent it would be a “lowest common denominator”, as stated by William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, 2nd edition Oxford University Press, Oxford 2016, p. 153. It is also unclear whether it represents *in toto* a crystallization of customary international law, as is the view of the Inter-American Court of Human Rights (IACtHR), *Almonacid-Arellano, et al. v. Chile*, Judgment, para. 99; *Herzog, et al. v. Brazil*, Judgment, para. 223. See Antonio Cassese, *Cassese’s International Criminal Law*, 3rd edition Oxford University Press, Oxford 2013, p. 105.

<sup>1532</sup> Vienna Convention on the Law of Treaties, art. 31(3)(c): “General rule of interpretation: There shall be taken into account, together with the context: (c) any relevant rules of international law applicable in the relations between the parties”.

<sup>1533</sup> ICC, Trial Chamber II, *Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 47. For the “International Criminal Court” status of the SCSL, see SCSL, *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-T, Judgment, 18 May 2012 (*Taylor*, Trial Judgment, 18 May 2012), paras. 37–42, in particular, paras. 38 and 42; and of the ECCC, see *Prosecutor v. Kaing Guek Eav alias Duch*, Case No. 001/18-07-2007-ECCC-OCIJ (PTC01), Decision on Appeal against Provisional Detention Order of Kaing Guek Eav alias “DUCH”, 3 December 2007, para. 20. According to this jurisprudence, the UNTAET Chambers share an equivalent status, given that UNTAET was created by virtue of Security Council Resolution 1272 (1999); A similar status, moreover, is enjoyed by a special chamber at the Court of Bosnia and Herzegovina (the “War Crimes Chamber”, SCGBH), particularly, because of its role in receiving cases concerning intermediate and lower-ranking indictees transferred to it by the ICTY; see Security Council resolution 1503 (2003), S/RES/1503 (2003), preamble, para. 11.

<sup>1534</sup> *Kupreškić*, Trial Judgment, para. 541; this is a practice in terms of para. 1 of conclusion 13 of ILC, Draft Conclusions on Identification of Customary International Law, Report of the International Law Commission, 70th Session (30 April–1 June and 2 July–10 August 2018), A/73/10, Supplement No. 10, paras. 65–66. The UN General Assembly has taken note of the draft articles by resolution 73/265 (22 December 2018), A/RES/73/265, para. 2(b).

<sup>1535</sup> Oberster Gerichtshof für die Britische Zone in Strafsachen (OGH StS), *Weller Case*, Judgment of 10 October 1949, in: *Entscheidungen des Obersten Gerichtshofes für die Britische Zone in Strafsachen*, Vol. 2 1949/50 (OGH StS 2), de Gruyter, Berlin & Hamburg 1950, 149–153, p. 151. For a summary of the case before the German Supreme Court in the British Zone of Occupation in English, see Antonio Cassese, *Cassese’s International Criminal Law*, 3rd edition Oxford University Press, Oxford 2013, p. 100, note 41.

imprisonment; torture; persecution on racial, religious, or political grounds) and this context.<sup>1536</sup>

## 1. Victimized community (“civilian population”)

943. Similar to international human rights law, which encompasses violations perpetrated by a State against members of its own population, the criminalization of a transgression of the international prohibition of crimes against humanity against “a civilian population” (especially against members of its own population) focuses on the individual as the active subject of such violations.<sup>1537</sup> Both branches of international law are conditioned by the context of a disparity of power; in the case of crimes against humanity, between a collectivity endowed –in the territory and during the time the events take place– with power equivalent to the territorial control of the organization of a State<sup>1538</sup> and an affected collectivity (“civilian population”) by the former.<sup>1539</sup>

944. The concept of a “civilian population” occurs when persons are targeted not based on their individual characteristics but because they share attributes with a victimized collectivity.<sup>1540</sup> This condition must be interpreted broadly and may, in particular, include those persons who identify as part of the victimized collectivity due to their affiliations or sympathies with it.<sup>1541</sup>

945. International jurisprudence has considered the following characteristics to identify a civilian population: “civilians who oppose or were perceived to oppose the ruling party,”<sup>1542</sup> including “demonstrators against” the President’s “third term in office and suspected demonstrators, members of the opposition political parties, members of the civil society, journalists,” writers,<sup>1543</sup> among others,<sup>1544</sup> or simply “enemies of the regime,”<sup>1545</sup>

<sup>1536</sup> See BT-Dr. 14/8524 (13 March 2002), § 7 para. 1 (Spanish translation by Alicia Gil, available at: [https://www.department-ambos.uni-goettingen.de/data/documents/Forschung/Projekte/Translations/VStGB/VStGB\\_span.pdf](https://www.department-ambos.uni-goettingen.de/data/documents/Forschung/Projekte/Translations/VStGB/VStGB_span.pdf); English by Brian Duffet, available at: [https://www.department-ambos.uni-goettingen.de/data/documents/Forschung/Projekte/Translations/VStGB/VStGB\\_engl.pdf](https://www.department-ambos.uni-goettingen.de/data/documents/Forschung/Projekte/Translations/VStGB/VStGB_engl.pdf)).

<sup>1537</sup> William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, 2nd edition Oxford University Press, Oxford 2016, pp. 148 et seq.

<sup>1538</sup> See *Tadić*, Trial Judgment, paras. 654 et seq.

<sup>1539</sup> *Ibid.*, para. 644. See also *Duch*, Trial Judgment, para. 302.

<sup>1540</sup> *Ibid.* See, for the use of the term “any civilian population” in the definition of crimes against humanity, ICTY Statute, art. 5; Statute of the International Tribunal for Rwanda, S/RES/955 (1994), Annex, art. 3 (ICTR Statute); Regulation No. 2000/11 on the Organization of Courts in East Timor, UNTAET/REG/2000/11, Official Gazette of East Timor, UNTAET/GAZ/2000/Add.1, section 10.3, Regulation No. 2000/15 on the Establishment of Groups With Exclusive Jurisdiction Over Serious Criminal Offences, UNTAET/REG/2000/15, Official Gazette of East Timor UNTAET/GAZ/2000/Add. 3, section 5 (Statute of the UNTAET Chambers); Statute of the Special Court for Sierra Leone, 2178 UNTS 145, article 2 (SCSL Statute); Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian law of Crimes Committed During the Period of Democratic Kampuchea, 2329 UNTS 117, art. 9, in connection with the Law on the Establishment of the Extraordinary Chambers, Reach Kram No. NS/RKM/0801/12, art. 5 (ECCC Statute). See also, Rome Statute, art. 7; Agreement between the Government of Senegal and the African Union on the Establishment of Extraordinary African Chambers within the Senegalese Judicial System, at 52 ILM 1028, art. 6 (Statute of the Extraordinary African Chambers in the Senegalese Judicial System, SJS). See also A/74/10, draft article 2.

<sup>1541</sup> ICTY, *Prosecutor v. Miroslav Kvočka, et al.*, Case No. IT-98-30/1-T, Judgment, 2 November 2001 (*Kvočka*, Trial Judgment), para. 195; ICTY, *Prosecutor v. Naletilić, alias “Tuta” & Martinović, alias “Štela”*, Judgment, Case No. IT-98-34-T, 31 March 2003 (*Tuta & Štela*, Trial Judgment), para. 636.

<sup>1542</sup> ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Registration No. ICC-01/17-9-Red, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X-9-US-Exp, 25 October 2017, 9 November 2017 (*Burundi*, Decision on Investigation), para. 40.

<sup>1543</sup> *Ibid.* See also ICC, Pre-Trial Chamber I, Situation in the Libyan Arab Jamahiriya, Case No. ICC-01/11-01/11-1, Decision on the “Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi”, 27 June 2011 (*Libyan Arab Jamahiriya*, Decision on Article 58 Application), paras. 42–65.

including “all individuals not supportive of the regime”.<sup>1546</sup> This approach is in line with the regional jurisprudence of the Inter-American System.<sup>1547</sup> In quantitative terms, given that the concept of “civilian population” refers to the subject of victimization and not to the number of victims *per se*, it is sufficient that a significant number of individuals are victimized to be considered a victimized collectivity, which excludes cases involving a few randomly selected people.<sup>1548</sup>

946. The attack was conceived by President Daniel Ortega, Vice President Rosario Murillo, and various government agencies, and directed against a heterogeneous group of people of differing ages belonging to various social and professional classifications in Nicaragua. This group evolved and expanded over time. The common denominator of the victimized group was that its members were, or were perceived as, critics or opponents of the Government.

947. In the first stage, the attack was directed at protesters and, in particular, at those who had assumed a leadership role in the protests. Over time, the attack encompassed a wider range of critical voices, including, but not limited to, human rights defenders, students, feminists, members of social organizations, journalists and other independent media workers, and members of political parties and of the Catholic Church. These critical voices represented the most important political opposition leaders in Nicaragua and others with prominence in civil society. All of these individuals were perceived by the Ortega-Murillo administration as a threat to its control of the State. In February 2023, the Government declared more than 300 of these individuals “traitors to the homeland,” deported 222 of them, and stripped them of their nationality.

948. During the 2018 protests, the Ortega-Murillo Government strategically developed a discriminatory policy by declaring the “enemy” and deeming the people whom they perceived as opponents to be responsible for the acts of violence. These persons were publicly identified by President Daniel Ortega, Vice President Rosario Murillo, and Government officials as groups of armed “terrorists” and “criminals,” operating in a coordinated manner or responding to a pre-existing plan of a deliberate “*coup attempt*” against the Government. The Government justified the attack against the civilian population based on these allegations.

949. The GHREN analysed information in the context of some demonstrations and roadblocks that occurred from 18 April 2018 onwards, which indicated the presence of people who committed violent acts in response to the repression by the National Police and pro-government armed groups. The violent acts included the throwing of stones, homemade mortars and, in some cases, firearms. The GHREN is also aware of the deaths of 22 members of the National Police in the context of the demonstrations.

950. Based on the information available and analysed, the GHREN has not found any factual or legal justification that would jeopardize the targeted civilian population’s status

<sup>1544</sup> See international jurisprudence that includes persons who, while not sharing religious or ethnic characteristics with a victimized population, are considered victims of crimes against humanity as they are targeted because of their political opposition and/or because they are perceived as opposition to the attacking collectivity, in *Kvočka*, Trial Judgment, para. 195; ICTY, *Tuta & Štela*, Trial Judgment, para. 636.

<sup>1545</sup> *Duch*, Judgment, para. 322.

<sup>1546</sup> *Ibid.*, para. 388.

<sup>1547</sup> *Almonacid-Arellano, et al. v. Chile*, Judgment, paras. 82(4)–82(6).

<sup>1548</sup> ICTY, *Prosecutor v. Dragoljub Kunarac, et al.*, Case No. IT-96-23 & IT-23/1-A, Judgment, 12 June 2002 (*Kunarac*, Appeal Judgment), para. 90; ICTY, *Tuta & Štela*, Trial Judgment, para. 235; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgment, 29 July 2004 (*Blaškić*, Appeal Judgment), para. 105; *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Judgment, 12 June 2007, para. 49; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgment Issued on 24 March 2016, 24 March 2016 (*Karadžić*, Trial Judgment), para. 475; ICTR, *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Judgment, 7 June 2001 (*Bagilishema*, Trial Judgment), para. 80; SCSL, *Prosecutor v. Hassan Sesay, et al.*, Case No. SCSL-04-15-A, Judgment, 26 October 2009, para. 719; *Duch*, Judgment, para. 303. See also Federal Court of Justice of Germany, BGH, 20 December 2018 - 3 StR 236/17, NJW 2019, 1818, 1826, No. 164.

as a protected group or provide a legal basis for the attack against part of the civilian population in Nicaragua. The GHREN concludes, with reasonable grounds to believe, that the presence of some armed individuals among the civilian population during acts of protest, including demonstrations, roadblocks and barricades, does not negate the predominantly civilian status of the group under attack. Nor does it justify the Government's attack, violations, abuses, and crimes committed against part of the civilian population.

951. The members of the civilian population of Nicaragua are protected subjects under both international law and Nicaraguan domestic law. The GHREN considers that, despite the Government's qualification of these individuals as enemies, they belong to the civilian population; consequently, the crimes and human rights violations and abuses identified by the GHREN, which were directed against these persons, are absolutely prohibited.

## 2. "Attack"

952. This type of victimization corresponds to the concept of an "attack"<sup>1549</sup> that is distinct and independent from the concept of an "armed conflict,"<sup>1550</sup> since the international criminalization of crimes against humanity under customary international law also encompasses violations outside of an armed conflict.<sup>1551</sup> The term "attack" has been interpreted in international jurisprudence to mean a course of conduct involving the commission of multiple acts of violence,<sup>1552</sup> requiring an element of organizational

<sup>1549</sup> Just as in the definition of the IRMCT Statute, the word "attack" does not appear literally in the definition of crimes against humanity in the ICTY Statute (different from the case of the other Statutes referred to above), *Tadić*, Trial Judgment, para. 645 has interpreted art. 5 of its Statute in this sense.

<sup>1550</sup> *Tadić*, Appeal Judgment, para. 251; ICTY, *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgment, 15 March 2002, para. 54 (*Krnojelac*, Trial Judgment); *Prosecutor v. Mitar Vasiljević*, *Mitar Vasiljević*, Case No. IT-98-32-T, Judgment, 29 November 2002 (*Vasiljević*, Trial Judgment), para. 30; *Prosecutor v. Fatmir Limaj, et al.*, Case No. IT-03-66-T, Judgment, 30 November 2005 (*Limaj*, Trial Judgment), para. 182; ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment, 2 September 1998 (*Akayesu*, Trial Judgment) para. 565; *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgment, 15 May 2003 (*Semanza*, Trial Judgment), para. 443; SCSL, *Prosecutor v. Alex Tamba Brima, et al.*, Case No. SCSL-04-16-T, Judgment, 20 June 2007 (*Brima*, Trial Judgment), para. 214; SCSL, *Taylor*, Trial Judgment, para. 506; ECCC, *Duch*, Trial Judgment, para. 178; *Prosecutor v. Nuon Chea and Khieu Samphan*, Case No. 002/19-09-2007/ECCC/TC, Judgment, 7 August 2014 (*Nuon & Khieu*, Trial Judgment), para. 178; SJS, Jury Chamber ("Chambre d'Assises"), *Ministère Public v. Hisssein Habré*, Jugement, 30 May 2016 (*Habré*, Judgment), available online <<http://www.legal-tools.org/doc/98c00a/>>, para. 1357. For the sake of completeness, it should be mentioned, moreover, that even in the case of an attack in the context of an armed conflict (which is not the case in the Nicaraguan context, at the time under investigation), the concept of "attack" is not identical to that of "armed conflict", according to *Tadić*, Appeal Judgment, para. 251; ICTY, *Krnojelac*, Trial Judgment, para. 54; *Kunarac*, Appeal Judgment, para. 85; *Vasiljević*, Trial Judgment, para. 30; *Karadžić*, Trial Judgment 1548, para. 473.

<sup>1551</sup> See *Tadić*, Interlocutory Appeal, paras. 140–141; *Duch*, Judgment para. 292. See also European Court of Human Rights (ECtHR), *Korbely v. Hungary*, Judgment, para. 82.

<sup>1552</sup> *Krnojelac*, Trial Judgment, para. 4; *Kunarac*, Appeal Judgment, para. 89; *Vasiljević*, Trial Judgment, para. 29; *Tuta & Štela*, Trial Judgment, para. 233; *Prosecutor v. Radoslav Brđanin*, case no. IT-99-36-T, Judgment, 1 September 2004 (*Brđanin Trial Judgment*), para. 131; *Prosecutor v. Vidoje Blagojević & Dragan Jokić*, Case No. IT-02-60-T, Judgment, 17 January 2005 (*Blagojević & Jokić*, Trial Judgment), para. 543; *Limaj*, Trial Judgment, para. 182; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Judgment, 6 September 2011, para. 82; ICTR, *Prosecutor v. Ferdinand Nahimana, et al.*, Case No. ICTR-99-52-A, Judgment, 28 November 2007 (*Nahimana*, Appeal Judgment), para. 918; *Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Judgment and Sentence, 25 February 2010, para. 476; *Prosecutor v. Yussuf Muniyakazi*, Case No. ICTR-97-36A-T, Judgment and Sentence, 5 July 2010, para. 503; *Prosecutor v. Théoneste Bagosora, et al.*, Case No. ICTR-98-41-T, Judgment and Sentence, 18 December 2008, para. 2165; UNTAET Chambers, *Prosecutor v. Joni Marques, et al.*, Case No. 09/2000, Judgment, 11 December 2001 (*Marques*, Judgment), para. 636; SCSL, *Prosecutor v. Moinina Fofana and Allieu Kondewa*, Case No. SCSL-04-14-T, Judgment, 2 August 2007 (*Fofana & Kondewa*, Judgment), para. 111; *Prosecutor v. Alex Tamba Brima, et al.*, Case No.

cohesion and support between the different conducts.<sup>1553</sup> It is not the mere accumulation of unconnected, random or isolated acts, but rather requires a collective criminal effort ultimately directed against a civilian population as a principal and common target.<sup>1554</sup> Isolated acts may constitute serious violations of international human rights law, but they do not constitute crimes against humanity.

953. The existence of a State plan or policy is not an element of crimes against humanity under customary international criminal law.<sup>1555</sup> However, when a State that attacks a collectivity of persons under its control is associated with an “authoritarian power structure,” as characterized by international jurisprudence,<sup>1556</sup> the acts by the State convert into crimes against humanity because they are part of the execution of a State plan or policy.<sup>1557</sup> This can also be considered as evidence of the existence of a widespread or systematic attack.<sup>1558</sup> The existence of an attack is more evident when a line of conduct is launched on the basis of a massive State action.<sup>1559</sup>

954. The element of “attack” is not limited to physical violence, but may include any mistreatment of a collectivity,<sup>1560</sup> including exerting pressure on the collectivity act in a certain way.<sup>1561</sup> In line with international jurisprudence, for the acts of the State to qualify as an “attack against a civilian population,” the type of conventional violence and/or mistreatment must reach such a scale or be of such gravity that those acts cannot correspond to a legitimate objective, but can only be understood as a line of conduct that

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SCSL-04-16-T, Decision on Motion for Judgment of Acquittal Pursuant to Rule 98, 31 March 2006, para. 42. See also *Habré*, Judgment, paras. 1356–1357; Rome Statute, art. 7(2)(a).

<sup>1553</sup> *Limaj*, Trial Judgment, paras. 212–213.

<sup>1554</sup> *Ibid.*, *Tadić*, Trial Judgment, para. 653; *Kunarac*, Appeal Judgment, paras 91-92; *Vasiljević*, Trial Judgment, para. 33; *Stakić*, Trial Judgment, para. 624.

<sup>1555</sup> *Kunarac*, Appeal Judgment, paras 98 and 101; *Limaj*, Trial Judgment, para. 184; *Blaškić*, Appeal Judgment, paras. 100 and 120; ICTY, *Prosecutor v. Dario Kordić & Mario Čerkez*, Case No. IT-95-14/2-A, Judgment, 17 December 2004 (*Kordić & Čerkez*, Appeal Judgment), para. 98; ICTR, *Prosecutor v. Silvestre Gacumbitsi*, Case No. ICTR-2001-64-A, Judgment, 7 July 2006 (*Gacumbitsi*, Trial Judgment), para. 84; *Semanza*, Trial Judgment, paras. 329-332; *Nahimana*, Appeal Judgment, para. 922; *Brima*, Trial Judgment, para. 215; *Fofana & Kondewa*, Judgment, para. 113; *Prosecutor v. Hassan Sesay, et al.*, Case No. SCSL-04-15-T, Judgment, 2 March 2009 (*Sesay*, Trial Judgment), para. 79; *Taylor*, Trial Judgment, para. 511.

<sup>1556</sup> *Ibid.*, referring to ICTY, *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, Review of indictment pursuant of the rules of procedure and evidence, Decision, 20 October 1995, para. 27.

<sup>1557</sup> *Tadić*, Trial Judgment, paras. 626–644; ICTR, *Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-3-T, Judgment, 6 December 1999 (*Rutaganda*, Trial Judgment), para. 69; *Akayesu*, Trial Judgment, para. 580; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1, Judgment, 21 May 1999 (*Kayishema & Ruzindana*, Trial Judgment), paras. 124-125, 581; *Marques*, Judgment, para. 639.

<sup>1558</sup> *Kunarac*, Appeal Judgment, paras 98 and 101; *Limaj*, Trial Judgment, para. 184; *Blaškić*, Appeal Judgment, paras 100 and 120; *Kordić & Čerkez*, Appeal Judgment, para. 98; *Semanza*, Trial Judgment, paras 329–332; *Gacumbitsi*, Trial Judgment, para. 84; *Nahimana*, Appeal Judgment, para. 922; *Brima*, Trial Judgment, para. 215; *Fofana & Kondewa*, Judgment, para. 113; *Sesay*, Trial Judgment, para. 79; *Taylor*, Trial Judgment, para. 511.

<sup>1559</sup> *Limaj*, Trial Judgment, para. 194.

<sup>1560</sup> *Nahimana*, Appeal Judgment, para. 918; *Fofana & Kondewa*, Judgment, para. 111; *Brima*, Trial Judgment, para. 214; *Duch*, Trial Judgment, para. 299; *Chea & Samphan*, Trial Judgment, para. 178; *Habré*, Judgment, para. 1357. For the sake of completeness, the concept of “attack” is not limited to the use of armed forces, according to *Kunarac*, Appeal Judgment, para. 86; *Limaj*, Trial Judgment, para. 182; *Kordić & Čerkez*, Appeal Judgment, para. 666. See also ICC, Elements of the Crimes, article 7, Introduction, para. 3, in Assembly of States Parties to the Rome Statute of the ICC, First session, New York, 3–10 September 2002, Official Records, ICC-ASP/1/3, 9 September 2002 (Elements of the Crimes), Introduction to art. 7, 112–160, p. 120.

<sup>1561</sup> *Akayesu*, Trial Judgment, para. 581; ICTR, *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgment, 27 January 2000, para. 205; *Rutaganda*, Trial Judgment, para. 69; *Semanza*, Trial Judgment, para. 205; *Brima*, Trial Judgment, para. 42.



attacks civilians for being members of a specific group. That conduct violates the fundamental rules of international human rights law that protect the civilian population.<sup>1562</sup>

955. The GHREN has reasonable grounds to believe that, in Nicaragua, as of April 2018 and up to the date of writing of this report, part of the Nicaraguan civilian population has been subjected to a widespread and systematic attack. The attack has been implemented through a discriminatory campaign, which includes the commission of human rights violations, abuses, and international crimes. The GHREN has reached this conclusion after considering, among other evidence, the means and methods employed during the attack, the profiles of the victims, the discriminatory nature of the attack, and the nature of the violations, abuses, and crimes committed during the attack.

956. The set of information collected and analysed by the GHREN demonstrates, *prima facie*, the existence of an attack orchestrated by President Daniel Ortega, Vice President Rosario Murillo, and agents and officials of various Government agencies and structures, against the Nicaraguan civilian population, through different means and methods implemented as of 18 April 2018. The attack has been executed from the highest levels of the Government in order to control the civilian population, and to suppress any type of conduct that the Government considers to be in opposition or interpreted as a *coup* or conspiracy attempt to generate a change in, or in any way challenge, the *status quo* of the ruling power.

957. The GHREN documented how, as of 18 April 2018, the Government put all measures and structures in place to implement an attack against a sector of the Nicaraguan civilian population, through a series of measures and acts, to repress any form of protest or activities considered “dissident”.

958. The attack began with violent acts committed by the National Police and pro-government armed groups to repress mass demonstrations that began in Nicaragua in April 2018. The GHREN documented armed actions directed against the civilian population in various forms, led by elements of the National Police and pro-government armed groups, who in some cases acted in a joint and coordinated manner. These armed actions resulted in extrajudicial executions of civilians who participated in the demonstrations.

959. The GHREN documented the repeated use of firearms by National Police officials and pro-government armed groups against civilian population protests since 19 April 2018. The firearms used included long-range weapons and weapons used traditionally only by armed forces during combat, including Dragunov sniper rifles. The Group also documented the presence of armed individuals positioned on rooftops of houses and buildings, whom were identified as “snipers,” indicating the intention of the Government to employ combat tactics against demonstrators.

960. Members of the National Police and pro-government groups were strategically deployed to areas where the protests were taking place, carrying communication equipment and various types of military weapons traditionally used during combat. Several members of National Police wore face masks, and members of the pro-government groups wore regular clothes with a distinctive colour that allowed them to identify each other and differentiate themselves from the civilian population during the armed operations with the National Police. Most of the operations against roadblocks and barricades took place in the early hours of the morning or during the night and, in some cases, were preceded by electricity and telephone service cuts. This hindered the protesters’ ability to react and communicate.

<sup>1562</sup> Coinciding in this way with the *ratio legis* of crimes against humanity, according to *Tadić*, Trial Judgment, para. 653, that “the reason why crimes against humanity so shock the conscience of mankind and *warrant intervention by the international community* is because they are not isolated, random acts of individuals but rather result from a deliberate attempt to target a civilian population” (emphasis in italics added). See also the conclusion of the comprehensive study of customary international criminal law on the subject, Robert Dubler & Matthew Kalyk, *Crimes against Humanity in the 21st Century, Law, Practice and Threats to International Peace and Security*, Brill Nijhoff, Leiden & Boston (2018), p. 652.

961. The characteristics of the armed operations carried out by the National Police and the pro-government armed groups manifested *prima facie* discipline in their actions, coordination, cooperation, and the necessary existence of a prior agreed plan of action. All of the characteristics indicate that the actions were carried out under instructions or effective direction or control, or with the consent or acquiescence, of actors and institutions of the Government of Nicaragua. The armed operations also signify professionalism, discipline, and training to the pro-government armed groups that participated in the operations against the protests.

962. Since the beginning of the protests in 2018, the Nicaraguan authorities instrumentalized the criminal law and the justice system to persecute real or perceived opponents of the Government, and to suppress any criticism or opposition. Thus, the justice system became a structured and organized tool to detain, accuse, and prosecute real or perceived opponents in a concerted and systematic manner. Sentences were imposed based on processes where evidence was produced *ad hoc* or under regulations created and interpreted for these purposes by the National Assembly.

963. During the first weeks of the protests, there were mass arrests of the demonstrators, followed by their release, without charges, between 24 and 48 hours after their arrests. From June 2018 onwards, the arrests of individuals extended to those who assumed leadership roles during the demonstrations. Between July 2019 and April 2021, the attacks included new detentions of real or perceived opponents, as well as re-arrests of individuals previously imprisoned for their participation in the demonstrations whom had been released following the adoption of the Amnesty Act. During this period, the GHREN identified a “revolving door” phenomenon, whereby the authorities detained and released a similar number of persons to maintain the number of persons detained.

964. Between May and November 2021, the authorities used criminal law to target individuals linked to the presidential elections, including the seven pre-candidates who had announced their willingness to participate in the elections, as well as many leaders of opposition political parties, individuals active in the organization of political movements and parties, journalists, and academics. As of August 2022, the attacks extended to other profiles of real or perceived critical voices, including religious leaders and members of the Catholic Church, relatives of real or perceived opponents, and relatives of victims of human rights violations and abuses who had claimed justice.

965. The GHREN documented that between April 2018 and the closing date of this report, the widespread use of physical and psychological torture and other cruel, inhuman, or degrading treatment or punishment of real or perceived opponents, including sexual violence and gender-based violence, in the context of arrests, interrogations, detentions in police custody, and deprivations of liberty. In addition, the GHREN documented the implementation of an “environment of torture” –e.g., exposure to a variety of situations and a combination of methods deliberately designed to inflict mental and physical pain and suffering– with respect to persons detained as of May 2021.

966. Since April 2018, the Government of Nicaragua also implemented a propaganda campaign of fake news, victimization, promotion of hate, and incitement to violence. President Daniel Ortega and Vice President Rosario Murillo used this propaganda campaign as the tool to initiate the attack against the civilian population that had initially peacefully manifested their discontent and opposition against President Ortega, Vice President Murillo, and the policies and acts of the Government. The discriminatory campaign was constructed and implemented in a methodical, disciplined, and meticulously coordinated manner, through public appearances and official media, as well as social networks and pro-government media. The GHREN concluded that it was operated and coordinated by various Government agencies and disseminated throughout the Nicaraguan territory based on nationalist discourse and intentional disinformation, and which was discriminatory against all those who expressed a position contrary to the Government.<sup>1563</sup>

<sup>1563</sup> See, Telesur TV.net, “Ortega: Las reglas las pone la Constitución, no los golpistas”, 7 July 2018, available at: <https://www.telesurtv.net/news/daniel-ortega-caminata-paz-nicaragua-discurso->

967. During the 2018 protests, the persecutory campaign created to justify the attack against the civilian population consisted of intentionally and strategically telling the Nicaraguan population and international community that the Government was suffering an attack by the opposition, with the support of the United States, to overthrow President Daniel Ortega and Vice President Rosario Murillo. According to President Ortega, these “conspirators” used the discontent of the population in April 2018 to attack the Government in a violent manner.<sup>1564</sup> The GHREN was able to identify that, as of April 2018, as the protests continued and the breadth of the demands increased to a national level, and while the Government was aware that support from social groups traditionally aligned with the Government was eroding, the Government constructed a public narrative based on the existence of a common enemy.

968. The GHREN documented that, in several cases as part of the attack on the civilian population, the authorities, including President Daniel Ortega himself, claimed that persons killed during the 2018 protests were sympathizers of the Government party and had been killed by the demonstrators. This information was later contradicted by witnesses and relatives of the victims, who explained that the people killed were not government sympathizers or members of pro-government armed groups, but were in fact demonstrators.

969. The discriminatory disinformation campaign has continued up to the date of writing this report. In October 2021, Meta, the company that owns Facebook and Instagram, announced that it had removed 1,300 fake accounts in Nicaragua, as well as 140 pages and 24 groups that were part of a “troll farm” linked to the Government and the FSLN. According to the report, the deleted accounts were part of a network aimed at implementing disinformation campaigns in favour of the Nicaraguan Government that were operated mainly by TELCOR employees working from the postal service’s headquarters in Managua; smaller groups of fake accounts were operated by other Government institutions, including the CSJ and the INSS.<sup>1565</sup>

970. In addition to the discriminatory campaign, the attack included other discriminatory and/or violent acts that occurred in the context of the massive closure of civic and public spaces. These acts included intimidations, threats, surveillance, and aggressive actions against real or perceived opponents by police agents, members of pro-government groups, and individuals associated with local structures connected to the FSLN. These acts also included the massive cancellation of the legal status of civil associations and foundations associated with the civilian population targeted in the attack; the suspension of the operations of other political parties; the removal of persons who were elected to public positions; and the closing of mass media, independent press, and radio and television stations in the country.

971. In February 2023, the situation regarding the violations of freedoms and rights of real or perceived political adversaries worsened as 316 individuals were stripped of their Nicaraguan citizenship. On 9 February, the Government of Nicaragua expelled 222 political prisoners to the United States under a “deportation” order issued by the Court of Appeals of Managua, declaring them “traitors to the homeland”. At the same time, the National Assembly implemented a constitutional reform and specific legislation to deprive persons declared “traitors to the homeland” of their nationality. On 15 February 2023, the same Court declared another 94 persons, residents in Nicaragua and abroad, “traitors to the homeland,” stripped them of their nationality, and ordered the confiscation of their assets to the State. The confiscation of assets was carried out immediately.

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20180707-0034.html; Twitter, teleSur TV broadcasting message from President Ortega, 7 July 2018, available at: <https://twitter.com/teleSURtv/status/1015740266425266176/photo/1>.

<sup>1564</sup> See, Interview by journalist Marc Perelman with President Daniel Ortega on France24 en Español, 11 September 2018 (03:58–06:14), available at: <https://www.france24.com/es/20180911-entrevista-daniel-ortega-crisis-nicaragua-trump>; El 19 Digital, “Rosario en Multinoticias” (20 Abril 2020), available at: <https://www.el19digital.com/articulos/ver/titulo:76084-rosario-en-multinoticias-edicion-especial-19-de-abril-del-2018>.

<sup>1565</sup> Meta, “Informe de Comportamiento Inauténtico Coordinado – octubre 2021”, available at: [https://about.fb.com/ltam/wp-content/uploads/sites/14/2021/11/Copia-de-CIB-October\\_2021.pdf](https://about.fb.com/ltam/wp-content/uploads/sites/14/2021/11/Copia-de-CIB-October_2021.pdf).

### 3. “Systematic or widespread”

972. When prohibited acts occur in a systematic or widespread manner, they reach a threshold that constitutes a conduct against persons based on their membership in a civilian population.<sup>1566</sup> An attack is “systematic” when the prohibited acts are organized and unlikely to be random, creating patterns of conduct that are intentionally and similarly repeated on a regular basis.<sup>1567</sup> An attack on a civilian population is “widespread” when there is a massive, frequent, large-scale occurrence of events, carried out collectively with considerable rigor and directed at multiple victims.<sup>1568</sup>

973. Although “widespread” and “systematic” are alternative elements that make up the criminal offense,<sup>1569</sup> differentiating between these criteria in practice can often be complex<sup>1570</sup> because a widespread attack directed at a large number of victims is generally based on some kind of organization.<sup>1571</sup> A widespread attack may consist of either the cumulative effect of a series of acts or the immediate effect of a single event of extraordinary magnitude.<sup>1572</sup> The quantitative criterion is not objectively definable, as evidenced by the fact that neither international texts nor international and national jurisprudence have established precise thresholds for which a crime against humanity is considered to have occurred.<sup>1573</sup>

974. The widespread and systematic nature of the attack are relative concepts that must be evaluated in relation to the population under attack,<sup>1574</sup> and taking into account that the attack may have several components.<sup>1575</sup> The assessment must be carried out on a case-by-case basis,<sup>1576</sup> with the most important factor being when the line of conduct is authorized by the power of the State.<sup>1577</sup>

<sup>1566</sup> *Tadić*, Trial Judgment, para. 644.

<sup>1567</sup> *Ibid.*, para. 648; *Kunarac*, Appeal Judgment, para. 94; *Kordić & Čerkez*, Appeal Judgment, paras 94 and 666; *Blaškić*, Appeal Judgment, para. 101; *Akayesu*, Trial Judgment, para. 580; *Nahimana*, Appeal Judgment, para. 920; *Duch*, Trial Judgment, para. 300; SCSL, *Brima*, Trial Judgment, para. 215; *Taylor*, Trial Judgment, para. 511; *Habré*, Judgment, paras. 1360 et seq.

<sup>1568</sup> *Ibid.*

<sup>1569</sup> *Tadić*, Trial Judgment, para. 646; *Tadić*, Appeal Judgment, para. 248; *Kunarac*, Appeal Judgment, paras. 93 and 97; *Akayesu*, Trial Judgment, para. 579; *Nahimana*, Appeal Judgment, para. 920, noting that the word “*et*” in the French version of the ICTR Statute was due to a translation error; *Duch*, Trial Judgment, para. 300; *Brima*, Trial Judgment, para. 215.

<sup>1570</sup> ICTY, *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, Judgment, 14 December 1999 (*Jelisić*, Trial Judgment), para. 53.

<sup>1571</sup> ICTY, *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgment, 3 March 2000 (*Blaškić*, Trial Judgment), para. 207.

<sup>1572</sup> ICTY, *Prosecutor v. Dario Kordić and Mario Čerkez*, Case no. IT-95-14/2-T, Judgment, 26 February 2001 (*Kordić & Čerkez*, Trial Judgment), para. 179; *Tadić*, Trial Judgment, para. 648; *Blaškić*, Trial Judgment, para. 206; *Bagilishema*, Trial Judgment, para. 77; *Duch*, Trial Judgment, para. 300.

<sup>1573</sup> *Blaškić*, Trial Judgment, para. 207. By way of example, Trial Chamber II of the ICC in *Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07: ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, 7 March 2014 (*Katanga*, Trial Judgment), para. 869, a number of at least 30 identified fatalities, plus 3 victims of rape/sexual slavery, were deemed sufficient to satisfy the “multiple commission” requirement, or indeed, the “widespread or systematic” requirements, in terms of Rome Statute, art. 7(1)(a) and 7(2)(a), to establish the contextual element for murder as a crime against humanity. Dubler & Kalyk (p. 616) have argued on the basis of an extensive study of customary international criminal law, that the current state of customary international law suggests that extreme violence is required, usually involving at least 100 deaths, and even then, other circumstances must be considered, such as the level of organization, the presence of the State, and the manner in which the victims have been attacked. According to Dubler & Kalyk, small attacks can reach the threshold when there is a clear policy by the State to attack the population. *Ibid.*

<sup>1574</sup> ICTY, *Prosecutor v. Dragoljub Kunarac, et al.*, Case No. IT-96-23-T & IT-23/1-T, Judgment, 22 February 2001 (*Kunarac*, Trial Judgment), para. 430; *Kunarac*, Appeal Judgment, para. 95.

<sup>1575</sup> ICTY, *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgment, 10 June 2010 (*Popović et al.*, Trial Judgment), para. 760, footnote 2780.

<sup>1576</sup> *Karadžić*, Trial Judgment, para. 477.

<sup>1577</sup> UNWCC, History of the United Nations War Crimes Commission and the Development of the Laws of War, p. 179 (“particularly if it was authoritative”); *Tadić*, Trial Judgment, para. 648.

975. Factors that may be taken into account in determining whether an attack is “widespread or systematic” include, but are not limited to:<sup>1578</sup>

- the general historical circumstances and the overall political context of the criminal acts;<sup>1579</sup>
- any identifiable patterns of crimes;<sup>1580</sup>
- the existence and repetition of patterns of violent acts;<sup>1581</sup>
- the means and methods or *modus operandi* of the attack;<sup>1582</sup>
- the repetition and multiplication of discriminatory acts directed against certain members of the population;<sup>1583</sup>
- the adoption of a wide range of discriminatory measures and laws against identifiable groups of people;<sup>1584</sup>
- the selectivity of criminality, victimizing specific categories of individuals;<sup>1585</sup>
- the identity and affiliation of the victims;<sup>1586</sup>
- the number and characteristics of incidents and number of victims;<sup>1587</sup>
- the scope of acts directed against members of the affected population;<sup>1588</sup>
- the duration and geographic scope of the attack, which may reach the entire territory of a country<sup>1589</sup> but not necessarily;
- the planned and organized nature of the attack;<sup>1590</sup>
- the operations of military, police, militias, paramilitaries or parastatal groups, coordinated and repeated temporally and geographically, leading to the same result;<sup>1591</sup>
- the identity of the perpetrators and circumstances in which the acts were committed;<sup>1592</sup>
- the objective behind the course of action;<sup>1593</sup>
- the connection between the violent events and a political agenda that underlies the events;<sup>1594</sup>

<sup>1578</sup> See, further, the analysis of the relevant factors developed in international jurisprudence by Judge Guénaél Mettraux, *International crimes, Law and practice. Volume II, Crimes against humanity*, Oxford University Press, Oxford 2020, pp. 228–232 and 277–285.

<sup>1579</sup> *Blaškić*, Trial Judgment, para. 204.

<sup>1580</sup> *Kunarac*, Appeal Judgment, para. 95.

<sup>1581</sup> *Kunarac*, Trial Judgment, paras. 429, 570 et seq.

<sup>1582</sup> *Kupreškić*, Trial Judgment, para. 761.

<sup>1583</sup> See *Kunarac*, Trial Judgment, paras. 571–573.

<sup>1584</sup> ICTY, *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgment, 27 September 2006 (*Krajišnik*, Trial Judgment), para. 708.

<sup>1585</sup> *Limaj*, Trial Judgment, para. 227.

<sup>1586</sup> ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, Registration No. ICC-01/09-19-Corr, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 108.

<sup>1587</sup> *Kunarac*, Appeal Judgment, para. 95.

<sup>1588</sup> *Kunarac*, Trial Judgment, paras. 574–575.

<sup>1589</sup> ICTR, *Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Judgment and Sentence, 20 December 2012, para. 1374.

<sup>1590</sup> *Kunarac*, Appeal Judgment, paras. 95 and 101.

<sup>1591</sup> *Blaškić*, Trial Judgment, para. 204; for an illustration beyond the military aspect, see ICC, Pre-Trial Chamber I, *Prosecutor v. Laurent Koudou Gbagbo*, Case No. ICC-02/11-01/11-656-Red, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014 (*Gbagbo*, Decision Confirming Charges) paras. 78 et seq, 223.

<sup>1592</sup> *Gbagbo*, Judgment Confirming Charges, para. 212.

<sup>1593</sup> *Kupreškić* Trial Judgment, para. 726.

- the existence of a political objective or a plan by virtue of which the attack is perpetrated, or of an ideology to destroy, persecute, or weaken a community;<sup>1595</sup>
- the existence of a plan or policy underpinning the attack,<sup>1596</sup> manifested particularly in the writings and speeches of political leaders, and in media propaganda;<sup>1597</sup>
- the presence of high-level political and/or military authorities in the definition and development of the methodical plan;<sup>1598</sup>
- the existence of a more aggressive growing political propaganda, hate speech, or calls for violence directed at the population in question;<sup>1599</sup>
- the violent repression of political dissidence;<sup>1600</sup>
- the complicity and participation of the authorities in carrying out the events;<sup>1601</sup>
- the resources mobilized in the attack,<sup>1602</sup> including the participation of a State or organization in the contribution of such resources;<sup>1603</sup> and
- the failure to bring those responsible to justice<sup>1604</sup> or to prevent or deter further crimes.<sup>1605</sup>

976. The duration of the attack is deemed to persist as long there is evidence that the attack is directed against the civilian population as a whole rather than specific members within the population, and a line of conduct with patterns that last for several years is indicative of the systematicity of the attack.<sup>1606</sup> Events that occurred prior to the start of the attack may be relevant to establish both the context in which the attack takes place and the general circumstances that led to or provided the framework for the attack.<sup>1607</sup>

977. While the targeting of civilians has taken many forms over time, the GHREN has documented in this report a *continuum* of coordinated violence starting from April 2018 until the date of writing of this report, throughout Nicaragua, with an epicentre in the city of Managua. The GHREN has directly documented that various Government actors and members of pro-government groups –either following the instructions, acting under the effective direction or control, or operating with the consent or acquiescence, of the Government of Nicaragua– committed extrajudicial executions, arbitrary detentions, torture, ill-treatment, sexual violence, and persecution on political grounds, in at least 11 of

<sup>1594</sup> Illustrative, ICTY, *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Judgment, 12 December 2007, para. 927 in fine.

<sup>1595</sup> *Blaškić*, Trial Judgment, para. 203.

<sup>1596</sup> *Kunarac*, Appeal Judgment, para. 98.

<sup>1597</sup> *Jelisić*, Trial Judgment, para. 53.

<sup>1598</sup> *Ibid.*

<sup>1599</sup> *Kunarac*, Trial Judgment, paras. 429, 572.

<sup>1600</sup> *Gbagbo*, Judgment Confirming Charges, para. 211.

<sup>1601</sup> ICTY, *Kunarac*, Trial Judgment, para. 576.

<sup>1602</sup> *Kunarac*, Trial Judgment, para. 430.

<sup>1603</sup> *Nahimana*, Appeal Judgment, paras. 921–922.

<sup>1604</sup> See *Gbagbo*, Judgment Confirming Charges, paras. 182–192, 223, 264; OGH StS, Weller Case, Judgment of 21 December 1948, OGH StS 1, 205–207, p. 207.

<sup>1605</sup> In the same vein, the Prosecution’s approach in ICC, Pre-Trial Chamber III, Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19-27, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, 14 November 2019 (“*Bangladesh/Myanmar*, Decision Pursuant to Article 15”), para. 90.

<sup>1606</sup> ICC, Pre-Trial Chamber I, *Prosecutor v. Omar Hassan Ahmad Al-Bashir*, Case No. ICC-02/05-01/09-3, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 85.

<sup>1607</sup> See SCGBH, *Prosecutor v. Mladen Blagojević*, Case No. X-KR/06/236, Judgment, 6 November 2008, p. 40, noting that “while assessing the nature of the attack on the Srebrenica enclave, the Court had in mind not only the developments in the territory of the enclave itself before the takeover of Srebrenica, but also all other developments that happened after the takeover of Srebrenica”.

the country's provinces, resulting in a large number of victims. This demonstrates, *prima facie*, the systematic and widespread nature of the attack.

978. The systematic and widespread nature of the attack has also been demonstrated through the evolution and expansion of the victims of the crimes, violations, and abuses documented by the GHREN. As of the date of this report, the victims have ranged from the 2018 protesters to the 94 people residing in Nicaragua and abroad who were declared "traitors to the homeland" and stripped of their nationality by the Government.

979. The GHREN concluded that the crimes, violations, and abuses that have been committed since April 2018 are not an isolated phenomenon, but a tool of the political agenda of the Ortega-Murillo Government, which has had the political objective of destroying and persecuting real or perceived opponents in Nicaragua. The political agenda includes the dismantling of the separation of powers, the concentration of power in the figures of the President and the Vice President of the Republic, and the confusion between the State, its institutions, and the Government party.

980. The Government made use of the entire State system to implement its attack against a sector of the Nicaraguan civilian population in an articulated and coordinated manner. Since April 2018, the Government launched a discriminatory campaign of disinformation and political propaganda, instigating the development and general dissemination of messages regarding violence in an attempt to justify the Government's criminal actions and persuade the Nicaraguan community about the urgency of an alleged foreign attack against the very existence of the State of Nicaragua.<sup>1608</sup> This alleged attack was orchestrated with the involvement of a segment of the population that participated in the protests. In this way, President Daniel Ortega, Vice President Rosario Murillo, and their Government labelled all protesters as "enemies" or "terrorists" or "coup plotters".

981. Under the pretext of an attack against the State, the Ortega-Murillo Government generated what turned out to be a sort of self-*coup d'état*, which allowed it to launch its persecutory campaign dismantle the balance of powers of a democracy, in order to centralize the Government's power in an illegitimate and criminal manner, and effectively eliminate the opposition and any kind of manifestation of the civilian population that questioned the Government's plan or narrative.

982. The continuous dissemination of disinformation and political propaganda, repeated over time and reinforced by mainstream and social media, has contributed to generate a climate of hostility towards voices critical of the Government, and facilitated the commission of other violations and abuses against them. Considering the general context of repression of any opposition or criticism, and the impunity of the attacks by the Government and the sector of the population aligned with the Government against the protesters, the GHREN considers that the described discourse incites violence.

983. Regarding the means and methods used in the attack, that is, the *modus operandi* of the attack, the GHREN recalls that during the 2018 protests, elements of the National Police and pro-government armed groups, following orders from, or in coordination with, the hierarchy of the Ortega-Murillo Government, methodically subjected the protesters to extrajudicial executions, arbitrary detentions and arrests, and acts of torture and physical abuse, including rape. Likewise, pursuant to a direct order from the Ministry of Health, medical attention to the wounded was denied in a structured manner throughout the national territory.

984. As acts of protest increased throughout Nicaragua, the Government increased its disproportionate use of force against real or perceived opponents of the Government. The Government armed and expressly and/or tacitly allowed the participation of pro-government armed groups, jointly or separately with the National Police, in the attack

<sup>1608</sup> The GHREN found no evidence of any preconceived plan, planning, or usurpation of power by the individuals and groups that participated in the 2018 mass demonstrations. See Euronews en Español, "Oscar Valero responde a vuestras preguntas sobre la entrevista a Daniel Ortega," 31 July 2018, min. 10:55; DW Español, "Entrevista exclusiva con Daniel Ortega," min. 2:30 (9 September 2018), available at: <https://www.youtube.com/watch?v=U8zxb6Lh7qs>.

directed against the civilian population. The GHREN has found that most of the members of these pro-government armed groups operated in a coordinated and articulated manner with combat tactics, which usually corresponded to the army or special police forces. These pro-government armed groups had significant resources to transport themselves to the areas of attack, and they were present in the same places as members of the National Police. The use of weapons and measures to control the civilian population were evident in these places, and the police failed to fulfil their duty to prevent or repress the unlawful conduct.

985. In all the incidents analysed, the GHREN identified the consistent use of firearms by both the National Police and pro-government armed groups in several areas of Nicaragua. The GHREN identified the use of weapons traditionally used only by armed forces during periods of combat –such as Dragunov sniper rifles– by the National Police. The use of these weapons is prohibited in these circumstances. The GHREN was also able to confirm the use of these weapons by pro-government armed groups acting in the presence of the police or with their acquiescence and in a coordinated and joint manner.

986. In addition to acts of violence against the civilian population resulting in injuries and killings, Nicaraguan authorities used arbitrary detentions as another method of attack. The GHREN documented the widespread practice of violations of judicial guarantees to target real or perceived Government opponents, including the denial of reliable information to family members about the whereabouts of detainees, excessive and arbitrary use of preventive detention, lack of equality before the courts, including lack of due process and violations of the right to an effective defence by a lawyer of the accused’s choice, trials on unfounded charges, and the imposition of long and severe prison sentences, among others.

987. The Government also used deliberately discriminatory prison conditions and practices to disrupt, punish, and deter any expression critical of the Government, including the use of torture and cruel, inhuman, or degrading treatment or punishment in detention centres throughout the country. The GHREN was able to document more precisely the existence of these practices and conditions in El Chipote, El Nuevo Chipote, La Modelo, and La Esperanza, but has information indicating that these conditions and practices were replicated in other detention centres.

988. Since July 2018, the Government also used the support of the National Assembly to develop a legal framework aimed at restricting and criminalizing the exercise of fundamental freedoms, which included the adoption of the Anti-Money Laundering Act, the Foreign Agents Act, the Cybercrimes Act, the Sovereignty Act, the Regulation of Non-Profit Organizations Act, and the Electoral Reforms Act. These Acts were adopted despite the objections and concerns raised publicly and jointly by members of the international community, including UN Rapporteurs.

989. The GHREN documented the use of these laws as justification to cancel the legal status of political parties and non-profit organizations, shut down media outlets, arbitrarily confiscate property, and persecute real or perceived opponents. In this regard, the GHREN verified the excessive bureaucratic and onerous administrative requirements that made it difficult for opposition political parties and non-profit organizations to operate. The systematic application of these persecutory methods forced representatives of many civil organizations and foundations to close their offices, cease operations and, in many cases, leave the country. Considering the criminalization of activities promoting and defending human rights in Nicaragua, had these individuals remained in the country, they would have been unable to work, segregated from participation in public life, monitored, threatened with arbitrary detention, subjected to ill-treatment, and criminally convicted.

990. Other Government institutions were also used to implement the attack. For example, TELCOR arbitrarily shut down independent media outlets and suspended the transmissions of several television channels. The GHREN received information that TELCOR’s former director sent intimidating messages to the people in charge of some of the most important media outlets in the country, forcing them to censor themselves.

991. In February 2023, the coordination between the Executive, Legislative, and Judicial Branches in the attack against the civilian population became evident when 316 individuals were arbitrarily stripped of their Nicaraguan nationality, which was carried out in a discriminatory manner and in violation of due process guarantees. Following a deportation



order issued by the Court of Appeals in Managua, 222 prisoners were deported to the United States. They had been arbitrarily detained as “traitors to the homeland” for being real or perceived opponents. Simultaneously, the National Assembly expedited the passage of a constitutional reform and special legislation to strip those declared “traitors to the homeland” of their nationality. President Daniel Ortega described the departure of these individuals as a “banishment” while the president of the National Assembly confirmed that the different institutions and powers of the State had worked in a synchronized manner under the same order to deport and deprive the persons of their nationality. A few days later, the Court of Appeals in Managua declared another 94 persons, residing in Nicaragua and abroad, “traitors to the homeland” and resolved to revoke their nationality and ordered the confiscation of their assets in favour of the State. As documented in this report, this order was issued without holding any proceedings that would allow the individuals to exercise their right to a defence.

## D. Prohibited acts

992 There is no consensus on the list of offenses –and their elements– that constitute crimes against humanity under customary international law.<sup>1609</sup> It is evident, however, that crimes against humanity include, but are not limited to: murder, deportation, imprisonment, torture and other cruel, inhuman, or degrading treatment, including acts of sexual and gender-based violence, and persecution on political grounds.<sup>1610</sup>

### 1. Murder

993. Killing or causing the death of a person in the context of a widespread and/or systematic attack directed against the civilian population constitutes the crime against humanity of murder. This crime also includes extrajudicial executions –unlawful and intentional killings performed pursuant to the orders of a Government or with its complicity or acquiescence–.<sup>1611</sup>

994. According to customary international criminal law, for an act to be considered murder as a crime against humanity, it is necessary to establish: (i) that the victim is dead; (ii) that the death was caused by an act or omission of the accused, or by a person or persons for whom the accused bears criminal responsibility; and (iii) that the act or omission of the accused, or of a person or persons for whom the accused bears criminal responsibility, was done with the intent to kill or to inflict serious bodily harm or injury, with reasonable knowledge that the act or omission was likely to cause death.<sup>1612</sup>

#### a) *Victims’ death*

995. As discussed in detail in section III.A of this report, in the absence of reliable official data, international human rights agencies and civil society organizations have developed their own records and lists of deceased persons in the context of the human rights situation that began in 2018 in Nicaragua. Based on the records of CEJIL and IACHR, it is documented that 342 to 350 individuals, respectively, died in Nicaragua from 18 April to 1 October 2018. According to CEJIL, 281 of the 342 documented deaths were linked to the social protests.

<sup>1609</sup> See A/74/10, examples in commentaries nos. 37–46 to draft article 2. Article 2 is not intended as a draft codification of an established rule of customary international law on the subject, as the ILC does not establish whether the list of offenses contained in article 2, and which largely reflects article 7 of the Rome Statute, has the necessary basis in practice and *opinio juris*.

<sup>1610</sup> See ICTY Statute, art. 5(a),(d),(e),(f),(h); ICTR Statute, art. 3(a),(d),(e),(f),(h); UNTAET Groups Statute, section 5.1(a),(d),(e),(f),(h); SCSL Statute, section 2(a),(d),(e),(f),(h); ECCC Statute, art. 5. See also, although more restricted than customary international criminal law, particularly as to the crime of persecution, Rome Statute, art. 7(1)(a),(d),(e),(f),(h); A/74/10, draft article 2(1)(a),(d),(e),(f),(h).

<sup>1611</sup> *Kayishema & Ruzindana*, Trial Judgment, para. 140.

<sup>1612</sup> *Brđanin*, Trial Judgment, para. 381.

996. The GHREN investigated 40 deaths in the context of the protests and concluded that extrajudicial executions were committed in every case. In 36 of these cases, National Police agents and members of pro-government groups acted in a joint and coordinated manner. In four cases, it was not possible to establish the direct participation of the National Police, but pro-government armed groups acted with total impunity.

997. The GHREN has reasonable grounds to believe that the victims in each of the deaths investigated in this report were members of the civilian population of Nicaragua. The victims were individuals of all ages, although overwhelmingly under the age of 35, belonged to all segments of Nicaraguan society, and were associated with the mass social protests of 2018 that took place in nearly every region of the country. Many victims were killed while participating in the protests or at roadblocks and barricades, some victims were near the protests but were not participants, and other victims were killed while trying to escape from the National Police and/or pro-government armed groups.

b) *Perpetrators' intent*

998. The GHREN has reasonable grounds to believe that the victims in each of the cases investigated were killed by the National Police and/or pro-government armed groups. The GHREN also has reasonable grounds to believe that the perpetrators directly responsible for these deaths used lethal force in an arbitrary, deliberate, and systematic manner. Their intent was to kill the victims or, at the very least, to intentionally inflict serious bodily harm or injury with reasonable knowledge that such actions could result in death.

999. To reach these conclusions, the GHREN considered the circumstances and manner in which the victims died. By analysing records from multiple sources, the GHREN discovered that between 70 and 80 percent of the deaths during the 2018 demonstrations were caused by gunshot injuries. Of the 40 killings investigated by the GHREN, 39 victims died because of injuries caused by firearms, and all of them exhibited bullet wounds in vital areas.

1000. The information gathered by the GHREN through various primary and secondary sources confirms that firearms were aimed directly at the protestors as a means of repressing the protest. When analysing the locations on the bodies of the protestors where the firearm projectiles impacted, a noticeable pattern indicates, *prima facie*, the intention to cause fatal injuries to the victims. The significant number of victims who sustained bullet impacts in vital areas signifies that the objective of the repressive acts perpetrated by members of the National Police and/or pro-government armed groups was not to detain or injure the protestors, but to deliberately cause their deaths.

1001. The GHREN's analysis of the type of weaponry used by the National Police and pro-government armed groups during the operations to repress the protests also revealed their intent to cause the deaths of the protestors. The National Police and pro-government armed groups used standard military weapons, including assault rifles, sniper rifles, and machine guns, which were intended for use against similarly-armed opponents and not during civil disturbances.

1002. The GHREN determined that personnel from different parts of the DOEP of the National Police –the TAPIR detachment, the Special Anti-Riot Brigade, and the GIR– participated in operations leading to extrajudicial executions. These units are equipped with long-range weapons and consist of specifically trained personnel, including snipers, to intervene in crisis situations and circumstances involving organized crime, terrorism, and the fight against drug trafficking.

1003. Operational participation of armed actors placed at tactical positions at a high altitude, probably including trained elements with specialized sniper skills, suggests an intent to employ combat tactics rather than crowd control techniques or police strategies designed to de-escalate violent situations. The use of these tactics and armed elements trained in engaging targets from positions of concealment or at distances exceeding the target's detection capabilities indicate an intention to cause the death of the protestors.

1004. The National Police and the pro-government armed groups operatives, acting either jointly or separately, performed operations in an orchestrated manner, following the same

*modus operandi*, including the use of prohibited weapons, and their deployment and development were characterized by the same characteristics. As the weeks went by, the operations became increasingly sophisticated, employing combat tactics usually associated with the army or special police forces. The operations required a significant degree of planning and were carried out in a coordinated manner. Most of the repressive operations took place in the evening or early morning hours, in the dark, limiting the protesters' ability to respond effectively.

1005. The GHREN has concluded, based on reasonable grounds, that the crimes documented in this report, including extrajudicial executions within the context of social protest, were committed as part of a plan orchestrated by President Daniel Ortega and members of his inner circle. This plan was devised with the aim of retaining presidential power at all costs, including the use of violence against the population, of which President Ortega was aware in real time.

1006. The presence of specialized units from the National Police throughout the territory, the magnitude of the mobilization of police forces, the continuity of police actions over time, the intervention of numerous police forces to repress the protests, and the high level of coordination with pro-government armed groups, all demonstrate decision-making, and orders given from the highest level of the police structure and the State.

1007. The GHREN has reasonable grounds to believe that the acts or omissions of the highest authorities of the Nicaraguan State in connection with the repression of social protest, including those of President Daniel Ortega, the high command of the National Police, the directors of the DOEP, the different departmental delegations of the National Police, the authorities of various municipalities and the FSLN, and the officials of the Ministry of Health, were undertaken with the intent to cause the death of the protesters or, at the very least, intentionally inflicted serious bodily harm or injury upon them, with the reasonable knowledge that the injuries could result in death.

c) *Conclusion*

1008. The GHREN has concluded with reasonable grounds to believe that, since April 2018 and as of the date of writing of this report, there has been a widespread and systematic attack directed against part of the Nicaraguan civilian population. The aforementioned extrajudicial executions are part of the widespread and systematic attack. In reaching this conclusion, the GHREN considered the circumstances underlying the executions as they correlate to the scope of the widespread and systematic attack, including the locations, the time periods, and the identities of the victims. The GHREN also considered the magnitude and systematic nature of the attack against the Nicaraguan civilian population. Therefore, the GHREN has reasonable grounds to conclude that these extrajudicial executions constitute murder as a crime against humanity.

## 2. Deportation

1009. The crime against humanity of deportation is intended to protect the right and aspiration of individuals to live in their communities and homes without external interference,<sup>1613</sup> which includes the right to not be deprived of their property and forcibly displaced to another location.<sup>1614</sup> Deportation may consist of an action or a culpable omission.<sup>1615</sup> Unlike "forcible transfer," whose status under customary international law is unclear<sup>1616</sup> and which can occur entirely within the borders of a single State, deportation, by

<sup>1613</sup> ICTY, *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgment, 17 September 2003 (*Krnojelac*, Appeal Judgment), para. 218.

<sup>1614</sup> ICTY, *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Motion for Judgment of Acquittal, 16 June 2004, para. 69.

<sup>1615</sup> See ICTY, *Prosecutor v. Jadranko Prlić, et al.*, Case No. IT-04-74-A, Judgment, 29 November 2017 (*Prlić*, Appeal Judgment), para. 2222.

<sup>1616</sup> Dubler & Kalyk, pp. 814 et seq.

definition, involves crossing a border.<sup>1617</sup> Under customary international law, for an act to qualify as deportation of the population as a crime against humanity, the following criteria must be met: (i) the forcible displacement of individuals, (ii) the individuals were lawfully present in the territory from which they are displaced, (iii) the displacement lacks a basis in international law, and (iv) the intent to forcibly displace the population.<sup>1618</sup>

a. *Displacement of individuals by force*

1010. There must be a “forcible” displacement.<sup>1619</sup> According to the Rome Statute, deportation<sup>1620</sup> must occur by “expulsion or other coercive acts” as defined by ICTY jurisprudence.<sup>1621</sup> These acts are not limited to physical force,<sup>1622</sup> but include the threat of force or coercion, detention, duress, psychological oppression, and abuse of power.<sup>1623</sup> They also include the deprivation of fundamental rights.<sup>1624</sup>

1011. Displacement must be involuntary in nature, with individuals having no genuine choice but to move.<sup>1625</sup> This constitutes an element of “overt conduct,” whereby the perpetrator may commit a variety of different acts that amount to expulsion or other forms of coercion.<sup>1626</sup>

1012. It must be proven that one or more acts performed resulted in the forceful displacement of the victim.<sup>1627</sup> The vulnerability of the victim is a significant factor to consider.<sup>1628</sup> From the victim’s perspective, the conduct must be the primary and direct cause of their displacement; it is insufficient for the actions to merely bear some relation to their displacement.<sup>1629</sup> A coercive environment alone is not enough. There must at the very least be an exploitation of that coercive environment,<sup>1630</sup> if not an individual contribution to

<sup>1617</sup> *Krstić*, Trial Judgment, para. 531; *Krnjelac*, Trial Judgment, para. 474; ICTY, *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgment, 22 March 2006 (*Stakić*, Appeal Judgment), paras. 278, 300, 302, 317; ICTY, *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgment, 14 March 2009 (*Krajišnik*, Appeal Judgment), para. 304; ICTY, *Prosecutor v. Jadranko Prlić, et al.*, Case No. IT-04-74-T, Judgment, 29 May 2013 (*Prlić*, Trial Judgment), para. 47.

<sup>1618</sup> *Blaškić*, Trial Judgment, para. 234; *Krnjelac*, Trial Judgment, para. 474; *Stakić*, Appeal Judgment, para. 278; *Krajišnik*, Appeal Judgment, paras. 304 and 726.

<sup>1619</sup> *Krnjelac*, Trial Judgment, para. 475, reconfirmed in the Appeal Judgment, *Krnjelac*, Appeal Judgment, para. 233.

<sup>1620</sup> According to the ICC’s Elements of the Crimes, the elements “deported or forcibly removed” are interchangeable with “forcibly displaced”. ICC, Elements of the Crimes, p. 121, footnote 12, Article 7(1)(d), Element No. 1.

<sup>1621</sup> Rome Statute, art. 7(2)(d). See, *Krstić*, Trial Judgment, paras. 528, 530; *Krnjelac*, Trial Judgment, para. 475; *Stakić*, Trial Judgment, para. 682; *Stakić*, Appeal Judgment, para. 279; *Brđanin* Trial Judgment, para. 543; ICTY, *Prosecutor v. Zdravko Tolimir*, Case No. T-05-88/2-T, Judgment, 12 December 2012 (*Tolimir*, Trial Judgment), para. 795; ICTY, *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgment, 22 November 2017 (*Mladić*, Trial Judgment), para. 3119.

<sup>1622</sup> *Krnjelac*, Trial Judgment, para. 475; ICTY, *Tuta & Štela*, Trial Judgment, para. 519; *Stakić*, Appeal Judgment, para. 281; *Krajišnik*, Appeal Judgment, para. 319.

<sup>1623</sup> *Stakić*, Appeal Judgment, para. 279; *Karadžić*, Trial Judgment, para. 489, *Prlić*, Trial Judgment, paras. 50–51; *Mladić*, Trial Judgment, para. 3119. This is in line with the elements of the crime against humanity of deportation or forcible transfer of population, defined in the Elements of the Crimes, p. 121, footnote 13, Article 7(1)(d), Element No. 1.

<sup>1624</sup> ICC, Pre-Trial Chamber I, Request under regulation 46(3) of the Regulations of the Court, Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”, Case No. ICC-RoC46(3)-01/18-37, 6 September 2018, para. 61.

<sup>1625</sup> *Stakić*, Appeal Judgment, para. 279; ICTY, *Krnjelac*, Appeal Judgment, para. 233.

<sup>1626</sup> ICC, Pre-Trial Chamber II, *Prosecutor v. William Samoei Ruto, et al.*, Case No. ICC-01/09-01/11-373, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 244.

<sup>1627</sup> *Ibid.*, para. 245.

<sup>1628</sup> *Blagojević & Jokić*, Trial Judgment, para. 596; *Tolimir*, Trial Judgment, para. 795.

<sup>1629</sup> See ICTY, *Prosecutor v. Ante Gotovina, et al.*, Case No. T-06-90-T, Judgment, 15 April 2011 (*Gotovina, et al.*, Trial Judgment), para. 1754.

<sup>1630</sup> *Stakić*, Appeal Judgment, para. 281; *Krajišnik*, Appeal Judgment, para. 319.

it.<sup>1631</sup> When the victim gives consent or requests their displacement, it is necessary to determine whether such consent is genuine –voluntarily given and representing the person’s free will– assessed in the light of the surrounding circumstances.<sup>1632</sup> Lack of genuine consent may be inferred from a coercive or intimidating environment.<sup>1633</sup>

1013. Regarding the extent of victims subjected to forcible displacement, there is no requirement of a minimum number of victims or that there be multiple victims.<sup>1634</sup> This reasoning is consistent with the Elements of the Crimes of deportation as a crime against humanity, which defines the forcible displacement of “one or more persons”.<sup>1635</sup>

1014. The consistency between the ICTY’s jurisprudence and the Elements of the Crimes regarding what constitutes forcible displacement stems not from establishing a minimum number of displaced individuals, but rather from the underlying principle of the international criminalization of crimes against humanity, which requires a connection between the commission of the individual prohibited act and the widespread or systematic attack against a civilian population.<sup>1636</sup>

1015. At the time of finalizing this report, the attack against the civilian population of Nicaragua gained new momentum with the expulsion of 222 members of the civilian population considered enemies of the Government of Nicaragua. The GHREN notes that in early February 2023, the Government released from prison and immediately expelled 222 individuals, including political and social leaders, students, former members of the Government who no longer had the sympathy of President Ortega and Vice President Murillo, and other members of the civilian population of Nicaragua.<sup>1637</sup>

1016. The expelled individuals were forced to sign a document claiming that they were voluntarily leaving the country. The GHREN emphasizes that international jurisprudence considers this practice to be illegal and devoid of any legal effect or validity to justify the unlawful acts committed against the victims.<sup>1638</sup> The victims’ signatures were obtained under coercion, invalidating any consent, since a refusal to sign this document meant

<sup>1631</sup> *Krstić*, Trial Judgment, para. 147; *Prosecutor v. Blagoje Simić, et al.*, Case No. IT-95-9-T, Judgment, 17 October 2003 (*Simić*, Trial Judgment), para. 126, noting acts calculated to terrorize the population and cause them to flee.

<sup>1632</sup> *Krnojelac*, Appeal Judgment, para. 233.

<sup>1633</sup> See *Stakić*, Trial Judgment, para. 707.

<sup>1634</sup> *Krajišnik*, Appeal Judgment, para. 309. See *Stakić*, Appeal Judgment, paras. 681, 685.

<sup>1635</sup> ICC, Elements of the Crimes, p. 121, Article 7(1)(d), Element No. 1. Commentators in the field have indicated that this definition responds to the need to ensure criminal liability of individuals lower in the chain of command (by perpetration) who would be carrying out the displacement of one or a few individuals. Carsten Stahn in: K. Ambos, Rome Statute of the International Criminal Court, Article-by-Article Commentary, 4th edition, Beck, et al., München, et al. (2022), art. 7 nm. 229.

<sup>1636</sup> Thus, the increase in the unjustness of forced displacement as a crime against humanity compared to a criminal unjustness that remains at the national level does not essentially result from the number of victims, but from the functional connection between the individual act of the crime against humanity of forced displacement and the overall fact of crimes against humanity (as a contextual element). Gerhard Werle & Florian Jeßberger in: MüKo-StGB VIII, 4th edition 2022, § 7 nm. 64.

<sup>1637</sup> See, Confidential, “Medardo Mairena: “Ortega quiere mantenerse en el poder sin importar cuál sea el costo,” 13 February 2023, available at: <https://www.youtube.com/watch?v=YEqGTgCsv28>; OHCHR on Twitter, 15 February 2023 (Alarming the information we are receiving about the arbitrary decision of the State to declare 94 people “traitors to the homeland” without even a trial, to strip them of their nationality and patrimony, and to declare them fugitives from justice), available at: <https://twitter.com/ACNUDH/status/1626032706134982656>; IACHR, Press Release, IACHR and OHCHR Condemn Escalating Human Rights Violations in Nicaragua, 17 February 2023, available at: <https://reliefweb.int/report/nicaragua/la-cidh-y-la-ACNUDH-condenan-la-escalada-de-violaciones-de-derechos-humanos-en-nicaragua>; Vatican News, “Francisco reza por obispo encarcelado en Nicaragua. El Pontífice oró y manifestó su cariño por Monseñor Rolando Álvarez”, condenado a 26 años de prisión, acusado de traición a la Patria, así como por los ciudadanos nicaragüenses recientemente deportados por el gobierno local a Estados Unidos, available at: <https://www.vaticannews.va/es/papa/news/2023-02/papa-francisco-reza-por-mons-rolando-alvarez-encarcelado-nicarag.html>.

<sup>1638</sup> *Karadžić*, Trial Judgment, para. 489.

enduring prolonged detention in inhuman and degrading conditions, which, in some cases, constituted torture. Those who resisted deportation faced a genuine threat of ongoing criminal persecution. This threat materialized in the case of the Bishop of Matagalpa, Monsignor Rolando Álvarez, who, upon refusing to board a plane to the United States, was immediately sentenced to 26 years in prison for treason and transferred to a prison, where he remains arbitrarily detained.<sup>1639</sup> Therefore, the victims' signatures or consent cannot serve as a defence to exempt or alleviate the individual criminal responsibility of the perpetrators or the responsibility of the State of Nicaragua for the commission of these international crimes.<sup>1640</sup>

b) *The individuals were lawfully present in the area from which they are being displaced*

1017. According to the ICTY, the term “lawfully” refers to individuals who are present in a State’s territory, as citizens or residents, in accordance with the State’s domestic law.<sup>1641</sup> Ultimately, however, according to ICC Pre-Trial Chamber III, a person’s lawful presence in a State must be assessed on the basis of international law,<sup>1642</sup> so a State cannot create legislation to make an individual’s presence illegal when it would be lawful under international law. Furthermore, Pre-Trial Chamber III of the ICC agrees with the ICTY that the lawful presence of a person should not be conflated with the concept of lawful residence.<sup>1643</sup>

1018. The individuals of the Nicaraguan civilian population who were victims of the latest persecutory attack through expulsion to the United States were protected individuals under international law and were legally present in Nicaraguan territory at the time of their expulsion.<sup>1644</sup> These victims were arbitrarily stripped of their nationality in a discriminatory manner and in violation of due process guarantees, rendering most of them stateless.<sup>1645</sup> The GHREN emphasizes that there is no legal basis for the State of Nicaragua to justify the denial of other rights, including the right to remain in one’s own country, by exploiting the statelessness resulting from an arbitrary deprivation of nationality.

1019. The expulsion of individuals from a State is not justified by the arbitrary deprivation of nationality. Article 13 of the Universal Declaration and Article 12, paragraph 4, of the ICCPR recognize the right of all persons to enter and leave their own country. One of the primary aspects of this right is the right to remain in one’s own country, which is a broader concept than nationality, because even when an individual’s nationality is withdrawn from a country, the country continues to be the individual’s “own country”.<sup>1646</sup> The individual retains a special bond with their own country, which prevents the individual from being

<sup>1639</sup> *Ibid*; see CNN en Español, “En las escaleras del avión nos dimos cuenta”, dice Miguel Mendoza sobre su destierro de Nicaragua, 11 February 2023, available at: <[https://www.youtube.com/watch?v=JrJ\\_rcKvflE](https://www.youtube.com/watch?v=JrJ_rcKvflE)>; France 24 Español, “222 prisioneros nicaragüenses fueron deportados a Estados Unidos por el Gobierno de Daniel Ortega”, 9 February 2023, available at: <<https://www.youtube.com/watch?v=A0Y5m0P85j4>>. See also, Vatican News, “Francisco reza por obispo encarcelado en Nicaragua. El Pontífice oró y manifestó su cariño por Monseñor Rolando Álvarez”. The Pontiff prayed and expressed his affection for Monsignor Rolando Alvarez, sentenced to 26 years in prison on charges of treason, as well as for Nicaraguan citizens recently deported by the local government to the United States.

<sup>1640</sup> For example, the declaration of statelessness violates international instruments and deprives the population of natural rights, generating irreparable damage for them and their generations.

<sup>1641</sup> ICTY, *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Public Judgment with Confidential Annex, 23 February 2011, para. 1616.

<sup>1642</sup> ICC, *Bangladesh/Myanmar*, Decision Pursuant to Article 15, para. 99.

<sup>1643</sup> *Popović et. al.*, Trial Judgment, para. 900; *Tolimir*, Trial Judgment, para. 797.

<sup>1644</sup> *Karadžić*, Trial Judgment, paras. 489–491.

<sup>1645</sup> Article 15 of the Universal Declaration recognizes the fundamental right of everyone to a nationality, and not to be arbitrarily deprived of it. The General Assembly in its resolution 50/152 and the Human Rights Council in its resolutions 7/10, 10/13, 13/2, 20/5 and 26/14 have reaffirmed the fundamental nature of the right to a nationality, as well as the prohibition of arbitrary deprivation of nationality. The principle of non-discrimination is a guiding principle of international human rights law and applies to the interpretation and effective exercise of the right to a nationality.

<sup>1646</sup> See CCPR/C/21/REV.1/Add.9, para. 20.

considered a foreigner. The right to remain in one's own country includes the prohibition of forced population transfers or mass expulsions to other countries, as occurred on 9 February with the expulsion of the 222 real or perceived opponents released from prison.<sup>1647</sup>

1020. The GHREN emphasizes that the derogatory terms used by the Ortega-Murillo Government and others to disparage to the victims of deportation, such as "stateless," "without a homeland," "not being Nicaraguans for a long time," "enemies," "traitors," or "terrorists," do not alter the fact that these individuals were at all times protected subjects under international law and held Nicaraguan nationality. Their Nicaraguan nationality is further evidenced by the passports issued to them by the Nicaraguan authorities during the deportation process.<sup>1648</sup>

c) *Displacement without a basis in international law*

1021. The permissibility of involuntary displacement under international law requires a case-by-case analysis of the facts in question.<sup>1649</sup> Generally, international law prohibits the deportation of a State's nationals, as well as the arbitrary or collective expulsion of foreign individuals.<sup>1650</sup> International law prohibits discrimination and, therefore, displacements that are carried out against the will of the persons involved and in a discriminatory manner can never be permissible under international law.<sup>1651</sup> Involuntary displacements will only be lawful in the most serious situations, and as a last resort.<sup>1652</sup>

1022. In addition to the limited circumstances permitted under international humanitarian law, there may be exceptional cases in peacetime where involuntary displacement may be permitted for public wellbeing.<sup>1653</sup> When a State claims national security or other seemingly legitimate grounds for involuntary displacement, it is essential to evaluate the good faith, legitimacy, and merits of the case based on the real purpose of the act, and not just the reasons asserted by the State.<sup>1654</sup>

1023. The Court of Appeals of Managua ordered the deportation and justified its resolution based on the objective of "protecting peace, national security, public order, health, public morals, rights and liberties of third parties".<sup>1655</sup> While these grounds may occasionally justify a restriction of a person's right to remain in the country under limited circumstances, the State failed to provide an explanation or proof as to how the presence of these individuals in the country poses a risk to peace, national security, public order, health, public morals, or the rights and freedoms of third parties. Consequently, this decision violates the right to remain in one's own country, as it was not reasonable or reasoned, and it failed to comply with the principles of legality, proportionality, and non-discrimination.<sup>1656</sup>

1024. International jurisprudence establishes that, in some cases and under very strict requirements, international law permits the forced displacement of a person for humanitarian reasons. This exception does not apply, however, to authorities who are

<sup>1647</sup> *Ibid.*, para. 19.

<sup>1648</sup> *Ibid.*; see also, Confidencial, "Daniel Ortega lanza su más virulento discurso de odio contra los presos políticos", 9 November 2021, available at: <https://youtu.be/wWNZgMb5g1I>. See, Voice of America, Rosario Murillo to be Nicaraguan vice-presidential candidate despite EU sanction, 3 August 2021 (00:44-01:00), available at: <[https://www.youtube.com/watch?v=t0Ut-\\_BI\\_Rk](https://www.youtube.com/watch?v=t0Ut-_BI_Rk)>

<sup>1649</sup> *Nuon & Khieu*, Trial Judgment, para. 451.

<sup>1650</sup> ICC, *Bangladesh/Myanmar*, Decision Pursuant to Article 15, para. 98.

<sup>1651</sup> ICTY, *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-A, Judgment, 27 January 2014 (*Đorđević*, Appeal Judgment), para. 734.

<sup>1652</sup> *Simić*, Trial Judgment, para. 125 (footnote omitted).

<sup>1653</sup> See Commentary No. 13 to ILC Article 18, Draft Code of Crimes against the Peace and Security of Mankind, 71st Session (6 May–26 July 1996), A/51/10, Supplement No. 10, para. 50. For cases of national legislation, see the examples of England, Canada and Australia at Dubler & Kalyk, p. 825, note 444. For the case of Germany, see Gerhard Werle & Florian Jeßberger in: MüKo-StGB VIII, 4th edition 2022, § 7 nm. 69.

<sup>1654</sup> Dubler & Kalyk, p. 825, citing the *Nuon & Khieu* case.

<sup>1655</sup> Resolution of the Court of Appeals of Managua of 8 February 2023.

<sup>1656</sup> CCPR/C/21/REv.1/Add.9, para. 21.

responsible for causing the very humanitarian situation that compels forced displacement. In the context of Nicaragua, President Daniel Ortega and members of his inner circle are responsible from the outset for creating a humanitarian situation prior to deportation through extrajudicial executions, arbitrary detentions, acts of torture, persecution on political grounds, and the constant threat of retaliation.

1025. Even if an international organization or a third-party State reaches an agreement with the Government of Nicaragua to assist in the protection and transportation of the forcibly displaced individuals to a safe location, that does not eliminate the illegal nature of the act or the exclusive responsibility of the State that caused the deportation.<sup>1657</sup> In this case, it is Nicaragua and the Government led by Ortega-Murillo that are exclusively responsible for creating this humanitarian situation and for the deportation of more than 220 Nicaraguan citizens.

d) *Perpetrators' intent*

1026. The mental element required for deportation involves the intent to forcibly displace the population by crossing a border.<sup>1658</sup> When such acts are executed with the requisite discriminatory intent, they may also be considered persecution.<sup>1659</sup>

1027. The GHREN has identified *prima facie* evidence of the existence of a deportation agreement or plan. This evidence includes public statements made in January 2022 by President Ortega, with the agreement of Vice President Murillo, authorities from different branches of the Nicaraguan Government, security forces, and the Army, in which he announced his intention to deport the Nicaraguan political opposition, who had been arbitrarily detained since 2021. The GHREN also highlights the most recent statements made by President Daniel Ortega, and agreed to by other senior representatives of his Government, regarding the February 2023 expulsions, the legislative developments related to revoking the nationality of the deportees, and the publicly announced judicial decisions, *inaudita parte*, without respecting any judicial guarantees. These statements were made during the expulsion of more than 220 Nicaraguan citizens.<sup>1660</sup>

1028. Through a presidential and public announcement, and in the presence of high-level Government officials, President Daniel Ortega not only confirmed the expulsion of more than 200 members of the civilian population who had been arbitrarily detained until their expulsion, which violated judicial guarantees, but also confirmed the coordination between State powers and the involvement of multiple institutions to facilitate the transfer and ultimate expulsion. President Ortega referred to the expelled civilian population as “terrorists” who should have been sent to the United States since 2018.<sup>1661</sup>

<sup>1657</sup> *Prlić*, Trial Judgment, paras. 52–54.

<sup>1658</sup> IRMCT, *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Judgment, 20 March 2019, para. 684.

<sup>1659</sup> *Karadžić*, Trial Judgment, paras. 515–516.

<sup>1660</sup> See, DW, “Nicaragua: Ortega celebra con marchas el destierro de Opositores, El régimen sandinista organizó marchas de apoyo tras su decisión de expulsar a Estados Unidos de 222 “presos políticos””, available at: <<https://www.dw.com/es/nicaragua-ortega-celebra-con-marchas-el-destierro-de-opositores/a-64677495>>; France 24, “222 prisioneros nicaragüenses fueron deportados a Estados Unidos por el Gobierno de Daniel Ortega”, available at: <https://www.france24.com/es/video/20230209-222-prisioneros-nicarag%C3%BCenses-fueron-deportados-a-estados-unidos-por-el-gobierno-de-daniel-ortega>. See also, BBC News World, Editorial, “Nicaragua libera a 222 opositores presos, los deporta a EE.UU. y les quita la nacionalidad”, 9 February 2023, available at: <https://www.bbc.com/mundo/noticias-america-latina-64587463>; Press Statement, by Secretary of the Department of State, Antony J, Blinken, 16 February 2023, available at: <<https://www.state.gov/nicaraguas-move-to-strip-citizenship-from-94-political-opponents/>>; Confidencial, “Despojan de nacionalidad nicaragüense a presos políticos desterrados”, available at: <<https://www.confidencial.digital/politica/asamblea-despoja-de-nacionalidad-nicaragüense-a-presos-politicos-desterrados/>>

<sup>1661</sup> See, El País, “Directo: Daniel Ortega habla de la liberación de más de 200 presos políticos en Nicaragua”, 9 February 2023, available at: <https://www.youtube.com/watch?v=fNREcDBIDFQ>. In this speech, Ortega referred to the evidence he had of the conspiracy against Nicaragua, which was



1029 Vice President Rosario Murillo sent a greeting to the family of the victims, describing the expulsion as a surprising act of generosity and magnanimity, and the correct decision to seek peace and “get rid of those demons” whose hands were stained with blood for being terrorists who tried to destroy Nicaragua.<sup>1662</sup>

1030. Gustavo Porras, the President of the National Assembly, characterized the expulsion as a successful process, coordinated by the highest authorities across the different branches of the Nicaraguan State, with the objective of expelling 222 protected subjects from the civilian population. Porras led this part of the attack against the civilian population and praised the synchronization exhibited by the different institutions and branches of the State. According to Porras, the expulsion was planned and implemented under the sole command of President Daniel Ortega.<sup>1663</sup>

1031. According to the information that the GHREN was able to access and analyse, Monsignor Rolando Álvarez was arrested on 19 August 2022, and charged with the crime of conspiracy to commit undermining of national integrity. On 8 February 2023, Monsignor Álvarez was transported to the Managua airport to be deported along with the other victims, but he refused to board the plane. President Daniel Ortega stated, “... *then we are going to talk about the Alvarez character. Well, when he is standing in line and arrives at the entrance to the plane, he starts to say that he is not leaving, that he is not leaving, that first he should [...] meet with the bishops and he demands a meeting with the bishops, an absurd thing if there is a decision of the Nicaraguan State that he as a Nicaraguan cannot question*”.<sup>1664</sup>

1032. After Monsignor Álvarez refused to board the plane, he was transferred to El Chipote. The trial against Monsignor Álvarez took place on 10 February 2023, two days after he refused to be deported from Nicaragua and 18 days before the originally scheduled trial date. Monsignor Álvarez was sentenced to 26 years and four months in prison for treason, undermining and spreading false news. According to President Ortega’s statements, Monsignor Álvarez was transferred to the prison known as La Modelo.<sup>1665</sup>

e) *Conclusion*

1033. The GHREN has reasonable grounds to believe that the perpetrators intended to expel the real or perceived opponents from Nicaragua without any legal justification, which constituted a violation of the victims’ fundamental right to remain in their own country and was an unlawful expulsion of this part of Nicaragua’s civilian population.

1034. The GHREN has concluded with reasonable grounds to believe that, since April 2018 and as of the date of writing of this report, there has been a widespread and systematic attack directed against part of the Nicaraguan civilian population. The GHREN has reasonable grounds to believe that the expulsions of real or perceived opponents of the Government are part of this widespread and systematic attack. The GHREN reached its conclusions based on the identities of the victims, the sequence and coordination of the expulsions, and the participation of different branches of Government in the deportation

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organized by the former U.S. Ambassador to Nicaragua and her European colleagues. See also Ambassador Gogu’s public denunciations regarding the crimes committed in Nicaragua, U.S. Embassy in Nicaragua, Remarks by U.S. Ambassador to Nicaragua Laura Dogu, 29 October 2018, available at: <<https://ni.usembassy.gov/es/amcham-reflexiones-de-la-embajadora-laura-dogu/>>

<sup>1662</sup> *Ibid.*

<sup>1663</sup> *Ibid.*

<sup>1664</sup> *Ibid.* (min. 40:04 to 41:05): “... *luego vamos a hablar del personaje Álvarez. Bueno cuando, cuando él está pues haciendo la fila ya llega pues a la grada del avión a la entrada ya para que pase entonces empieza a decir que él no se va que no se va que primero tendría que [...] reunirse con los obispos y exige una reunión con los obispos una cosa absurda si lo que hay es una decisión del Estado nicaragüense que no la puede cuestionar él como nicaragüense no la puede cuestionar*”.

<sup>1665</sup> *Ibid.* See also El País, “El Régimen de Ortega Condena a más de 26 años de Cárcel al Obispo Rolando Alvarez”, 10 February 2023, available at: <https://elpais.com/internacional/2023-02-10/el-regimen-de-ortega-condena-a-mas-de-26-anos-de-carcel-al-obispo-rolando-alvarez.html>.

operation. These factors correlate with the systematic and widespread nature of the attack against the Nicaraguan civilian population.

1035. Based on the available information accessible thus far, the GHREN has identified *prima facie* the following stages: (a) the transfer for expulsion of members of the civilian population who had been arbitrarily detained in various detention facilities in the country, under the custody of the authorities and officials of the National Prison Service and the National Police; (b) the transport of these members of the civilian population under the custody of the National Police in conditions of incommunicado detention to the Managua airport, which was under the effective control of the Nicaraguan Army; c) the expulsion of these members of the civilian population from the country, under real threats of physical or psychological harm if they resisted; d) the promotion of a constitutional reform on 9 February 2023, through an emergency procedure in the National Assembly, to approve the Loss of the Nicaraguan Nationality Special Act;<sup>1666</sup> e) the declaration of the deprivation of nationality on 10 February 2023, the day the Special Act was forcibly passed;<sup>1667</sup> and f) the removal of the birth certificates of these members of the civilian population from the Civil Registries.

1036. Therefore, the GHREN has reasonable grounds to believe that the documented expulsions constitute the crime of deportation as a crime against humanity.

### 3. Imprisonment

1037. International criminal law recognizes imprisonment, or other severe deprivation of physical liberty, as a crime against humanity. This involves the unlawful and/or arbitrary deprivation of an individual's liberty, without due process of law, when committed as part of a widespread or systematic attack against any civilian population.<sup>1668</sup>

1038. Under customary international criminal law, for an act of imprisonment or other severe deprivation of physical liberty to qualify as a crime against humanity, the following elements must be established: (i) the deprivation of a person's liberty; (ii) the deprivation of liberty is carried out arbitrarily, in other words, without a legal basis; and (iii) the perpetrator, or others for whom the perpetrator bears criminal responsibility, carries out the act or omission causing the person's deprivation of physical liberty with the intent to arbitrarily deprive the person of their physical liberty or with reasonable knowledge that the act or omission is likely to cause the arbitrary deprivation of physical liberty.<sup>1669</sup>

1039. According to International Criminal Tribunals jurisprudence, the deprivation of a person's liberty is deemed arbitrary, and therefore unlawful, when there is no legal basis to justify the initial deprivation of liberty. If domestic law is relied upon as a justification, the relevant provisions must not contravene international criminal law. Moreover, if a legal basis for the deprivation of liberty exists, it must remain in effect for the entire duration of the deprivation of liberty; the deprivation of a person's liberty becomes arbitrary as soon as the legal basis ceases to exist.<sup>1670</sup>

#### a) *Arbitrary deprivation of liberty*

1040. As discussed in chapter III.B of this report, the GHREN documented in depth 44 cases of arbitrary detentions and arbitrary proceedings against individuals who are, or who are perceived as, opponents. These cases are not isolated or random acts, but are part of a

<sup>1666</sup> National Assembly, "Aprueban reforma a la Constitución y ley especial que regula la pérdida de la nacionalidad nicaragüense", 9 February 2023, available at: <https://noticias.asamblea.gob.ni/aprueban-reforma-a-la-constitucion-y-ley-especial-que-regula-la-perdida-de-la-nacionalidad-nicaraguense/>.

<sup>1667</sup> Statement of the Presiding Judge of Criminal Chamber One of the Court of Appeals of Managua, regarding the loss of Nicaraguan nationality.

<sup>1668</sup> *Kordić & Čerkez*, Appeal Judgment, paras 115–116.

<sup>1669</sup> *Krnjelac*, Trial Judgment, para. 115; *Krajišnik*, Trial Judgment, para. 752; *Karadžić*, Trial Judgment, para. 519.

<sup>1670</sup> See, ICTY, *Prosecutor v. Mićo Stanišić & Stojan Župljanin*, Case No. IT-08-91-T, Judgment, 27 March 2013 (*Stanišić & Župljanin*, Trial Judgment), para. 79; *Gotovina*, Trial Judgment, para. 1816; *Krajišnik*, Trial Judgment, para. 753; *Krnjelac*, Trial Judgment, para. 114.

State policy with repetitive behaviours, an evolving strategy over time, and a coordinated involvement of multiple institutions. According to data provided to the GHREN, a total of 2,018 people were detained from April 2018 to December 2022. As of the closing date of this report, 38 people who self-identify as “political prisoners” remain in detention.

1041. The GHREN identified different stages in the widespread and systematic use of arbitrary detentions resulting from the Ortega-Murillo Government’s exploitation of criminal law and the justice system to persecute individuals from the civilian population of Nicaragua who are real or perceived opponents to its Government. Between April and June 2018, there were extensive and violent arrests amidst acts of social protest. Subsequently, from July 2018 until June 2019, the Government selectively detained individuals who assumed a leadership role or gained notoriety during the social protests. Between July 2019 and April 2021, the Government denied the existence of politically-motivated imprisonments of individuals. Arbitrary detentions against real or perceived opponents continued, however, with unfounded charges for common crimes for which they were not responsible. Between May and November 2021, there was a wave of detentions linked to the November 2021 presidential elections. As of August 2022, and up to the date of writing of this report, individuals with other profiles were detained, including religious leaders, members of the Catholic Church, relatives of real or perceived opponents, and relatives of victims of human rights violations who had sought justice.

1042. The detention operations involved members of the National Police, occasionally in collaboration with members of pro-government armed groups. The GHREN documented the arbitrary detention of real or perceived opponents to the Government in detention centres of the National Prison System, in police stations across the country’s regions, and in the DAJ. The GHREN has reasonable grounds to believe that the victims in each of the documented cases of arbitrary detention belong to various segments of the Nicaraguan civilian population, sharing a characteristic of being real or perceived opponents or critics of the Government.

1043. The GHREN considered the circumstances in which the real or perceived opponents of the Government were arrested and, in many cases, held incommunicado, as well as the lengthy periods of detention. The GHREN documented patterns that demonstrate the arbitrary nature of the detentions, which include: (i) the detention of individuals on unfounded and disproportionate criminal charges based on laws that violate human rights and/or on false evidence; (ii) the execution of detentions without presenting the detained individuals with an arrest warrant or informing them of the reasons for their detention; (iii) the delayed presentation of individuals before a judicial authority, waiting several days or even weeks after their initial detention; (iv) the failure to comply with orders in connection to *habeas corpus* writs; (v) the excessive and arbitrary use of preventive detention, imposing it in a generalized manner while disregarding the specific circumstances of each case, and the proportionality and finality of the process, without due consideration of alternative measures; (vi) the systematic violation of the due process rights of real or perceived opponents, including the lack of equality before the courts and the lack of procedural fairness; (vii) the systematic violation of the right to an effective defence; and (viii) the absence of a review process for the detentions.

1044. The arbitrary nature of the detentions was further substantiated through the mass arrests of hundreds of individuals deemed to be real or perceived opponents during the protests, the subsequent release of these individuals following the adoption of the Amnesty Act in 2019, followed by new arrests and recaptures for their participation in the 2018 protests. The GHREN documented how these individuals, prior to their recapture, were victims of intimidation, threats, and surveillance by members of the National Police and motorized civilians. Likewise, the GHREN documented the adoption or amendment of legislation to allow the justice system to weaponize criminal law as a tool of attack against real or perceived opponents.

b) Perpetrators’ intent

1045. The GHREN has concluded with reasonable grounds to believe that from April 2018 and up to the date of writing this report, the Nicaraguan authorities used arbitrary detentions as a tool to target real or perceived Government opponents. These arbitrary detentions were

not isolated or random acts, but part of a State policy that was implemented through the methodical involvement of various public institutions at multiple levels, the reiteration of behaviours, and the evolution of such criminal practices throughout the period analysed by the GHREN.

1046. The GHREN has reasonable grounds to believe that the arbitrary detentions documented in this report occurred as a result of the acts or omissions of actors belonging to various State institutions, including, principally: the National Police, the Public Prosecutor's Office and the Judiciary.

1047. The information analysed by the GHREN demonstrates the collaboration between police forces and pro-government armed groups in conducting the unlawful detention operations against real or perceived opponents. These unlawful detentions were executed without proper arrest warrants or search warrants.

1048. The Public Prosecutor's Office also played a fundamental role in this joint action, and its involvement was necessary for the processing, presentation, and validation of procedures carried out by the National Police, despite many instances where the minimum requirements of legality were not met. The majority of persons arrested were charged with serious crimes, which reflected an arbitrary and disproportionate application of criminal law. In many of the cases investigated, the actions of Public Prosecutor's Office failed to comply with the principles of legality, criminality, and *lex mitior*, requiring the retroactive application of criminal laws that are more beneficial to the accused.

1049. The Judicial Branch, particularly the judges entrusted as guarantors of the process, failed to act or comply with the principle of impartiality. To the contrary, the judges actively contributed to the denial of rights, deliberately and systematically obstructing judicial proceedings and flagrantly violating minimum procedural safeguards. The GHREN has reasonable grounds to believe that the officials who participated in each documented case of arbitrary detention acted with the intent to arbitrarily deprive the victims of their liberty.

1050. Regarding the arbitrary detentions, the GHREN has reasonable grounds to believe that the acts or omissions by the highest authorities of the Nicaraguan State, including President Daniel Ortega, the top commanders of the National Police, the directors of the DOEP, the DAJ, the various departmental delegations of the National Police, and the high-ranking officials of the Judicial Branch and the Public Prosecutor's Office, were conducted with the intent to arbitrarily detain persons who were real or perceived opponents of the Government.

c) *Conclusion*

1051. The GHREN has reasonable grounds to believe that real or perceived Government opponents were deprived of their liberty without legal basis, and that the perpetrators, or the person or persons for whom the perpetrators bear criminal responsibility, intended to arbitrarily deprive these individuals of their liberty without legal basis. The GHREN has reasonable grounds to believe that this constitutes an arbitrary detention of these individuals and a denial or violation of a fundamental right.

1052 The GHREN has concluded with reasonable grounds to believe that, from April 2018 until the date of writing of this report, there has been a widespread and systematic attack directed against part of the Nicaraguan civilian population, including the arbitrary detentions of real or perceived opponents of the Government. The GHREN reached its conclusions by considering the identity of the victims, as well as the scope and duration of the detentions, which relate to the systematic and widespread nature of the attack against the Nicaraguan civilian population. Therefore, the GHREN has reasonable grounds to believe that the documented arbitrary detentions constitute imprisonment as a crime against humanity.

#### 4. Torture and other cruel, inhuman, or degrading treatment

1053. The prohibition against torture is firmly established in customary international jurisprudence, including in criminal matters, and constitutes a norm of *jus cogens*. Torture is an internationally defined crime, even when it is committed outside a generalized or systematic context.<sup>1671</sup>

1054. The Nicaraguan Criminal Code prohibits torture and cruel, inhuman, or degrading treatment.<sup>1672</sup> The Nicaraguan Criminal Code considers torture a crime against humanity, which in turn is a crime against international order, and describes it as the act of “intentionally causing pain or serious suffering, whether physical or mental, to a person in the custody or under the control of the accused [...]”<sup>1673</sup>

1055. Torture qualifies as a crime against humanity when it is committed as part of a systematic or generalized attack against the civilian population.<sup>1674</sup> Under customary international criminal law, for an act to qualify as torture as a crime against humanity, in addition to the contextual elements, it must meet the following criteria: (i) the infliction, by act or omission, of severe physical or mental pain or suffering; (ii) the intent to commit the act or omission; and (iii) the act or omission is intended to obtain information or a confession, to punish, intimidate, or coerce the victim or a third party, or to discriminate against the victim or a third party for any reason.<sup>1675</sup>

1056. When cruel, inhuman, or degrading acts occur in the context of a systematic and/or widespread attack against the civilian population, they constitute crimes against humanity. Under customary international criminal law, the standard required to establish these crimes is the same as that required to prove a charge of “wilfully causing great suffering or serious injury to body or health,” but lower than that of torture.<sup>1676</sup> The form, severity, and duration of the violence, and the intensity and duration of the physical or mental suffering inflicted on the victim, serve as the basis for determining whether such crimes were committed.<sup>1677</sup>

##### a) *Infliction, by act or omission, of severe physical or mental pain or suffering*

1057. There is no exhaustive list of all acts or omissions that may be considered torture. Allegations of torture must be examined on a case-by-case basis to determine whether the acts that were committed and the circumstances surrounding the acts resulted in the infliction of severe physical or psychological pain. Acts inflicting physical pain may still constitute torture even when they do not cause the type of pain typically associated with serious injury.<sup>1678</sup>

1058. The International Criminal Tribunals’ jurisprudence has provided non-exhaustive examples of acts that constitute torture, including, but not limited to: sexual assaults, rape, naked exhibitions in humiliating circumstances, beatings, removal of teeth or nails, burns, electric shocks, suspension, suffocation, exposure to excessive light or noise, prolonged denial of rest or sleep, prolonged denial of food, prolonged denial of sufficient hygiene,

<sup>1671</sup> See Convention against Torture, arts. 4 and 7. See also, Report of Diane Orentlicher, Independent Expert to Update the Set of Principles to Combat Impunity – Updated Set of Principles for the Protection and Promotion of Human Rights, Through Action to Combat Impunity, E/CN.4/2005/102/Add.1, 8 February 2005, p. 6; *Čelebići*, Trial Judgment, paras. 452–459; *Furundžija*, Trial Judgment, paras. 137–146, and 153–157; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgment, 21 July 2000, para. 111.

<sup>1672</sup> Criminal Code, art. 4.

<sup>1673</sup> Criminal Code, art. 486.

<sup>1674</sup> ICTY, *Prosecutor v. Haradinaj, et al.*, Case No. IT-04-84-A, Judgment, 19 July 2010, para. 290; *Kunarac*, Appeals Judgment, para. 142 (referring to the definition of torture adopted by the Trial Chamber in *Kunarac*, Trial Judgment, para. 497).

<sup>1675</sup> *Kunarac*, Appeal Judgment, paras. 142, 144–148.

<sup>1676</sup> ICTY, *Tuta & Štela*, Trial Judgment, para. 246; *Kvočka*, Trial Judgment, para. 161.

<sup>1677</sup> *Blagojević & Jokić*, Trial Judgment, para. 586; *Krnjelac*, Trial Judgment, para. 131. See *Blaškić*, Trial Judgment, para. 243.

<sup>1678</sup> See ICTY, *Prosecutor v. Tuta & Štela*, Case No. IT-98-34-A, Appeals Judgment, 3 May 2006, para. 299; *Brđanin*, Appeals Judgment, para. 251.

prolonged denial of medical care, total isolation and solitary confinement, sensory deprivation, constant confusion about time and space, threats to torture or kill family members, total abandonment, and mock executions.<sup>1679</sup>

1059. Under customary international criminal law, the use of sexual violence against any individual is prohibited and, depending on the circumstances surrounding the sexual violence, may constitute a crime against humanity.<sup>1680</sup> In certain cases, acts of sexual violence have been prosecuted as independent crimes.<sup>1681</sup> In other cases, they have been incorporated within more general criminal charges, such as torture, cruel and inhuman treatment,<sup>1682</sup> and persecution.<sup>1683</sup>

1060. There is no universally agreed-upon definition of “sexual violence” or “rape” in international law. The International Criminal Tribunals have concluded that “sexual violence,” including rape, is any act of a sexual nature committed under coercive circumstances. Rape is regarded as a form of aggression that cannot be fully described through a purely mechanical description of body parts and objects. The International Criminal Tribunals have defined “rape” as a physical invasion of a sexual nature, committed against a person under coercive circumstances.<sup>1684</sup> The IACtHR recognizes “sexual violence” as encompassing acts of a sexual nature committed against an individual without their consent, which includes acts that involve physical intrusion into the victim’s body, but also includes acts that do not involve penetration or any physical contact.<sup>1685</sup>

1061. The International Criminal Tribunals have recognized that acts of sexual violence can constitute the crime of torture, especially when they occur in circumstances involving the detention, intimidation, degradation, humiliation and discrimination, punishment, control, or destruction of a person.<sup>1686</sup> In addition to rape, other forms of sexual violence<sup>1687</sup> can cause severe physical and mental suffering, including the sexual touching or threat of rape against female detainees<sup>1688</sup> or severe blows to the genitals of a detainee.<sup>1689</sup>

<sup>1679</sup> In this regard, the jurisprudence of the International Criminal Tribunals takes as examples, acts recognized as torture by the UN Human Rights Committee, the IACtHR, and the Special Rapporteur on Torture. See, *Kunarac*, Appeal Judgment, paras.142–148 (clarifying the *Furundžija* Case Appeal Judgment, para.111 and the *Čelebići* Case Trial Judgment, para.494); *Limaj*, Trial Judgment, paras.234–240; *Čelebići*, Trial Judgment, paras. 461–469.

<sup>1680</sup> *Kvočka*, Trial Judgment, para.327. See, *Brđanin* Trial Judgment, paras. 144–145 and 149. Likewise, rape as an act of torture can constitute a crime against humanity if the contextual elements corresponding to the same are present. In this regard see, *Furundžija*, Trial Judgment, paras. 163, 171 (convicted of nudity and humiliation in addition to acts of rape); *Tadić*, Trial Judgment (holding that acts of male sexual assault, including mutilation, fellatio, and indecent assault, constituted inhumane treatment, cruel treatment as war crimes and inhumane acts as crimes against humanity).

<sup>1681</sup> See, e.g., *Kunarac*, Trial Judgment, paras. 515–543; ICC, *Prosecutor v. Ntaganda*, Case No. ICC-01/04-02-06, Judgment, 8 July 2019, paras. 966–986; *Sesay*, Trial Judgment, paras 152–163.

<sup>1682</sup> See, e.g., *Furundžija*, Trial Judgment, paras. 163–164; *Čelebići* Trial Judgment, paras 495–496.

<sup>1683</sup> See, e.g., ICTY, *Prosecutor v. Đorđević*, Case No. IT-05-87/1-A, Judgment, 27 January 2014, paras. 886–901; *Karadžić*, Trial Judgment, paras. 511–513.

<sup>1684</sup> *Akayesu*, Trial Judgment, para. 241; *Čelebići* Trial Judgment, paras. 478–479.

<sup>1685</sup> See, *inter alia*, IACtHR., *Case of Miguel Castro Castro Castro v. Peru*, Judgment, 25 November 2006, para. 306; *Case of Espinoza Gonzales v. Peru*, Judgment, 20 November 2014; *Case of Favela Nova Brasília v. Brazil*, Judgment, 16 February 2017, para. 246.

<sup>1686</sup> *Furundžija*, Trial Judgment, paras. 176–177. See also, para. 12, *Prosecutor v. Simić*, Case No. IT-95-9/2, Sentencing Judgment, 17 October 2002 (in this case, Simić kicked four persons in their genitals and repeatedly pulled down the pants of one person whom he beat and threatened to cut off his penis. Simić acknowledged that the Prosecution would have proved that these acts inflicted severe mental or physical pain or suffering and were committed for the purpose of punishing, intimidating or humiliating the victims with discriminatory intent).

<sup>1687</sup> *Kunarac* Appeal Judgment, paras 150–151; *Čelebići* Trial Judgment, paras 495–496; *Semanza*, Trial Judgment, para 485.

<sup>1688</sup> *Kvočka* Trial Judgment, paras. 548, 559, 560–561 (recognizing that sexual touching and threats of rape against women in detention are forms of torture, due to the situation of extreme vulnerability in which the victims found themselves and the position of authority of the perpetrators).

<sup>1689</sup> *Brđanin* Trial Judgment, paras. 498, 500.

1062. The IACtHR established that “the severe suffering of the victim is inherent in rape, even when there is no evidence of physical injury or disease [...] [W]omen victims of rape also experience complex consequences of a psychological and social nature”.<sup>1690</sup>

1063. As described in Chapter III.B of this report, the GHREN concluded with reasonable grounds to believe that since April 2018, agents of the National Police and the National Prison System committed acts of torture and other cruel, inhuman, or degrading treatment or punishment against real or perceived Government opponents. In some instances, non-State actors, specifically civilians belonging to pro-government armed groups, collaborated with State actors or acted with their knowledge and/or consent. These acts of torture and inhuman, cruel, or degrading treatment or punishment remain unpunished because judicial and prosecutorial authorities have deliberately and systematically obstructed the processes of accountability.

1064. The GHREN documented the use of physical, sexual, and psychological torture during prolonged interrogations in police custody during the 2018 protests. These acts of torture served a dual purpose of punishing and humiliating individuals participating in the protests and extracting information. The GHREN documented the following acts of torture: beatings, sexual violence –rape, threat of rape, sexual torture, and forced nudity–, electric shocks –including to the genitals–, acid and cigarette burns, asphyxiation, simulated drowning (waterboarding), penetrating injuries with a sharp weapon, removal of fingernails, and stress positions. The GHREN also obtained information regarding the use of humiliation and threats, including death threats against the detainees and their families, along with gender-based insults.

1065. The GHREN found that members of the National Police and the National Prison System and, in some cases, the pro-government armed groups, committed acts of sexual violence against individuals who were arbitrarily detained. These acts of sexual violence, occurring within their custody, amounted to acts of torture in certain instances. The use of rape and other forms of sexual torture, such as the application of electric currents or the infliction of kicks or blows to the genitals, was more frequent between April and August 2018. These acts typically occurred during interrogations and police custody, while the individuals were in police stations, the DAJ, or clandestine detention centres. There were reports of cases where detainees, especially women, were subjected to multiple rapes for several days.

1066. The threat of rape was frequently used, particularly against women, during apprehensions and interrogations. The threat of rape also extended to family members of detainees. Furthermore, the GHREN documented the repeated and constant use of forced nudity in many detention facilities, both clandestine and official. Such acts occurred during searches, within cells, during interrogations, and in court settings. Some individuals were interrogated while naked, photographed in the nude, and/or forced to remain naked for several days.

1067. Throughout the period covered by this report, politically motivated detainees, particularly those held in La Modelo and La Esperanza prisons, both belonging to the National Prison System, were subjected to discriminatory treatment and cruel, inhuman, or degrading conditions of detention. Some of these detainees were also subjected to acts of torture. The GHREN documented various acts of mistreatment in these centres, including: beatings, threats, insults, prohibited communications with other detainees, prolonged isolation in punishment cells without reason, inadequate food provisions –sometimes in smaller portions than what was provided to common prisoners–, stoppage of water and electricity in the cells, and the denial of food and basic supplies brought by the detainees’ families. Medical attention was limited and rarely provided, typically only administered when the detainee’s medical situation had significantly worsened.

1068. Within La Modelo, a prolonged and indefinite isolation regime was implemented in the maximum-security section, known as La 300. Detainees were kept in dark, unsanitary cells, without ventilation or sufficient natural light. They were exposed to humidity and

<sup>1690</sup> IACtHR, *Fernández Ortega, et al. v. Mexico*, Judgment, 30 August 2010, para. 124.

extreme temperatures ranging from cold to intense heat. The punishment cells, known as “El Infiernillo,” were extremely hot and had limited water. Detainees were rarely allowed to leave their cells. In some documented cases, detainees were held for two years during which they were prohibited from leaving the cell, going to the yard, receiving visitors, or communicating with family members for weeks or months at a time.

1069. As of May 2021, most of the political opposition leaders and high-profile figures in Nicaragua were arbitrarily imprisoned in El Nuevo Chipote, a DAJ police compound established in 2019. The GHREN documented numerous illegal practices inflicted upon the victims, including: prolonged and indefinite isolation, being held incommunicado, sensory irritation, threats, insults, and the creation of an “environment of torture”. The environment of torture encompassed a combination of methods and situations deliberately designed to inflict mental and physical pain and suffering: incessant and round-the-clock interrogations, limited access to natural light, food restrictions, sleep deprivation, restrictions on visitation, denial of access to legal representation, prohibition of any recreational activities, no access to reading or writing materials, denial of televisions or radios, and refusal to allow correspondence or calls from family members. Detainees deprived of the opportunity to see their children for over a year. The GHREN concluded that in certain cases, the treatment of the detainees reached the threshold of torture due to a combination of factors, including the prolonged duration of the treatment, the presence of other stressors or vulnerabilities, and the severe psychological and physical damage it caused the victims.

1070. The GHREN received information regarding a variety of physical and psychological acts of violence inflicted upon family members of detainees. These acts included humiliating or degrading treatment during searches conducted by police and prison authorities, concealment or misrepresentation of information regarding the fate or location of detainees, refusal to provide information about the health situation of detainees, and threats of retaliation against their detained family members if they denounced the prison conditions. Some forms of sexual violence, such as unwanted touching and forced nudity during searches, occasionally accompanied by sexist insults, were also directed against family members and lawyers of the detainees.

b) *Perpetrators’ Intent (Mens Rea)*

1071. The criminal definition of torture in international criminal law is nearly identical to that of the Convention Against Torture, with minor differences. Article 1 of the Convention Against Torture requires that torture be committed “with the consent or acquiescence of a public official or other person acting in an official capacity,” and constitutes customary international law pertaining to the conduct of States since it concerns the violation of human rights. Beyond the scope of the Convention Against Torture, and in the context of international criminal law, jurisprudence does not require that the perpetrator of the torture be a public official or that the torture be committed in the presence of a public official.<sup>1691</sup>

1072. Based on the GHREN’s investigation, the main perpetrators of the acts of torture and other cruel, inhuman, or degrading treatment are National Police agents, including members of the DOEP, members of pro-government armed groups acting jointly with the Police or with their tacit approval or acquiescence, and personnel from the National Prison System. These acts occurred during apprehensions and arbitrary detentions in various locations, including police stations in different regions of the country, the DAJ facilities (El Chipote and El Nuevo Chipote), and detention centres of the National Prison System (including La Modelo and La Esperanza).

1073. In several documented cases, acts of torture were committed in police stations and especially in the DAJ, in the presence of high-ranking members of the National Police, who either encouraged or permitted these acts. Additionally, pro-government groups detained real or perceived opponents of the Government in undisclosed locations, and subjected them to torture, with the knowledge and acquiescence of the authorities. Following periods

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<sup>1691</sup> See *Brđanin* Trial Judgment, para. 482; *Brđanin*, Appeal Judgment, para. 246.



ranging from hours to days, these individuals were transferred to the police with visible signs of violence.

1074. The GHREN also documented that the officials in charge of El Nuevo Chipote allowed the creation of a climate of insecurity within the facility. Authorities arbitrarily exercised control, frequently changed the rules, imposed punishments, restricted the rights of detainees at will, and subjected detainees to constant insecurity regarding their situation.

1075. The GHREN has reasonable grounds to believe that the acts or omissions of high-ranking members of the National Police, including the leadership of the DOEP, the DAJ, and various departmental branches, as well as high-ranking officials of the National Prison System, were deliberate acts carried out with the intention of inflicting severe physical or mental pain or suffering to real or perceived opponents of the Government. The failure to investigate these acts, even though they were reported to the courts, indicates intentional acts by the Public Prosecutor's Office and the Judiciary to obstruct the prosecution of the perpetrators of these acts.

*c) Purpose of the action or omission*

1076. The GHREN documented that during the initial wave of detentions that began in April 2018, acts of torture and ill-treatment were inflicted against real or perceived opponents of the Government to punish them. However, there was also the intent to extract information about other people participating in demonstrations, roadblocks, barricades, and other expressions of protest, as well as the organization of the protests and their sources of financing.

1077. During the later stages, torture and cruel, inhuman, or degrading treatment was inflicted as punishment against real or perceived opponents or enemies of the Government. For example, students or social leaders who played prominent roles in the protests, former Government officials, and members of the FSLN suffered more serious acts of torture.

1078. The GHREN documented the severe treatment of women political leaders of UNAMOS, who were held in separate cells for the entirety of their 20-month detention, where they were forbidden from communicating with anyone and subjected to permanent semi-darkness. One of these leaders was detained in solitary confinement for more than 13 months. This treatment appears to have been intended not only to humiliate and break opposition leadership, but also to silence specific political voices with qualities associated with perceived betrayals of the FSLN: opponents, women, and feminists.

1079. The GHREN has reasonable grounds to believe that the officials involved in each of the documented cases of torture acted intentionally with the purpose of obtaining information, administering punishment, exerting intimidation or coercion, or discriminating against the victims as real or perceived Government opponents.

*d) Conclusion*

1080. The GHREN has reasonable grounds to believe that real or perceived opponents of the Government were subjected to the infliction, by act or omission, of severe physical or mental pain or suffering. The perpetrators intended to commit these acts or omissions in order to obtain information or a confession, or to punish, humiliate, intimidate, or coerce the victim. These acts and omissions constitute acts of torture, including sexual and gender-based violence, or cruel, inhuman, and degrading treatment.

1081. The GHREN has concluded with reasonable grounds to believe that from April 2018 through the date of this report, there has been a widespread and systematic attack directed against a part of the Nicaraguan civilian population. Part of the attack includes the acts of torture and other cruel, inhuman, or degrading treatment inflicted against real or perceived opponents of the Government. Therefore, the GHREN has reasonable grounds to believe that the documented acts constitute torture, or cruel, inhuman, and degrading treatment, as a crime against humanity.

## 5. Persecution

1082. Persecution as a crime against humanity is an extreme form of discrimination, which international jurisprudence characterizes as “one of the most vicious of all crimes against humanity” because it violates the principle of human equality.<sup>1692</sup> Its international criminalization is intended to protect individuals against discrimination based on their membership in ethnic, religious, and political groups.<sup>1693</sup> While the crimes of persecution and genocide share the common characteristic of targeting individuals belonging to a specific group,<sup>1694</sup> unlike genocide, persecution does not protect specific groups but rather persons in their individual capacity, even though they are targeted because of their association with a group.<sup>1695</sup>

1083. Persecution has been included in the list of prohibited acts constituting crimes against humanity in all relevant instruments of international law starting from the London Charter.<sup>1696</sup> As part of customary international law, for an act of persecution to qualify as a crime against humanity, the following elements must be established: (1) there must be a discriminatory act or omission, (2) which deprives or infringes upon a fundamental right established in international law, (3) and is carried out on racial, religious, or political grounds, (4) with the intent to deliberately discriminate.<sup>1697</sup>

### a) *De Facto Discrimination*

1084. The conduct must have actual discriminatory consequences,<sup>1698</sup> in other words, the conduct must have a discriminatory effect;<sup>1699</sup> the mere intent to discriminate is not enough.<sup>1700</sup> According to international jurisprudence, these consequences result when the perpetrator discriminates against victims based on their characteristics and traits that the perpetrator attributes to a specific group.<sup>1701</sup> In other words, the perpetrator does not target the individual, but rather the individual’s membership in a specific group.<sup>1702</sup>

1085. The group to which the victim is perceived to belong must be “sufficiently discernible,”<sup>1703</sup> meaning that the perpetrator can identify the group based on the perpetrator’s perspective. When determining the identifiability of a group, a mixed

<sup>1692</sup> *Kupreškić* Trial Judgment, para. 751.

<sup>1693</sup> ECCC, *Prosecutor v. Kaing Guek Eav alias Duch*, Case No. 001/18-07-2007-ECCC/SC, Judgment, 3 February 2012 (*Duch*, Appeal Judgment), para. 265; *Prosecutor v. Nuon Chea and Khieu Samphân*, Case No. 002/19-09-2007-ECCC/SC, Appeal Judgment, 26 November 2016 (*Nuon & Khieu*, Appeal Judgment), para. 668.

<sup>1694</sup> *Tolimir*, Trial Judgment, para. 849.

<sup>1695</sup> See *Jelisić*, Trial Judgment, para. 79, regarding the mental element of intent to destroy the group as such.

<sup>1696</sup> *Duch*, Appeal Judgment, para. 225.

<sup>1697</sup> *Tadić*, Trial Judgment, para. 715; *Kupreškić* Trial Judgment, para. 621; *Kordić & Čerkez*, Trial Judgment, para. 189; ICTY, *Krnjelac*, Appeal Judgment, para. 185; *Prosecutor v. Mitar Vasiljević*, Case no. IT-98-32-A, Judgment, 25 February 2004 (*Vasiljević*, Appeal Judgment), para. 113; *Vasiljević*, Trial Judgment, para. 131; *Kordić & Čerkez*, Appeal Judgment, para. 101; *Stakić*, Appeal Judgment, paras 327-328; *Prosecutor v. Miroslav Kvočka, et al.*, Case No. IT-98-30/1-A, Judgment, 28 February 2005 (*Kvočka*, Appeals Judgment), para. 320; *Nahimana*, Appeal Judgment, para. 985; *Prosecutor v. Théoneste Bagosora*, Case No. ICTR-98-41-T, Judgment, 18 December 2008, paras. 2208-2209; *Duch*, Trial Judgment, paras. 376-379; *Duch*, Appeal Judgment, para. 226; *Nuon & Khieu*, Trial Judgment, para. 427; *Prosecutor v. Khieu Samphân*, Case No. 002/19-09-2007/SC: F76, Appeal Judgment, 23 December 2022 (*Khieu*, Appeal Judgment), para. 868; SCGBH, *Prosecutor v. Ratko Bundalo, et al.*, Case No. X-KRŽ-07/419, Second Instance Verdict, 28 January 2011, translation available at: <<https://www.internationalcrimesdatabase.org/Case/979/Bundalo-et-al/>>, paras. 294-296.

<sup>1698</sup> *Vasiljević*, Trial Judgment, para. 245; *Stakić*, Trial Judgment, para. 733; *Duch*, Trial Judgment, para. 377; *Duch*, Appeal Judgment, para. 276; *Nuon & Khieu*, Trial Judgment, para. 428.

<sup>1699</sup> *Tadić*, Trial Judgment, para. 715.

<sup>1700</sup> *Duch*, Appeal Judgment, para. 228; *Stakić*, Trial Judgment, para. 733.

<sup>1701</sup> *Krnjelac*, Appeal Judgment, para. 185; *Duch*, Appeal Judgment, paras. 274-275.

<sup>1702</sup> *Blaškić*, Trial Judgment, para. 235.

<sup>1703</sup> *Nuon & Khieu*, Appeal Judgment, paras. 907-910; *Krnjelac*, Trial Judgment, para. 432.

approach may be adopted, considering both objective and subjective criteria.<sup>1704</sup> Both the perpetrator's perception of the group, and the victims' perception and self-identification as belonging to the same group, may be considered.<sup>1705</sup> It is not necessary that all members of the group experience the same level of discrimination.<sup>1706</sup> It is also irrelevant that the conduct affects persons outside of the group as long as it has discriminatory consequences for members of the group.<sup>1707</sup>

1086. The group may be characterized in positive or negative terms and include individuals who are affiliates, sympathizers, suspected members,<sup>1708</sup> and close relatives.<sup>1709</sup> The group may include various categories of people, such as officials and activists, people with certain opinions, convictions, and beliefs, people of a certain ethnicity or nationality, or people representing certain social strata.<sup>1710</sup>

b) *To deprive or infringe fundamental rights established in international law*

1087. According to Judge Meron, among all the prohibited acts that constitute crimes against humanity,<sup>1711</sup> the crime of persecution is the one that most encompasses human rights violations, making it a kind of “*umbrella crime*”.<sup>1712</sup> Persecution does not require that the victims be physically injured<sup>1713</sup> or that the conduct itself be “criminal”.<sup>1714</sup> International jurisprudence differentiates between two categories of violations. The first category includes conducts that already meet the elements of other prohibited acts constituting crimes against humanity.<sup>1715</sup> The second category includes conducts that do not constitute any other prohibited acts of crimes against humanity,<sup>1716</sup> but rather result in the deprivation of a broad spectrum of political, social, and economic rights.<sup>1717</sup>

1088. Not every impairment of human rights qualifies as persecution. Only serious deprivations of fundamental rights,<sup>1718</sup> amounting to a gross or flagrant denial, reach the same level of severity as the other prohibited acts constituting crimes against humanity.<sup>1719</sup> This definition aligns with the definition of persecution in the Rome Statute.<sup>1720</sup> To determine whether specific acts meet this threshold of gravity, there must be an assessment of whether the acts meet the threshold on their own or as a cumulative effect in conjunction with other acts.<sup>1721</sup> Acts should not be evaluated in isolation.<sup>1722</sup> An act that does not appear to have the level of gravity required to constitute a crime against humanity may reach the

<sup>1704</sup> ICC, *Bangladesh/Myanmar*, Decision Pursuant to Article 15, para. 102.

<sup>1705</sup> *Ibid.*, paras. 103, 109.

<sup>1706</sup> *Nuon & Khieu*, Appeal Judgment, para. 684.

<sup>1707</sup> *Marques*, Judgment, para. 771.

<sup>1708</sup> See examples in *Duch*, Appeal Judgment, para. 272 and reference in *Khieu*, Appeal Judgment, para. 914; ICTY, *Tadić*, Trial Judgment, para. 652; *Jelisić*, Trial Judgment, para. 71; *Blaškić*, Trial Judgment, para. 236; *Kvočka*, Trial Judgment, para. 195 and *Kvočka*, Appeal Judgment, para. 363.

<sup>1709</sup> *Duch*, Appeal Judgment, para. 273 and the reference in *Khieu*, Appeal Judgment, para. 915.

<sup>1710</sup> *Ibid.*, para. 272.

<sup>1711</sup> Theodor Meron, *International law in the age of human rights*, 301 LoC (2003), p. 120.

<sup>1712</sup> ICTY, *Prosecutor v. Zoran Kupreškić, et al.*, Case No. IT-95-16-A, Judgment, 23 October 2001, paras. 98, 105; *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-S, Sentencing Judgment, 28 October 2003, para. 38; *Popović*, Trial Judgment, para. 965; *Đorđević*, Appeal Judgment, para. 1756; *Stanišić & Župljanin*, Trial Judgment, para. 67.

<sup>1713</sup> *Tadić*, Trial Judgment, para. 707.

<sup>1714</sup> *Kvočka*, Trial Judgment, para. 186.

<sup>1715</sup> *Kupreškić*, Trial Judgment, paras. 593–615, 617.

<sup>1716</sup> *Tadić*, Trial Judgment, paras. 703–710.

<sup>1717</sup> *Ibid.* para. 710 specifically referring to the Nazi policy of stripping Jews of their political rights, and separating them from social, economic and cultural life through the adoption of laws; *Kupreškić Trial Judgment*, para. 615(c).

<sup>1718</sup> *Blaškić*, Appeal Judgment, paras 138 et seq; *Kupreškić*, Trial Judgment, para. 618; ICTY, *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgment, 30 January 2015, paras 761 et seq; *Prlić*, Appeal Judgment, para. 422.

<sup>1719</sup> *Kupreškić Trial Judgment*, para. 621.

<sup>1720</sup> *Karadžić*, Trial Judgment, para. 1621.

<sup>1721</sup> *Duch*, Appeal Judgment, para. 257–259.

<sup>1722</sup> *Kupreškić Trial Judgment*, para. 615(e).

requisite level if it has, or is likely to have, a similar effect as other prohibited acts due to the context in which the act is carried out.<sup>1723</sup> Accordingly, cases in international jurisprudence involving the crime of persecution generally fall within a broader pattern of prohibited acts constituting crimes against humanity.<sup>1724</sup>

1089. International jurisprudence has held that the creation of an exhaustive list of fundamental rights whose violation could constitute the crime against humanity of persecution would not serve the interests of justice because the explicit inclusion of certain fundamental rights could be interpreted as the implicit exclusion of others.<sup>1725</sup> Instead, a case-by-case analysis has been adopted. International cases have recognized certain fundamental rights, including: the right to life, liberty, and security of the person, the right not to be subjected to torture or other cruel and inhuman treatment, the right not to be arbitrarily arrested, detained or exiled,<sup>1726</sup> the right to due process,<sup>1727</sup> and the freedoms of expression, assembly, and association. The ICC jurisprudence, in addition to the aforementioned rights, recognizes the right to education<sup>1728</sup> and the right to private property.<sup>1729</sup>

1090. International jurisprudence recognizes the following acts as forms of political persecution: murder,<sup>1730</sup> imprisonment, arbitrary arrest and detention,<sup>1731</sup> enforced disappearance,<sup>1732</sup> the creation or perpetuation of inhumane living conditions, particularly during arrest or detention,<sup>1733</sup> torture and other cruel or inhumane treatment causing physical or mental harm or injury,<sup>1734</sup> sexual violence,<sup>1735</sup> hate speech,<sup>1736</sup> including cases of the approval of press guidelines for the publication of hate speech,<sup>1737</sup> deportation and confiscation of property,<sup>1738</sup> including the intentional provision of erroneous legal advice regarding the legality of deportation,<sup>1739</sup> forced exile,<sup>1740</sup> deprivation of the right to citizenship,<sup>1741</sup> confiscation<sup>1742</sup> and illegal seizure<sup>1743</sup> of private property, and utilization of

<sup>1723</sup> *Tolimir*, Trial Judgment, para. 848 (footnote omitted).

<sup>1724</sup> *Kupreškić* Trial Judgment, para. 615(d). See also, international case law matters cited throughout this section II.A. and, in particular, *Duch*, Appeal Judgment, para. 256. This makes the gravity threshold not very restrictive in practice, as Darryl Robinson, *Defining “Crimes Against Humanity” at the Rome Conference*, 93 AM. J. INT’L L. 43-57 (1999), p. 55.

<sup>1725</sup> *Kupreškić*, Trial Judgment, para. 623, referring to the principle “*expressio unius est exclusio alterius*”.

<sup>1726</sup> *Blaškić*, Trial Judgment, para. 220.

<sup>1727</sup> *Brđanin*, Trial Judgment, paras. 1044–1045. See also *United States v. Ernst von Weizsäcker, et al.*, Opinion and Judgment, April 11, 1949, in: Case No. 12, *United States v. von Weizsäcker, et al.* (“The Ministries Case”), *Trials of War Criminals Before the Nürnberg Military Tribunals Under Control Council Law no. 10*, Vol. 14, Washington DC 1952, 308–870, p. 604.

<sup>1728</sup> ICC, *Bangladesh/Myanmar*, Decision Pursuant to Article 15, para. 101.

<sup>1729</sup> ICC, *Burundi*, Decision on Investigation, para. 132.

<sup>1730</sup> *Blaškić*, Appeal Judgment, para. 143; ICTR, *Prosecutor v. Pauline Nyiramasuhuko, et al.*, Case No. ICTR-98-42-T, Judgment and Sentence, 24 June 2011, paras. 6099, 6101, 6103, 6106, 6108.

<sup>1731</sup> *Gotovina*, Trial Judgment, paras. 1814–1824.

<sup>1732</sup> *Ibid.*, paras. 1831–1839.

<sup>1733</sup> *Karadžić*, Trial Judgment, paras. 496–500, 514 and 2507–2511.

<sup>1734</sup> *Ibid.* paras. 503–504, 2485–2499.

<sup>1735</sup> See *Čelebići*, Trial Judgment; *Kvočka*, Trial Judgment.

<sup>1736</sup> *Nahimana*, Appeal Judgment, paras. 983–988; *Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgment, 2 December 2008, para. 393.

<sup>1737</sup> The Ministries Case, pp. 575–576.

<sup>1738</sup> *Kvočka*, Trial Judgment, para. 186.

<sup>1739</sup> The Ministries Case, Order and Memorandum of the Tribunal and Separate Memorandum of Presiding Judge Christianson, 12 December 1949, 950–959, pp. 958–959.

<sup>1740</sup> The Ministries Case, p. 471.

<sup>1741</sup> The Ministries Case, p. 471; *The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics v. Hermann Wilhelm Göring, et al.*, Judgment, 1 October 1946 (“The Göring Case”), in: *Trial of the Major War Criminals Before the International Military Tribunal*, Vol. I (Nuremberg 14 November 1945–1 October 1946), International Military Tribunal, Nuremberg 1947, 171–341, pp. See also UN, UN Ad Hoc Committee on Refugees and Stateless Persons, *A Study of Statelessness*, United Nations, August 1949, *Lake Success, New York*, 1 August 1949, E/1112; E/1112/Add.1, Part II, Section I, Chapter I, III, referring “to measures for the deprivation of nationality applied by the nazi and fascist

the legal system to implement a discriminatory policy.<sup>1744</sup> Political persecution has also been considered “participation in a nationwide government-organized system of cruelty and injustice, in violation of the laws of [...] humanity, and perpetrated in the name of law by the authority of the Ministry of Justice, and through the instrumentality of the courts”,<sup>1745</sup> including through an “unwarrantable extension of the concept of high treason,<sup>1746</sup> [...]contributing greatly to the ‘final solution’ of the problem”.<sup>1747</sup>

1091. The ICC has recognized several acts that qualify as persecution, including the arrest of anti-government protesters,<sup>1748</sup> the protestors’ conditional release in exchange for signing a statement agreeing not to protest against the government,<sup>1749</sup> the torture of detained anti-government protesters,<sup>1750</sup> the abduction and subsequent torture of relatives of alleged dissidents,<sup>1751</sup> the shooting of protesters resulting in injury and death,<sup>1752</sup> and the denial of medical care to injured protesters.<sup>1753</sup> Additional acts of persecution include the harassment of and threats against independent journalists, including the closure of their offices, their forced exile, and the destruction of their equipment, as well as the suspension or revocation of licenses of civil society organizations, the freezing of bank accounts belonging to their executives, and the issuance of “international arrest warrants” against journalists and leaders of civil society organizations.<sup>1754</sup>

c) *For reasons based on political grounds*

1092. Political persecution, that is, politically motivated persecution, occurs when the perpetrator discriminates against victims on the basis of their political ideology or opinions.<sup>1755</sup> Political persecution encompasses situations where victims belong to a political group or hold specific political opinions. It also includes individuals who do not share common political convictions or opinions, or even have no relevant convictions or opinions, but are simply perceived as potential opponents or obstacles to the perpetrator’s political agenda.<sup>1756</sup> This aligns with case law that recognizes the victim’s *de facto* discrimination based on the perpetrator perception of the victim’s specific group.

1093. Political persecution may be directed at groups with no common identity or agenda.<sup>1757</sup> It can occur when individuals are targeted because the perpetrator considers them to be political enemies,<sup>1758</sup> meaning they are perceived as a political threat by the perpetrator.<sup>1759</sup> It is not necessary for the victims to be organized into one political

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governments against their Jewish nationals and opponents of the regime which constituted a part of the body of the measures of racial, religious or political persecution”.

<sup>1742</sup> The Göring Case, p. 282; The Justice Case, pp. 1063–1064; *United States v. Oswald Pohl, et al.*, Opinion and Judgment, Nov. 3, 1947, in: Case No. 4, *United States v. Pohl, et al.* (“The Pohl Case”), Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law no. 10, Vol. 5, U.S. Government Print. Office, Washington DC 1950, 958–1163, p. 977–978. See also, ICTY, *Kupreškić* Trial Judgment, para. 612; *Blaškić*, Trial Judgment, para. 227; *Krajišnik*, Trial Judgment, paras. 824 and 827.

<sup>1743</sup> *Krajišnik*, Trial Judgment, paras. 771–772.

<sup>1744</sup> ICTY, *Kupreškić* Trial Judgment, para. 612, referring to The Justice Case.

<sup>1745</sup> The Justice Case, p. 985.

<sup>1746</sup> *Ibid.*, p. 1028.

<sup>1747</sup> *Ibid.*, p. 1079.

<sup>1748</sup> *Libyan Arab Jamahiriya*, Decision on Article 58 Application, paras. 43–44.

<sup>1749</sup> *Ibid.*, para. 45.

<sup>1750</sup> *Ibid.*, para. 46.

<sup>1751</sup> *Ibid.*, para. 47.

<sup>1752</sup> *Ibid.*, paras. 49–62.

<sup>1753</sup> *Ibid.*, para. 63.

<sup>1754</sup> ICC, *Burundi*, Decision on Investigation, para. 135.

<sup>1755</sup> *Akayesu*, Trial Judgment, para. 583.

<sup>1756</sup> *Nuon & Khieu*, Appeal Judgment, para. 669.

<sup>1757</sup> *Ibid.*, para. 678.

<sup>1758</sup> *Khieu*, Appeal Judgment, para. 917.

<sup>1759</sup> *Ibid.*, para. 919.

entity.<sup>1760</sup> As long as all members of the group are perceived as political enemies, the victims may belong to different categories because it is the perpetrator's designation of them as political enemies that leads to their persecution.<sup>1761</sup>

d) *Discriminatory intent*

1094. While crimes against humanity often involve discriminatory motives,<sup>1762</sup> and other prohibited acts share the same *actus reus* as that of persecution,<sup>1763</sup> only persecution requires an additional element of discriminatory intent.<sup>1764</sup> It is the specific intent to exclude an individual from society on discriminatory grounds<sup>1765</sup> and cause them harm because of their membership in a specific group that distinguishes persecution from other prohibited acts. This intent, rather than the methods employed,<sup>1766</sup> gives the conduct its unique character and gravity in the context of a widespread or systematic attack against a civilian population. This condition transforms a discriminatory act into a crime under international law,<sup>1767</sup> even in situations where the act itself may not be considered "criminal" or appear to directly infringe upon the most fundamental rights of the human being.<sup>1768</sup>

1095. The presence of discriminatory intent should not be automatically inferred from the discriminatory nature of an attack against a civilian population,<sup>1769</sup> but from the circumstances of the specific case, particularly when assessing the case as a set of acts.<sup>1770</sup> While the circumstances of a case may help determine the discriminatory act itself, those circumstances, as well as other factors, are considered in establishing the discriminatory intent underlying the commission of the discriminatory act.<sup>1771</sup>

1096. International tribunals have considered the following circumstances to infer discriminatory intent:

- the systematic nature of the acts against the group and the general attitude of the perpetrator as demonstrated by their conduct;<sup>1772</sup>
- the existence of discriminatory policies that were implemented with the perpetrator's participation;<sup>1773</sup>
- selectivity in targeting victims, particularly in the way arrests and detentions are implemented, by targeting a specific group of people using specific forms of treatment;<sup>1774</sup>
- statements made by Government officials and the media directed against members of the affected group;<sup>1775</sup>
- the existence of systematic measures and procedures that are organized and authorized by the Government targeting members of the affected group;<sup>1776</sup>

<sup>1760</sup> *Ibid.*

<sup>1761</sup> *Ibid.*, para. 917.

<sup>1762</sup> *Tadić*, Appeal Judgment, para. 297.

<sup>1763</sup> *Kupreškić*, Trial Judgment, para. 607.

<sup>1764</sup> *Tadić*, Appeal Judgment, para. 305; ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgment, 1 June 2001 (*Akayesu*, Appeal Judgment), para. 466.

<sup>1765</sup> *Kupreškić*, Trial Judgment, para. 621.

<sup>1766</sup> *Blaškić*, Trial Judgment, para. 235.

<sup>1767</sup> *Ibid.*; *Kvočka*, Trial Judgment, para. 186.

<sup>1768</sup> *Ibid.*

<sup>1769</sup> ICTY, *Kvočka*, Appeal Judgment, para. 460; *Kordić & Čerkez*, Trial Judgment, para. 715; *Tolimir*, Trial Judgment, para. 850; *Đorđević*, Appeal Judgment, paras. 876 and 886; *Karadžić*, Trial Judgment, para. 500.

<sup>1770</sup> *Krnjelac*, Appeal Judgment, para. 201–202.

<sup>1771</sup> *Ibid.*, para. 185.

<sup>1772</sup> *Ibid.*, para. 184.

<sup>1773</sup> *Duch*, Appeal Judgment, para. 240.

<sup>1774</sup> *Đorđević*, Appeal Judgment, paras. 876 and 886; *Krnjelac*, Appeal Judgment, paras. 184 and 186.

<sup>1775</sup> *Karadžić*, Trial Judgment, para. 2515.

<sup>1776</sup> The Justice Case, pp. 1080–1081.

- the rank, position, and role of the perpetrator, which establishes their relationship to the underlying acts or policies.<sup>1777</sup>

e) *Analysis*

1097. The GHREN has reasonable grounds to believe that the crimes against humanity of murder, imprisonment, torture, rape and other acts of sexual violence of comparable gravity, and deportation, all of which are documented in this report, were committed as part of a politically motivated discriminatory campaign, orchestrated from the highest levels of the Ortega-Murillo Government, against part of the civilian population of Nicaragua, and constitute, *prima facie*, the crime against humanity of persecution.

1098. The GHREN has concluded with reasonable grounds to believe that since 18 April 2018, the Government of Nicaragua has implemented a discriminatory State policy targeting a segment of the population perceived as a threat to the authority and power of the Ortega-Murillo administration in order to suppress any criticism or opposition. Over time, the Government's repressive strategies have become more sophisticated and been directed at a diverse range of the Nicaraguan civilian population who have all expressed criticism of the Government, adopted differing positions from the Government, or engaged in political or opposition activities. The number of individuals affected increased throughout this persecutory campaign.

1099. The GHREN analysed a multitude of evidence to determine the existence of the discriminated group subjected to persecutory attacks by President Daniel Ortega and senior officials of his Government. This evidence includes: (i) statements, interviews, and testimonies by the President, Vice President, and other officials of their Government identifying the persecuted group; (ii) discriminatory disinformation campaigns disseminated in official or pro-government media and social networks; (iii) the abusive and discriminatory application of new laws and amendments to existing laws; and (iv) administrative and judicial decisions made without legal basis or in violation of fundamental guarantees of due process and a fair trial.

1100. By carefully analysing this set of information, the GHREN was able to identify the targeted group. This group consists of individuals in the Nicaraguan civilian population who have been perceived to be in opposition to the Government. The Government has labelled the individuals in this group as "criminals," "enemies," "terrorists," "coup perpetrators," "traitors to the homeland," and "abortionists," among other discriminatory terms, demonstrating its discriminatory intent.<sup>1778</sup> The GHREN's determination aligns with the jurisprudence of the International Criminal Tribunals, which establishes that it is the perpetrator of persecutory crimes who defines the victim group, and the victims themselves have no influence on the designation of their status.

1101. When the perpetrator classifies an individual as a member of the targeted group, this is a "*de facto* discriminatory" designation for the victim because it cannot be refuted, even if such a classification may be incorrect from an objective point of view. In such cases,

<sup>1777</sup> SCGBH, *Prosecutor v. Krsto Savić and Milka Mučibabić*, Case No. X-KR-07/400, Verdict, 24 March 2009, para. 171, referring that it had been on the basis of (Savić's) position in the power structures of the Serb Republic of Bosnia and Herzegovina and the number and duration of crimes against humanity, (that the Chamber) concluded on the existence of discriminatory intent beyond reasonable doubt. English translation in MICT, *Augustin Ngirabatware v Prosecutor*, Case No. MICT-12-29-A, Annex B: List of Authorities (Continuous) to Dr. Ngirabatware's Brief in Reply to Prosecution Respondent's Brief filed on 13 August: Disclosure of Full Judgment of Trial Group (24 March 2009) and Full Judgment of Appellate Group (12 April 2010) in the Matter of the *Prosecutor v. Krsto Savić and Milka Mučibabić*, 6 September 2013.

<sup>1778</sup> See, e.g., Marc Perelman interview with President Daniel Ortega in France24 en Español, 11 September 2018 (03:58-06:14), available at: < <https://www.france24.com/es/20180911-entrevista-daniel-ortega-crisis-nicaragua-trump>>; El 19 Digital, "Mismo invasor, mismos vendepatrias" (6 Octubre 2019), available at: <https://www.el19digital.com/articulos/ver/titulo:95035--mismo-invasor-mismos-vendepatrias>; Policía Nacional de la República de Nicaragua, Nota de prensa No. 115 (28 September 2018), available at: <https://www.policia.gob.ni/?p=23327>.

objective discrimination occurs, as the victims are subjected to discrimination based on their identity or actions as perceived by the perpetrator of the persecutory crime.<sup>1779</sup>

1102. The GHREN identified the existence of discriminatory intent in the commission of the crimes against humanity documented in this report. These crimes against humanity are part of the criminal persecutory attack against part of the civilian population of Nicaragua.

i) Murders

1103. The GHREN has concluded with reasonable grounds to believe that from April 2018 until the date of this report, there has been a widespread and systematic attack directed against a portion of the Nicaraguan civilian population. The killings documented in this report are part of this widespread and systematic attack. The GHREN has also concluded that these killings constitute murder as a crime against humanity.

1104. Since the beginning of the social protest, President Daniel Ortega, Vice President Rosario Murillo, and members of their Government have made public statements labelling all individuals participating in demonstrations against the Government as terrorists or coup plotters. This discriminatory and hate-fuelled campaign, originating from a position of leadership, instigated a persecutory attack that resulted in the commission of murders against those who were identified as enemies of the State, “destabilizers,” “conspirators,” “terrorists,” and “traitors of the homeland” in discriminatory speeches.

1105. The GHREN recognizes that during the repression of social protests, some FSLN sympathizers and/or members of pro-government armed groups, along with at least 22 agents of the National Police, also died. However, the GHREN concluded that the majority of victims in the documented incidents of killings were individuals from the civilian population who were targeted by the persecutory attack, or family members of individuals deemed to be opponents, such as the case of the murdered minors.

1106. The GHREN also found that the National Police and pro-government armed groups used lethal force in a discriminatory manner against peaceful demonstrators and demonstrators who, while engaged in acts of violence, did not pose lethal threats.

1107. Accordingly, the GHREN has reasonable grounds to believe that the killings constitute persecution as a crime against humanity.

ii) Deportation

1108 The GHREN concluded with reasonable grounds to believe that from April 2018 and as of the date of this report, there has been a widespread and systematic attack directed against a part of the Nicaraguan civilian population, that the illegal expulsion of 222 real or perceived opponents of the Government is part of this attack, and that the perpetrators intended to expel these individuals from Nicaragua without any legal justification. The GHREN also concluded that these expulsions constitute deportation as a crime against humanity.

1109. The GHREN concluded that the deportations suffered by the civilian population in Nicaragua are part of the Ortega-Murillo Government’s criminal plan to remove any opposition to its Government and thus guarantee its permanence in power. The GHREN has documented the context of political persecution in which the deportations in Nicaragua took place, including public threats, arbitrary detentions, and the dissemination of hate speech inciting violence against real or perceived opponents by President Daniel Ortega, Vice President Rosario Murillo, and other senior officials in their Government. The GHREN considered the deportations as part of this *iter criminis*, and took into account available information regarding subsequent criminal acts committed in Nicaragua, including the arbitrary deprivation of nationality followed by the misappropriation of goods and properties of the civilian population who were deported.

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<sup>1779</sup> *Tuta & Štela*, Trial Judgment, para. 636 and footnotes nos. 1571–1572.



1110. The GHREN notes the evidence demonstrating Ortega-Murillo's intention to remove dissenting voices or individuals who questioned Ortega-Murillo's legitimacy in power or Government decisions from Nicaraguan territory. For example, after the 2021 presidential election, which was condemned by the international community, President Ortega made public derogatory and discriminatory remarks about opposition presidential candidates who had been arbitrarily detained prior to the elections. President Ortega declared to the general public in Nicaragua and worldwide: "[T]hose who are imprisoned there, are the sons of bitches of the Yankee imperialists....they should take them there, to the United States, because they are not Nicaraguans, they stopped being Nicaraguans a long time ago, they have no homeland".<sup>1780</sup> In January 2022, President Ortega again lashed out against the Nicaraguan political opposition, who were in arbitrary detention, announcing his intention to deport them.

1111. The language used by President Daniel Ortega and Vice President Rosario Murillo in their public announcement following the deportation of the 222 victims, in the presence of high-level authorities of their Government, including State security forces, serves as additional evidence of the discriminatory nature of the deportations targeting real or perceived opponents of the Government. Similarly, the language used by Gustavo Porras in an interview on 10 February 2023, where he referred to the deported individuals as "terrorists," "delinquents," and "traitors to the homeland," denotes the discriminatory intent behind the deportation of these individuals.

1112. In conclusion, the GHREN has reasonable grounds to believe that the deportations constitute persecution as a crime against humanity.

iii) Arbitrary deprivation of nationality

1113. The arbitrary deprivation of nationality, conducted with discriminatory intent in the context of a systematic and/or widespread attack against the civilian population, may constitute a crime of persecution. The persecutory act must intend to cause, and ultimately result in, the violation of a person's enjoyment of a basic or fundamental right, in this case the right to not be arbitrarily deprived of nationality.

1114. The facts documented in this report denote the discriminatory intent with which President Daniel Ortega, Vice President Rosario Murillo, and others utilized agents and departments across all branches of the Government to perpetrate the underlying crimes against humanity as part of the persecutory policy to consolidate their political dominance and absolute power. The arbitrary deprivation of nationality imposed by the Ortega-Murillo Government against 222 members of the civilian population, together with the deportation of the individuals and misappropriation of the property, is part of these persecutory criminal acts.

1115. The GHREN concluded that the deprivation of nationality of the 222 Nicaraguans through the resolution issued by the Managua Court of Appeals on 9 February 2023 was conducted in a discriminatory manner with the intent to target real or perceived Government opponents. The GHREN has reasonable grounds to believe that the perpetrators of the arbitrary deprivation of nationality chose their victims on the basis of their identity as real or perceived opponents. For example, the 222 civilian victims included all of the former presidential candidates arbitrarily detained in 2021, along with other key opposition leaders in Nicaragua.

1116. The deportation of the individuals was not enough for the Ortega-Murillo Government; they also arbitrarily deprived the individuals of their nationality, with the accompanying serious legal consequences. This further demonstrates the discriminatory intent to ensure that these individuals could not pose any future threat to the power of

<sup>1780</sup> See, Confidential, "Daniel Ortega lanza su más virulento discurso de odio contra los presos políticos", 9 November 2021, available at: <https://youtu.be/wWNZgMb5g1I>: "[E]sos que están presos ahí, son los hijos de perra de los imperialistas yanquis...se los deberían llevar para allá, para los Estados Unidos, porque esos no son nicaragüenses, dejaron de ser nicaragüenses hace rato, no tienen patria...".

President Daniel Ortega and Vice President Rosario Murillo. In other words, it was not enough to arbitrarily detain the civilian population who were victims of the attack, but the Ortega-Murillo Government had to ensure that they would not participate in Nicaraguan life and the political exercise of their rights. By deporting and depriving the nationality of those individuals identified as opponents, those individuals will not be able to exercise any kind of political rights, including the right to vote for their representatives or to run for election. The persecutory intent is evident through statements made by the president of the National Assembly, who explained that due to the technical legal difficulty of stripping the nationality of native citizens because it was not contemplated by criminal legislation or the Constitution of Nicaragua, the problem would be solved through a constitutional reform to adjust the regulations to their agenda.<sup>1781</sup>

1117. At the close of this report on 15 February 2023, the president of the Court of Appeals of the Managua Circumscription, Judge Ernesto Rodríguez Mejía, announced a judgment imposing penalties against another 94 Nicaraguan citizens, including absolute and special incapacitation to hold public office, to exercise public functions in the name of or in the service of the State of Nicaragua, and to exercise popularly elected positions. The judgment also imposed the lifetime loss of their citizenship rights for being “traitors to the homeland,” in the same manner as the 222 persons deported on 9 February 2023.<sup>1782</sup> The GHREN has not been granted access to the criminal resolution relating to these 94 Nicaraguan citizens.

1118. The 94 victims affected by this illegal decision include Nicaraguan individuals who had previously been forced to flee Nicaragua out of fear for their lives, physical well-being, and moral integrity, as well as other real or perceived opponents who remained in Nicaragua as of the date of this report. This group of victims includes well-known human rights defenders, members of political parties and movements, academics, individuals who participated in the protests of 2018, and family members of individuals who were deported on 9 February 2023. The GHREN identified that many of these individuals had already been victims of harassment, threats, and arbitrary detentions throughout the various stages of the attack against the civilian population. Among the 94 victims were also 24 women, including feminists and members of the Nicaraguan feminist movement, who were persecuted due to their leadership roles as critical voices against the Government.

1119. Therefore, the GHREN has reasonable grounds to believe that the arbitrary deprivation of nationality of real or perceived opponents of the Government constitutes persecution as a crime against humanity.

#### iv) Arbitrary Detentions

1120. Arbitrary detention, conducted with discriminatory intent in the context of a systematic and/or widespread attack against the civilian population, may constitute a crime of persecution. The persecutory act must intend to cause, and ultimately result in, the violation of a person’s enjoyment of a basic or fundamental right, in this case the right to liberty.

1121. The GHREN has concluded with reasonable grounds to believe that from April 2018 through the date of this report, there has been a widespread and systematic attack directed against a portion of the Nicaraguan civilian population, and the arbitrary detentions of real or perceived opponents of the Government are part of this attack. Therefore, the documented arbitrary detentions constitute imprisonment as a crime against humanity.

1122. The GHREN has reasonable grounds to believe that the perpetrators of the arbitrary detentions deliberately targeted their victims with the intent to discriminate against them on the basis of their identities as real or perceived opponents of the Government. This was supported by the fact that the detentions were almost exclusively targeted at persons who

<sup>1781</sup> See, cparlamentonic, Interview Dr. Gustavo with Alberto Mora, 10 February 2023, available at: <https://www.youtube.com/watch?v=d3SqQmykfOg>.

<sup>1782</sup> See, Twitter, Canal 4 Nicaragua, 15 February 2023, available at: <https://twitter.com/Canal4Ni/status/1626025280258117633?cxt=HHwWgsC4mZPY5pAtAAAA>.

were real or perceived opponents, while the perpetrators were Government officials and/or supporters of the ruling party. In addition, the GHREN also considered the insults and threats directed at the victims on the basis of their identity as “traitors or traitors of the homeland”. The public speeches made by President Ortega also evidence the discriminatory intent of the arbitrary detentions, such as his speech on 9 November 2021, during the inauguration of his last mandate, and his speech justifying the imprisonment of the Bishop of Matagalpa, Monsignor Álvarez, for refusing deportation.

1123. The GHREN has observed that the profiles of the victims subjected to arbitrary detentions and the methods used to exploit criminal law evolved over time. However, in all stages and campaigns of arbitrary detentions identified by the GHREN, the victims were real or perceived opponents to the Government. This includes former allies and members of the Government who were initially part of the attack but, for various reasons, were later added to the list of those considered “traitors,” “criminals,” or opponents of the Ortega-Murillo Government.

1124. Persecution has occurred when individuals identified as real or perceived opponents were released following the enactment of the Amnesty Act, only for several of these individuals to be subsequently arbitrarily re-incarcerated. The GHREN documented how a significant group of real or perceived opponents felt forced to leave the country after their release due to the fear of being arbitrarily re-imprisoned and the threats they had already faced in this regard. In contrast, the GHREN was unable to obtain information regarding the imprisonment of the common prisoners who were released by the Ortega-Murillo Government under the pretext of the Amnesty Act.

1125. In light of the analysis of available information, the chronological development of the persecutorial campaign, and the commission of the underlying crimes against humanity identified in this report, which occurred *after* the adoption of the Amnesty Act, the GHREN determined that the real threat of repetition and the lack of security identified by the victims was correct. Individuals arbitrarily detained encompass not only the protesters who were released through the Amnesty Act, but also students, journalists, human rights defenders, members of the Catholic Church and opposition parties, as well as opposition leaders. They were targeted for their opposition stance or for being considered opponents by the Government.

1126. President Daniel Ortega’s televised public speech during the inauguration of his fourth presidential term provides evidence of discriminatory intent. President Ortega referred to the seven opposition presidential pre-candidates who were arbitrarily detained, stating: “[...] *those who are imprisoned there, are the sons of bitches of the Yankee imperialists [...] they should take them there, to the United States, because those are not Nicaraguans, they stopped being Nicaraguans long ago, they have no homeland*”.<sup>1783</sup>

1127. The GHREN also identified several cases of political persecution through arbitrary detentions following the adoption of laws to restrict and criminalize the exercise of fundamental freedoms, which are analysed in detail in this report.

1128. Therefore, the GHREN has reasonable grounds to believe that imprisonment constitutes persecution as a crime against humanity.

v) Torture and other cruel, inhuman, or degrading treatment or punishment

1129. Torture or cruel, inhuman, or degrading treatment or punishment, conducted with discriminatory intent in the context of a systematic and/or widespread attack against the civilian population, may constitute a crime of persecution. The persecutory act must intend to cause, and ultimately result in, a violation of a person’s enjoyment of a basic or fundamental right, in this case the right to personal integrity.

<sup>1783</sup> See, Confidencial, “Daniel Ortega lanza su más virulento discurso de odio contra los presos políticos”, 9 November 2021, available at: <https://youtu.be/wWNZgMb5g1I>: “...*esos que están presos ahí, son los hijos de perra de los imperialistas yanquis...se los deberían llevar para allá, para los Estados Unidos, porque esos no son nicaragüenses, dejaron de ser nicaragüenses hace rato, no tienen patria...*”.

1130. The GHREN documented the use of physical, sexual, and psychological torture, as well as other cruel, inhuman or degrading treatment or punishment against individuals who were subjected to prolonged interrogations, held in police custody, or detained and arrested for political reasons. The intent behind these acts was to punish or intimidate these individuals, or to extract information about their political and civic actions or ideas.

1131. Discrimination is evident when looking at the detention conditions imposed on these individuals, whether under house arrest, in police stations, or in prisons. While the overall prison conditions in Nicaragua are precarious for the entire prison population, the GHREN obtained information indicating clearly discriminatory treatment of detainees who were real or perceived opponents. Together with the arbitrariness of their detention, these members of the civilian population were targets of a persecution campaign and discriminated against in their detention conditions, as detailed earlier in this report.

1132. The establishment and perpetuation of inhumane living conditions inflicted on arbitrarily detained individuals are considered a subcategory of cruel and/or inhumane treatment. If the severity of these conditions reaches the same level of gravity as other underlying crimes of persecution and meets the general requirements of persecution as outlined by the GHREN in Nicaragua, then these conditions may constitute persecution.<sup>1784</sup> International criminal jurisprudence has noted that, although there is no recognized crime of “inhumane living conditions” applicable to these international crimes, inhumane living conditions are a factual description of the environment and treatment endured by detained individuals.<sup>1785</sup>

1133. Accordingly, the GHREN has reasonable grounds to believe that torture and other cruel, inhuman, or degrading treatment constitute persecution as a crime against humanity.

## E. Participation and knowledge of the attack

1134. For prohibited acts to constitute crimes against humanity, they must be part of the attack against the civilian population.<sup>1786</sup> There is a sufficient connection between the acts and the attack when the acts are objectively part of the attack, in other words, if the nature or consequences of the acts contribute to the attack.<sup>1787</sup> The totality of the circumstances of the case, including its characteristics, the nature of its objectives, and its consequences, must be considered.<sup>1788</sup> Factors in determining whether an act is part of an attack include the relationship of the prohibited acts to the attack or any underlying policy,<sup>1789</sup> the similarities between the individual acts and other acts forming part of the attack (including *modus operandi* and motives),<sup>1790</sup> the nature of the events and circumstances surrounding the individual acts,<sup>1791</sup> the temporal and geographic proximity of the individual acts to the attack,<sup>1792</sup> the identities of the perpetrators and victims,<sup>1793</sup> and the perpetrator’s role and function in the attack.<sup>1794</sup>

<sup>1784</sup> See this reasoning applied in *Krajišnik*, Trial Judgment, paras. 755–756; *Krnjelac*, Trial Judgment, paras. 439–443 and 497–500.

<sup>1785</sup> *Čelebići*, Trial Judgment, paras. 554, 556.

<sup>1786</sup> *Tadić*, Appeal Judgment, paras 248 and 255; *Kayishema & Ruzindana*, Trial Judgment, para 135; *Nuon & Khieu*, Trial Judgment, paras 315 and 321.

<sup>1787</sup> *Tadić*, Appeal Judgment, paras. 251–271; *Tuta & Štela*, Trial Judgment, para 234; *Kordić & Čerkez*, Trial Judgment, para 33; *Kumarac*, Trial Judgment, para 418; *Semanza*, Trial Judgment, para 326; *Sesay*, Trial Judgment, paras. 89–90.

<sup>1788</sup> *Semanza*, Trial Judgment, para. 326.

<sup>1789</sup> *Semanza*, Trial Judgment, para. 326; *Tadić*, Trial Judgment, paras. 629–633.

<sup>1790</sup> *Brima*, Trial Judgment, para. 220; *Taylor*, Trial Judgment, para. 512.

<sup>1791</sup> *Ibid.*

<sup>1792</sup> *Ibid.*

<sup>1793</sup> *Gbagbo*, Judgment Confirming Charges, para. 212.

<sup>1794</sup> SCGBH, *Prosecutor v. Miodrag Nikačević*, Case No. X-KR-08/500, Verdict, 19 February 2009, p. 27.

1135. The perpetrator must know that there is a widespread and/or systematic attack against the civilian population. In other words, the perpetrator must have knowledge of the broader or general context of the attack,<sup>1795</sup> and that their acts are part of that attack.<sup>1796</sup> The perpetrator does not need to know the details of the attack.<sup>1797</sup> It is sufficient for the perpetrator to assume that the conduct is part of the attack.<sup>1798</sup> Direct evidence of the perpetrator's knowledge of the relevant context and connection is not necessary; circumstantial reasoning based on indirect evidence is sufficient.<sup>1799</sup> Indirect evidence may include: the perpetrator's position within a civilian or military hierarchy, the perpetrator's membership in a group or organization involved in the commission of crimes, the magnitude of the perpetrator's acts of violence, the perpetrator's presence at the crime scene, and the degree of consequences of the crimes in the media.<sup>1800</sup>

1136. The GHREN observes that crimes against humanity are generally committed in the context of a generally and publicly known attack; therefore, an individual responsible for committing such crimes cannot credibly deny knowledge of the attack. Accordingly, knowledge can be proven by drawing inferences from relevant facts and circumstances.<sup>1801</sup>

1137. The GHREN has concluded that from April 2018 until the date of this report, numerous State officials and authorities, including members of the Judiciary, the National Assembly, the Public Prosecutor's Office, the National Prison System, the Ministry of the Interior, medical and auxiliary personnel of public health centres, and members of the National Police, have participated in the commission of crimes and serious violations and abuses of human rights pursuant to orders from the President and Vice President of Nicaragua.

1138. The GHREN found that within the context of suppressing protests, agents of the National Police and pro-government armed groups committed extrajudicial executions. Additionally, officials from multiple Government institutions, including the National Police, the Public Prosecutor's Office, and the Judiciary, participated jointly in the commission of arbitrary detentions and due process violations. The GHREN also documented the participation of agents of the National Prison System and the National Police in acts of torture and other cruel, inhuman, or degrading treatment, including acts of sexual and gender-based violence, against real or perceived opponents.

1139. The GHREN considers that due to the characteristics of the attack against the civilian population, including its visibility, wide-reaching impact, and prolonged duration, it is impossible that the individuals who participated in the commission of crimes, serious violations, and abuses were unaware of the attack against the civilian population, or that the crimes, violations, and abuses were part of that attack.

1140. The GHREN documented that on several occasions, Nicaraguan authorities at various levels of the hierarchy were photographed and filmed during armed operations to suppress protests. Furthermore, throughout the period covered by this report, government authorities acknowledged their participation in committing criminal acts as part of the

<sup>1795</sup> *Blaškić*, Appeal Judgment, para. 122; *Limaj*, Trial Judgment, para. 190; *Semanza*, Trial Judgment, para. 332; *Bagilishema*, Trial Judgment, para. 84; *Sesay*, Trial Judgment, para. 90.

<sup>1796</sup> *Tadić*, Appeal Judgment, para. 248; *Kunarac*, Appeal Judgment, para. 102; *Blaškić*, Appeal Judgment, para. 124; *Akayesu*, Appeal Judgment, para. 467; *Semanza*, Trial Judgment, para. 332; *Sesay*, Trial Judgment, para. 91; *Brima*, Trial Judgment, para. 221; *Nuon & Khieu*, Trial Judgment, para. 191.

<sup>1797</sup> *Kunarac*, Appeal Judgment, para. 102; *Blaškić*, Appeal Judgment, para. 122; *Kordić & Čerkez*, Appeal Judgment, para. 42; *Mladić*, Trial Judgment, para. 3029; *Sesay*, Trial Judgment, para. 90; *Nuon & Khieu*, Trial Judgment, para. 191.

<sup>1798</sup> ICTY, *Prosecutor v. Nikola Šainović, et al.*, Case No. IT-05-87-A, Judgment, 23 January 2014, para. 271.

<sup>1799</sup> ICTR, *Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR-95-1-A, Judgment (Reasons), 1 June 2001, para. 159.

<sup>1800</sup> SCGBH, *Prosecutor v. Mitar Rašević and Savo Todović*, Case No. X-KR/06/275, Verdict, 28 February 2008, p. 42.

<sup>1801</sup> *Vasiljević*, Appeal Judgment, paras. 28 and 20; ICC, Elements of the Crimes, General Introduction, p. 3.

attack documented in this report. They valued and justified these acts committed by government agents and pro-government armed groups as necessary measures to safeguard the freedom and peace of the Nicaraguan people.

1141. The statements made by authorities of the National Police, the Ministry of the Interior, President Daniel Ortega, Vice President Rosario Murillo, and members of the Judiciary, among others, demonstrate the knowledge of officials at all levels of the State hierarchy regarding the violent acts that led to the commission of crimes, violations, and abuses, as detailed in other sections of this report.

1142. Since the onset of the 2018 protests, President Daniel Ortega also publicly acknowledged the deaths of 195 individuals, including police officers, FSLN members, and members of pro-government armed groups. President Ortega attributed these deaths to what he alleged was an armed confrontation. In a public statement, the President publicly acknowledged the actions of his Government up to that point, including the arrests and detentions of members of the civilian population who, according to him, materially participated in “terrorist acts”.<sup>1802</sup>

1143. The GHREN has concluded that the National Police systematically participated in attacks against the civilian population throughout Nicaraguan territory, demonstrating effective and continuous control of their areas of operations. In most of the incidents investigated by the GHREN, police officers acted jointly and in coordination with members of pro-government armed groups. President Daniel Ortega publicly asserted that these individuals were members of the National Police and volunteer police.

1144. Based on the information examined, the GHREN has determined that Vice President Rosario Murillo knew the context of her Government’s persecutory attack on part of the civilian population. The Vice President’s multiple public addresses since April 2018, including in her capacity as Coordinator of the Council of Communication and Citizenship, evidence her contemporaneous knowledge regarding several of the violations, abuses, and crimes committed in Nicaragua. Likewise, the Vice President has used her position to lead the discriminatory campaign against the civilian population the Government deemed as opposition, reinforcing messages of hate and disinformation, and publicly supporting President Daniel Ortega’s claims as justification for the attack.<sup>1803</sup>

1145. The deportation process undertaken on 9 February 2023, was described as successful by Nicaraguan government officials, and shows the commitment, coordination, collaboration, and participation of multiple State institutions and public officials. This deliberate exploitation of the State institutions and functions to facilitate the attack against the civilian population could not have occurred without the prior express consent, participation, and full knowledge of the meticulously planned operation by the highest level of the Nicaraguan State.

1146. President Daniel Ortega, accompanied by Vice President Rosario Murillo and other authorities of their Government, made a subsequent public announcement of this deportation operation,<sup>1804</sup> highlighting the active role of the army in the deportation. President Ortega, addressing the Chief of the Nicaraguan Army, publicly praised the work of the army in the deportation operation, which provided security to ensure that the deportation process was executed without any difficulties. Likewise, in the presence of the Attorney General, the Minister of the Interior, the Vice President of the Supreme Court of

<sup>1802</sup> Daniel Ortega interview on EURONEWS, (01:00–03:13) 30 July 2018, available at: <https://www.youtube.com/watch?v=NiR0R4hYCuA>

<sup>1803</sup> See, e.g., Canal 4 Nicaragua, “Declaraciones de la vicepresidenta compañera Rosario Murillo”, 30 April 2021, available at: <https://www.youtube.com/watch?v=UaAu-boA2xk>; Voz de América, “Rosario Murillo será candidata a la vicepresidencia de Nicaragua pese a sanción de la Unión Europea”, 3 August 2021 (00:44–01:00), available at: < [https://www.youtube.com/watch?v=t0Ut\\_Bl\\_Rk](https://www.youtube.com/watch?v=t0Ut_Bl_Rk)>; DW Noticias, Vicepresidenta de Nicaragua carga contra periodistas”, 26 June 2021, available at: <<https://www.dw.com/es/vicepresidenta-de-nicaragua-carga-contra-periodistas/a-58053979>>

<sup>1804</sup> See, El País, “Directo: Daniel Ortega habla de la liberación de más de 200 presos políticos en Nicaragua”, 9 February 2023.

Justice (as the President of the Supreme Court of Justice was reportedly occupied working on the matters at hand –deportation, deprivation of nationality, and misappropriation of assets of the civilian population–), and the Chancellor and Vice Chancellor of Nicaragua, President Daniel Ortega confirmed the coordination between the powers of the State to accomplish this successful criminal operation.

1147. Furthermore, on 10 February 2023, the President of the National Assembly, Gustavo Porras, publicly acknowledged his role as an active participant in the deportation process. He also acknowledged his role in the legislative and judicial processes that condemned the deported individuals as “traitors to the homeland,” leading to their deportation and revocation of their nationality within a framework of complete illegality and judicial abuse.<sup>1805</sup>

1148. Based on the foregoing, the GHREN concludes that there is sufficient information evidencing the participation of high-level authorities from the various branches of the State of Nicaragua in the commission of international crimes against part of the civilian population of Nicaragua. These authorities possessed express knowledge that their governmental acts, decisions, and orders are part of the ongoing attack against the civilian population of Nicaragua considered to be oppositions and enemies of the Ortega-Murillo Government since April 2018.

## V. Accountability and access to justice

1149. The GHREN has reasonable grounds to believe that the human rights violations, abuses, and crimes against humanity described in this report give rise to State responsibility for breaches of its international human rights obligations and the commission of internationally wrongful acts. In some cases, such crimes also give rise to individual criminal responsibility, whether under Nicaraguan criminal law, international criminal law, or third States’ law.

1150. The GHREN documented how, as of 18 April 2018, the Government of Nicaragua implemented a discriminatory State policy towards a sector of the population which has been perceived by the Ortega-Murillo administration as a threat to its control of the State.

### A. President, Vice President, and main State institutions

1151. The GHREN has reasonable grounds to believe that President Daniel Ortega and Vice President Rosario Murillo mobilized the entire State apparatus, including a variety of public institutions, political entities, and private actors sympathetic to the Government to implement a series of measures and acts aimed at systematically repressing any form of protest and activity deemed “dissident,” and thereby ensure their permanence in power. Implementing these measures and acts resulted in the systematic commission of serious human rights violations and abuses by these institutions, entities, and groups.

1152. The documented violations, abuses, and crimes were part of a common plan to repress opponents or persons perceived as such, to eliminate dissent. The President, the Vice President, and senior Government authorities shared the intention to systematically perpetrate violations, abuses, and crimes, and used other branches and authorities of the State and pro-government armed groups to do so.

#### 1. *Daniel Ortega and Rosario Murillo*

1153. The GHREN has reasonable grounds to believe that, without the actions of President Daniel Ortega and Vice President Rosario Murillo, the systematic human rights violations, abuses, and crimes documented in this report would not have occurred or would have occurred in a significantly different manner.

<sup>1805</sup> See, cparlamentonic, “Entrevista Dr. Gustavo con Alberto Mora”, 10 February 2023, available at: <<https://www.youtube.com/watch?v=d3SqQmykfOg>>

1154. Daniel Ortega and Rosario Murillo are, respectively, President and Vice President of the Republic of Nicaragua.<sup>1806</sup> Since before April 2018, Daniel Ortega and Rosario Murillo instrumentalized the structures and branches of the State, including the National Assembly and the laws issued by it to ensure their control over a variety of State actors and institutions that were to comply with their orders rigorously.

1155. Additionally, President Daniel Ortega is also the visible head of the FSLN. The FSLN structures and leaderships, –including the Sandinista Youth, UVEs, Political Secretaries, mayors, and CLS–, served two purposes: to support the FSLN-formed Government and implement its decisions at the local and institutional level, and to establish territorial and institutional oversight and control mechanisms, which are being used up to the date of publication of this report. Citizen participation structures, such as the CPCs and the Family Cabinets, which were controlled by people related to the FSLN, were used in a systematic matter to monitor and pressure Nicaraguans in various neighbourhoods, communities, and departments. Thus, Daniel Ortega and Rosario Murillo managed to systematically blur the dividing line between the State and the FSLN.

1156. Daniel Ortega and Rosario Murillo were aware of the factual circumstances that allowed them to exercise joint control over the commission of the crimes. This coordinated control was possible due to the organized and hierarchical nature of the State authorities, the strong implantation at the national and territorial level of the FSLN leadership structures, and the systematic presence of pro-government armed groups, which ensured effective compliance with the orders given by President Daniel Ortega and his close circle.

1157. The GHREN has reasonable grounds to believe that President Daniel Ortega and Vice President Rosario Murillo used various State institutions to systematically repress persons who were opponents or were perceived as such. Their orders were executed effectively and in a coordinated way throughout the national territory by the public institutions mentioned below.

1158. The GHREN also has reasonable grounds to believe that the President and Vice President’s instructions were transmitted through the official structures of the State and the structures of the governing party. The Political Secretaries, members of the Sandinista Leadership Committees, and the unions present in the various State institutions, structured vertically and with a hierarchical behaviour, were in charge of ensuring compliance with the orders coming from the highest State authorities.

1159. The GHREN received information indicating that some people followed the instructions issued from El Carmen<sup>1807</sup> out of conviction and loyalty to President Daniel Ortega and the FSLN, but others did so out of fear of reprisals.<sup>1808</sup> Thus, the presidential couple, high authorities and State officials, and other persons related to the Government, participated in the commission of crimes and serious human rights violations and abuses, as part of a discriminatory policy of persecuting, silencing any person and systematically dismantling any civic or political organization that holds positions different from those of the Government, or that is perceived as critical or adverse to it.

1160. As detailed in Chapter II, President Daniel Ortega, as provided by law, exercises the highest command of the National Police and has broad powers to order the actions of the Police and Army forces, as well as to appoint and dismiss the highest officers of these institutions. Also, according to the Sovereign Security Act, President Daniel Ortega heads the coordination of the National Sovereign Security System (*Sistema Nacional de Seguridad Soberana*) in situations that threaten the “independence, sovereignty, territorial

<sup>1806</sup> President Daniel Ortega has recently referred to Rosario Murillo as the “Co-President” of the Republic of Nicaragua. See Canal 4 Nicaragua, “Mensaje del Comandante Daniel y Compañera Rosario a las familias nicaragüenses,” 10 February 2023, available at: <https://www.youtube.com/watch?v=aacxInTBIDA> (min. 09:45).

<sup>1807</sup> The official residence of President Daniel Ortega and Vice President Rosario Murillo in Managua is popularly known as “El Carmen”.

<sup>1808</sup> GHREN interviews BBIV001, BBIV005, BBIV006, BBIV012, BBIV013 27, BBIV015 and BBIV031.



integrity, and national self-determination” of Nicaragua. The creation of this mechanism has allowed the President to coordinate the activities of the Army, the National Police, the Public Prosecutor’s Office, the Ministry of the Interior and its subordinate directorates, the Financial Analysis Unit, the Attorney General’s Office, and other institutions that are part of the national system.

1161. The control over these State entities propitiated that, faced with the outbreak of massive demonstrations in April 2018, President Daniel Ortega and Vice President Rosario Murillo systematically used the high command of the State security forces and the FSLN political secretary system to communicate instructions aimed at violently repressing the protests together with armed pro-government groups. The repression did not stop with the acts of violence, but was consolidated and continued throughout the entire period under review through the systematic arbitrary detention and prosecution of real or perceived opponents in proceedings in which the essential procedural guarantees and the right to a fair trial were not respected. Likewise, real or perceived opponents in detention were systematically subjected to torture and ill-treatment.

1162. During the repression of social protests in 2018, President Daniel Ortega and Vice President Rosario Murillo had actual and permanent knowledge of the unlawful and systematic actions of the National Police and pro-government armed groups, as well as the use of lethal weapons against protesters by both actors, as these were notorious facts transmitted in real-time by the media and social networks. President Daniel Ortega’s and Vice President Rosario Murillo’s statements since 19 April 2018 demonstrate their knowledge of the situation and violent deaths that occurred systematically from that day forward.<sup>1809</sup>

1163. The situation was covered not only by the media, but also by others. On 23 April 2018, UN Secretary-General António Guterres called for the protection of human rights and freedom of expression in Nicaragua.<sup>1810</sup> On 27 April 2018, Human Rights Watch urged President Daniel Ortega to cease attacks against protesters.<sup>1811</sup> For its part, the Episcopal Conference, which had tried to maintain a dialogue with the government to stop the violent acts and arbitrary arrests, made a statement on 31 May 2018, condemning the aggressions that occurred the day before during the Mother’s Day march.<sup>1812</sup>

1164. Despite these public statements, the systematic killings and detentions of real or perceived opponents continued for more than five months. On 7 July 2018, President Ortega said he would continue to fight the alleged coup plotters.<sup>1813</sup> The continuous nature of these actions indicates that not only were no orders issued from the highest authority to cease the acts of violence against demonstrators, but that these acts were instigated from the Presidency and Vice-Presidency of the Republic. The GHREN did not receive any information affirming that measures were taken to avoid the unlawful, disproportionate, violent, and lethal response of the security forces against the protesters.

<sup>1809</sup> See, e.g., El 19 Digital, “Rosario en Multinoticias”, available at: [<sup>1810</sup> UN, Press Release, “Secretary-General Expresses Concern over Casualties during Protest in Nicaragua,” 23 April 2018, available at: <https://press.un.org/en/2018/sgsm19005.doc.htm>.](https://www.el19digital.com/articulos/ver/titulo:76067-rosario-en-multinoticias-19-de-abril-del-2018; Canal 4 Noticias, Comandante Presidente #DanielOrtega in communication with Nicaraguan families, 21 April 2018, available at: https://www.youtube.com/watch?v=vDQypjKy5dg.</a></p>
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<sup>1811</sup> HRW, “Nicaragua: saldo letal en protestas”, 27 April 2018, available at: <https://www.hrw.org/es/news/2018/04/27/nicaragua-saldo-letal-en-protestas>.

<sup>1812</sup>

[https://twitter.com/CENicaragua/status/1002165413965369344?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1002165413965369344%7Ctwgr%5Ed1a627d5113dea6f2691065c096ddb8b889c7654%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fwww.elcomercio.com%2Factualidad%2Fmundo%2Figlesia-nicaragua-dialogo-gobierno-muertes.html](https://twitter.com/CENicaragua/status/1002165413965369344?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1002165413965369344%7Ctwgr%5Ed1a627d5113dea6f2691065c096ddb8b889c7654%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.elcomercio.com%2Factualidad%2Fmundo%2Figlesia-nicaragua-dialogo-gobierno-muertes.html)

<sup>1813</sup> France 24, “Daniel Ortega: “we will fight the coup plotters and we will not advance elections”, 8 July 2018, available at: <https://www.france24.com/es/20180708-nicaragua-ortega-sandinismo-managua-represion>.

1165. Since the outbreak of the social protests, President Ortega and Vice President Murillo systematically centred their interventions and public messages to Nicaraguans around exalting the defence of Nicaragua’s sovereignty, patriotism, revolution, independence, and anti-imperialism. In doing so, President Ortega and Vice President Murillo resorted to notorious hate speeches, wherein they described the demonstrators and any person who did not support the government as “minuscule,” “vandals,” “gang members,” “terrorists,” “plague,” “coup perpetrators,” “vampires,” and “devils”.

1166. The GHREN has reasonable grounds to believe that, in addition to violently repressing acts of social protest, President Ortega and Vice President Murillo orchestrated a deliberate and systematic series of legal measures, and executed plans and policies, to criminalize protesters and other real or perceived political opponents, eliminate opposition political parties, close and control civic spaces, and silence critical voices. The comprehensive body of information analysed by the GHREN clearly indicates that the highest State authorities designed a common plan to retain power, relying on their ability to control the four Nicaraguan State branches and reorganize State institutions to serve their agenda.

1167. With all branches of government aligned to serve the interests of President Ortega and Vice President Murillo, real or perceived opponents were systematically imprisoned and prosecuted without a valid legal basis and in violation of due process and procedural guarantees. National and international non-profit organizations faced mass cancellations of their legal status, media organizations critical of the government lost their broadcasting rights, universities were systematically closed, and members of the Catholic Church and other critical voices were persecuted, including artists, academics, human rights defenders and students and other voices critical of the government.

1168. The GHREN received information indicating that institutions such as the Public Prosecutor’s Office and the Judiciary significantly contributed to the plan and execution of the President’s and Vice President’s orders to persecute real or perceived opponents through the criminal and administrative sanctioning system. Additionally, these institutions validated the acts perpetrated by the Government, effectively destroying the separation of powers enshrined in the Constitution.<sup>1814</sup>

1169. In February 2023, as recognized by the President of the National Assembly,<sup>1815</sup> the erosion of the separation of powers and obedience to the Presidency became evident when, by order of President Ortega, different State institutions acted in a synchronized manner to declare the 222 persons imprisoned as “traitors to the homeland,” incapacitating them life time from holding public or freely elected office, and immediately executed orders expelling the 222 persons to the United States of America. Simultaneously, in its first legislative session, the National Assembly adopted an amendment to the Constitution of Nicaragua, as well as a new regulation, both aimed at withdrawing the nationality of the 222 persons and other persons who could be declared “traitors to the homeland”.

1170. Through these actions, President Ortega and Vice President Murillo systematically neutralized most of the political opposition, human rights defenders, and journalists critical of the Government from the Nicaraguan political and civic landscape. This was done to impose and perpetuate power.

## 2. *The Branches of Government*

### a) *Judicial Branch*

1171. The GHREN concluded that the Judiciary systematically instrumentalized criminal law to persecute real or perceived opponents. The Judiciary executed the direct instructions of the Presidency, ignored the separation of powers, abandoned its independence and

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<sup>1814</sup> GHREN interviews BBIV001, BBIV005, BBIV006, BBIV012, BBIV013, BBIV015 and BBIV031.

<sup>1815</sup> Canal 4 Nicaragua, “Doctor Gustavo Porras en En Vivo Magazine con Alberto Mor”, 10 February 2023, available at: [https://www.youtube.com/watch?v=hXW\\_HawQHvI](https://www.youtube.com/watch?v=hXW_HawQHvI).

impartiality, and functioned as a hierarchical and vertical structure guaranteeing compliance with the instructions of the high levels of the State.

1172. The judicial proceedings against the real or perceived opponents were marked by systematic and deliberate undue delays, as well as the frequent failure of judicial authorities to comply with minimum procedural guarantees. Judges, who were expected to be guarantors of a fair process, systematically ignored complaints related to non-compliance of constitutional guarantees, *habeas corpus* writs for illegal detention, appeals for lack of jurisdiction, and appeals regarding irregularities in the process and evidence. Judges often suppressed such appeals from the hearing records and intimidated defence attorneys to dissuade them from pursuing them.

1173. Judges also generally failed to comply with due process and equality by accepting all the evidence presented by the Public Prosecutor's Office and dismissing the defence's evidence, allegations, and objections. Judges disregarded flagrant irregularities in the process and issues with the legality of the evidence. The GHREN documented how judges indiscriminately accepted the arguments of the Public Prosecutor's Office, and automatically admitted documentary and testimonial evidence presented by the prosecution without considering the legality of the evidence or allowing opposing evidence. The courts applied preventive detention in a generalized and automatic manner, and systematically granted requests for judicial detention, thus extending investigation and detention times without formal charges for 90 days. They also routinely declared proceedings as complex, effectively doubling the duration of judicial proceedings. Judges committed all of these actions even though the unfounded charges failed to correspond to the facts described and were based on false evidence and laws blatantly contrary to international human rights standards.

1174. According to information received by the GHREN, judges received instructions on the charges prepared by the Public Prosecutor's Office and the National Police, which they were expected to confirm.<sup>1816</sup> The GHREN also found that some judges who have prosecuted and convicted real or perceived opponents since 2018 have been irregularly promoted.

1175. The GHREN documented that in cases of torture and cruel, inhuman, or degrading treatment, judicial authorities not only deliberately and obstructed accountability processes, but also systematically failed to protect the victims of such violations and abuses. The judicial authorities, as well as the authorities of the SPN and the National Police, deliberately impeded or prevented the execution of *habeas corpus* writs filed on behalf of real or perceived opponents, which are meant to guarantee both the legality of the detention and respect for the prohibition of torture and inhumane treatment. In cases where signs of torture and cruel, inhuman, or degrading treatment were evident, lawyers filed complaints that were systematically ignored by the courts and suppressed from the records of the hearings.

b) National Assembly

1176. The National Assembly of the Republic of Nicaragua was instrumental in the repression of real or perceived opponents of the government, facilitating the articulation of their objectives through legislative activity, and evidencing the absence of separation of powers.

1177. By enacting the Amnesty Act on 8 June 2019, charges against all persons involved in the commission of crimes during the 2018 social protests, including persons linked to the State and members of pro-government armed groups who acted under the direction or with the acquiescence of the government, were dropped. Article 1 of the Act establishes that "the competent authorities shall not initiate investigation proceedings, shall close the administrative proceedings initiated and criminal proceedings to determine responsibility as well as the execution of sentences, upon the entry into force of this Act".

<sup>1816</sup> Document on file with GHREN BBIV194.

1178. The National Assembly also progressively adopted a series of Acts that restricted human rights and fundamental freedoms, even though these Acts were contrary to Nicaragua's international obligations. The National Assembly disregarded the repeated warnings of treaty bodies and special procedures of the Human Rights Council, as well as the concerns expressed by OHCHR and IACHR, among other bodies and organizations. The Acts were specifically adopted to create a legal framework to dismantle and criminalize any form of political opposition or activism and perpetuate the government of President Ortega and Vice President Murillo. Among these are:

- **The Anti-Money Laundering Act** of 16 July 2018, which has undermined the rights to freedom of peaceful assembly, association, and expression, as it can be used against persons participating in social movements in which material damage is inadvertently caused.
- **The Foreign Agents Act** of 15 October 2020, which has been systematically used to justify the cancellation of the legal status of national and international non-profit organizations funded with resources from abroad, restrict the right to participate in public affairs, and undermine the operational capacity of civil society organizations in Nicaragua by limiting their ability to obtain funds from abroad.
- **The Cybercrime Act** of 27 October 2020, which criminalizes the propagation of fake news based on ambiguous and subjective terms, and has been systematically, arbitrarily, and disproportionately used and instrumentalized to criminalize real and perceived opponents while restricting freedom of expression through the justice system.
- **The Sovereignty Act** of 22 December 2020, which was instrumental in declaring real or perceived opponents, and sometimes their relatives, as "traitors to the homeland" for the alleged commission of acts based on ambiguous concepts. It was also cited in the resolution to cancel the main opposition political coalition. It later served as the basis for revoking Nicaraguan nationality from 316 people. One of the primary consequences of this Act is that persons declared "traitors to the homeland" will not be able to hold elected office, severely restricting their right to participate in the country's political life.
- **Law No. 1057** of January 2021 and **Law No. 1060** of February 2021, which limited the procedural guarantees of detained persons.
- **Law No. 1070** of 4 May 2021, which perpetuates the power of President Ortega and Vice President Murillo. The electoral reform law incorporated elements of the Foreign Agents Act and the Sovereignty Act, and expanded the causes of disqualification for the registration of candidacies. Based on these regulations, the registrations of two political parties that could have run in the 2021 presidential elections were cancelled.
- **Law No. 1115**, Regulation and Control of Non-Profit Organizations General Act, adopted in March 2022, **Law No. 1127** of amendments, and additions to **Law No. 1115**, of August 2022. The first regulation establishes that assets of cancelled organizations will become the property of the State except in the case of voluntary liquidation and dissolution. The amendment grants the Ministry of the Interior the power to cancel the legal status of non-profit organizations.

1179. Since 2018 and before the adoption of Law No. 1127, the National Assembly, as the competent body to grant and cancel the legal status of non-profit organizations, adopted numerous legislative decrees that cancelled the legal status of more than 3,000 national and international civil society organizations and associations, as well as at least 18 universities.

1180. On 9 February 2023, while 222 individuals previously arbitrarily detained for opposing the Government were expelled to the United States of America, the National Assembly reformed Article 21 of the Constitution of Nicaragua, whereby persons declared as "traitors to the homeland" lost their Nicaraguan nationality. At the same time, the Assembly adopted Law No. 1145, the Loss of the Nicaraguan Nationality Special Act, to regulate Article 21 of the Constitution of Nicaragua for individuals sentenced under the Sovereignty Act. This Act came into force the following day even though, according to the

Magna Carta, the constitutional reform should have been approved in a second legislature. The Special Act was used to withdraw the nationality of the 222 individuals expelled from the country and another 94 persons declared as “traitors to the homeland”. The President of the National Assembly acknowledged in an interview on Channel 4 that all State institutions worked synchronously to carry out the orders of President Ortega regarding the deportation of the 222 individuals, and also admitted that the National Assembly fulfilled its role with the adoption of the aforementioned Acts.

c) Supreme Electoral Council

1181. During the period covered by the GHREN’s mandate, the CSE cancelled three political parties based on legislation that restricted the right to participation, thus violating international human rights standards. The Council failed to provide sufficient justification for its resolutions. The GHREN analysed the dissolution resolutions of the three parties and found that they were flagrantly arbitrary and lacked transparency.

3. *Other public authorities*

1182. During the available time under the mandate, the GHREN was able to investigate the role of the National Police, the Public Prosecutor’s Office, the Ministry of Health, the Ministry of the Interior, and the Nicaraguan Institute of Telecommunications and Postal Services. The GHREN believes the investigation should continue to determine the actions, participation, and intervention of other public authorities, as well as to identify individuals who may have acted in concert in carrying out the violations, abuses, and crimes.

a) National Police

1183. The GHREN has reasonable grounds to believe that, since 18 April 2018, various units and divisions of the National Police, under the command of President Ortega, committed extrajudicial executions in the context of the repression of protests carried out by the Nicaraguan civilian population. The GHREN found that the National Police used lethal force arbitrarily, deliberately, and systematically. These acts resulted in the death of real or perceived opponents. The GHREN has reasonable grounds to believe that agents of the National Police also systematically participated in the commission of hundreds of arbitrary detentions since 2018, as well as in acts of torture and other cruel, inhuman, or degrading treatment.

1184. In many of the cases of the repression of protest investigated by the GHREN, the National Police acted in coordination with pro-government armed groups. The National Police permitted and/or facilitated the commission of acts of violence by these groups.

1185. The GHREN was able to establish the systematic participation of agents from a variety of units and divisions of the National Police in the commission of extrajudicial executions, both by action, collaboration and/or omission. This includes departmental police delegations, the Public Security Directorate, the TAPIR, the Special Anti-Riot Brigade, and the GIR, all operating under the DOEP<sup>1817</sup>. The GHREN also documented the coordination of the different departmental police delegations with the DOEP throughout the national territory<sup>1818</sup>.

1186. The National Police played an essential role in the massive and systematic arbitrary detentions of real or perceived Government opponents. The detentions carried out in the context of the 2018 demonstrations by agents of the National Police and members of pro-government armed groups were particularly violent and included beatings, insults, and

<sup>1817</sup> As developed in detail in Chapter II.2(b)(iii) of this report, the DOEP is composed of special units with personnel trained to intervene in crises and in contexts of organized crime, terrorism and the fight against drug trafficking.

<sup>1818</sup> Photographic material on file with GHREN IIDOC068, IIDOC064, DDDOC373, DDDOC383, IIDOC071, DDDOC381, IIDOC013, IIDOC067, IIDOC073, IIDOC075, DDDOC056, CCDOC088, CCDOC089, CCDOC090 CCDOC091, DDDOC387

threats. These violent acts occurred during both the apprehension and the transfers of the detained persons.

1187. The coordinated actions of territorial police entities, national directorates, and specialised units during the repression of the demonstrations required, at a minimum, coordination between the National Police Headquarters, the heads of the specialized units of the DOEP, and the leaders of the different departmental and regional delegations.<sup>1819</sup> In some cases, high-ranking officials of the National Police were observed during the operations, as exemplified by the presence of the Deputy Director of the National Police, Commissioner General Ramón Avellán in Masaya.<sup>1820</sup> The GHREN has reasonable grounds to believe that the presence of national specialised units of the National Police throughout Nicaragua, the magnitude of the mobilization of police personnel, the continuous nature of police actions over time, and the involvement and articulation of various police forces during the repression of the protests all demonstrate decision-making and instruction originating from the highest level of the police and State structure.

1188. The GHREN was able to document that, in addition to systematically participating in mass arrests in 2018, the National Police were involved in the arbitrary and systematic arrests of real or perceived Government opponents throughout the period covered by this report. These detentions were generally carried out without a valid judicial or police arrest warrant, and people's homes were raided and searched without a valid search warrant. Many of these arrests were carried out with the deployment of large police forces, often involving violence in the presence of the arrested person's family members. The GHREN also documented the systematic participation of National Police members manipulating testimonial and documentary evidence, as well as search and arrest warrants, and fabricating evidence.

1189. As detailed in Chapter III.B, by 2021, most of the individuals detained as alleged opponents or critics of the government were interrogated, tried, and deprived of their freedom in the facilities of the DAJ (El Nuevo Chipote). The victims were subjected to the jurisdiction of the National Police and, therefore, to the direct civil authority of the President of the Republic. Moreover, since the DAJ is a police precinct and not a prison proper, the DAJ lacks the facilities required for prolonged incarceration. The GHREN documented the ill-treatment of victims detained in the DAJ facilities, which often constituted acts of torture.

1190. Agents of the National Police, both men and women, including members of the DOEP and members of the DAJ, have been identified as the main perpetrators of acts of torture and other cruel, inhuman, or degrading treatment during the victims' apprehension, as well as in the DAJ and police stations in different departments of the country. In some cases, high-ranking officials of the National Police were present during the development of the operations to arrest the victims, as well as in the police stations where long interrogations were carried out with torture methods. These officials included Commissioner Luis Alberto Pérez Olivas, who is in charge of the DAJ in Managua, and Commissioner General Ramón Avellán in Masaya, the sub-director of the National Police.<sup>1821</sup>

1191. The National Police was also instrumental in acts of aggression, surveillance, harassment, threats, intimidation, and detention of critical voices and real or perceived opponents, as well as in raids on independent media outlets. The GHREN received information on the systematic participation of agents of the DAJ and DOEP, among other units, in carrying out such actions and operations. The GHREN also documented several cases where acts of torture and ill-treatment were committed in the presence of high-ranking members of the police institution, who either incited or permitted these violations to take place.

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<sup>1819</sup> For more detailed information on the National Police organizational structure, please refer to Chapter II.2(b) of this report.

<sup>1820</sup> Photographic material on file with GHREN DDDOC304, DDDOC376.

<sup>1821</sup> GHREN interviews EEIV004, DDIV022.

## b) Public Prosecutor's Office

1192. The GHREN concluded that officials of the Public Prosecutor's Office, along with other actors in the justice system and the National Police, engaged in coordinated actions to systematically guarantee and extend the arbitrary deprivation of liberty of real or perceived opponents, violate their procedural rights, fabricate evidence, and conceal acts of torture and forced disappearance.

1193. The National Police and the Public Prosecutor's Office operated jointly to systematically generate false accusations by fabricating evidence, instructing prosecution witnesses, and drafting indictments that did not align with reality.<sup>1822</sup> The National Police and the Public Prosecutor's Office also acted complicitly by failing to present the detained persons before the appropriate judicial authority within the deadlines established by law, which systematically prolonged the detained persons' stay in police custody. These systematic delays helped the physical evidence of the torture inflicted on the detainees to disappear or be concealed before the detainees faced a competent judge. The delays also gave State agents additional time to investigate and interrogate the detainees.<sup>1823</sup>

1194. The GHREN has reasonable grounds to believe that the Public Prosecutor's Office officers received and implemented direct instructions from the State hierarchy.

## c) Ministry of Health

1195. The GHREN has reasonable grounds to believe that senior health system officials, including Health Minister Sonia Castro González in 2018,<sup>1824</sup> Secretary General of Health Carlos Saenz Torres, and the health workers' union, were involved in the role that the health system played during the repression of the protests. This involvement included issuing orders to professionals and public health centres to not treat injured real or perceived opponents.

1196. The GHREN has reasonable grounds to believe that in April 2018, the Minister of Health ordered professionals and public health centres to refuse to treat people injured during the demonstrations. The GHREN received testimonies from medical personnel who revealed that they received such orders from their superiors, both verbally and in writing.<sup>1825</sup> The GHREN gathered multiple testimonies referring to the systematic denial of medical assistance to injured persons,<sup>1826</sup> and describing the cruel and inhumane treatment of injured persons by medical personnel.<sup>1827</sup>

1197. Testimonies gathered by the GHREN, along with information from open sources, affirm that the Secretary General of the Federation of Health Workers (Fetsalud), Gustavo Porras, who is also the President of the National Assembly, exercised significant power

<sup>1822</sup> GHREN interviews BBIV001, BBIV005, BBIV006.

<sup>1823</sup> GHREN interviews EEIV014, EEIV025, EEIV029, EEIV028, EEIV032, EEIV039, BBIV001, BBIV005, BBIV006, BBIV012 and BBIV030.

<sup>1824</sup> Sonia Castro has been sanctioned by the United States, Canada, the European Union, and the United Kingdom, for her links to the repression of the protests. See Treasury Sanctions Members of Nicaraguan President Ortega's Inner Circle Who Persecute Pro-Democracy Voices, 21 June 2019, available at: <https://home.treasury.gov/news/press-releases/sm715>; Consolidated Canadian Autonomous Sanctions List, available at: [https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/sanctions/consolidated-consolide.aspx?lang=eng#dataset-filter](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/consolidated-consolide.aspx?lang=eng#dataset-filter); Implementing Regulation (EU) 2019/1716 concerning restrictive measures in view of the situation in Nicaragua, 4 of May 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R0606>; Consolidated List of Financial Sanctions Targets in the UK, regime Nicaragua, 25 of February of 2022, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1057498/Nicaragua.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1057498/Nicaragua.pdf).

<sup>1825</sup> GHREN interviews IIV003, DDIV017, IIDOC004.

<sup>1826</sup> GHREN interviews IIV001, IIV002, IIV003, DDIV017, DDIV018, DDIV10, DDIV024, DDIV014.

<sup>1827</sup> GHREN interviews IIV003, IIV002, DDIV007, DDIV014.

within the Ministry and was linked to the role that the Fetsalud played during the repression of the protests.

d) Ministry of the Interior

1198. The Ministry of the Interior, led by Minister María Amelia Coronel Kinloch, played an essential role in the repressive infrastructure of the government of President Ortega and Vice President Murillo through three of its subordinate units.

e) General Directorate of the National Prison System (SPN)

1199. As developed in Chapter II of this report, the SPN is responsible for administering prison services and ensuring the execution of criminal sentences and custodial measures in the application of prison policies while adhering strictly to the Nelson Mandela Rules.

1200. Based on the information available to the GHREN, several individuals who were arbitrarily detained as real or perceived opponents were transferred to SPN centres throughout the national territory, where they were systematically subjected to discriminatory treatment and detention conditions that violated international standards, which constituted cruel, inhuman or degrading treatment, and, in some cases, torture.

1201. The GHREN documented the conditions of detention for real or perceived opponents in the Jorge Navarro prison complex, known as La Modelo, and the La Esperanza Integral Prison Centre for Women, both under the jurisdiction of the SPN. The detainees were systematically subjected to mistreatment and discrimination as punishment for their real or perceived political choices, which included physical beatings, threats, insults, prohibitions on communications with other detainees, isolation in punishment cells, inadequate food, sometimes in smaller portions than those corresponding to common prisoners, and lack of water and electricity in the cells. Access to medical attention was minimal and only provided on rare occasions or when the person's medical situation had significantly worsened.

1202. Several victims detained at La Modelo were subjected to a prolonged and indefinite isolation regime in the maximum-security section known as La 300 and in punishment cells known as El Infiernillo, where conditions were even more precarious. Some detainees remained in this regime for more than two years. The GHREN received information from different sources about the cruelty exhibited by the official in charge of La 300 towards the detainees and their families.<sup>1828</sup>

f) General Department of Migration and Alien Affairs (DGME)

1203. The Government of President Ortega and Vice President Murillo has restricted the right to freedom of movement for real or perceived opponents, their family members, and even State institution workers. According to information received by the GHREN,<sup>1829</sup> the DGME helped the Government systematically restricted the right of real or perceived opposition nationals to leave and to re-enter Nicaraguan territory. This was accomplished through express prohibitions to officials, confiscation of passports at border points, non-renewal of expired travel documents, and forcing the departure of these individuals from the country through unregulated routes. The DGME also participated in the arbitrary revocation of nationality and summary expulsion of binational Nicaraguans. These violations require further investigation.

g) General Directorate of Control and Registration (DGCR)

1204. The Ministry of the Interior played a central role in the systematic cancellations of non-profit organizations. This process was carried out by the National Assembly under the direction of its Department of Registration and Control of Non-Profit Organizations until May 2022, when it was transformed into a directorate and renamed the DGCR (*Dirección*

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<sup>1828</sup> GHREN interviews EEIV005, EEIV016, EEIV017, EEIV023.

<sup>1829</sup> GHREN interviews BBIV004, BBIV012, BBIV014.



*General de Control y Registro*). Director Franya Urey Blandón headed the Department and the General Directorate. As of August 2022, the Ministry of the Interior has the authority to cancel organizations by Ministerial Agreement. The Ministry of the Interior, particularly the Department of Registration and Control and its successor, the DGCR, systematically obstructed or prevented the organizations from submitting the information and materials required under the current legislation, thus forcing them into non-compliance with their legal obligations.

h) Nicaraguan Institute of Telecommunications and Postal Services (TELCOR)

1205. The GHREN highlights that TELCOR is a decentralized entity under the direct sectoral control of the Presidency. Since the onset of the social protests in April 2018, TELCOR has played an instrumental role in the periodic censorship of journalists, interruption of retransmissions, and systematic closure of independent media. These actions were part of the government's strategy to silence all critical voices.

1206. The GHREN received information from several sources indicating that TELCOR management sent intimidating messages to the people responsible for at least two television channels, threatening that if they gave media coverage to public demonstrations against the Government, they would have to "abide by the consequences". TELCOR management also suggested that the television channels should focus on other issues. Additionally, the director of the regulator requested that the television channel's director remove two programs particularly critical of the government from its programming.

1207. Throughout the investigation covered by the GHREN, TELCOR systematically closed dozens of independent local and national media outlets.

1208. According to the social media conglomerate Meta, TELCOR employees allegedly coordinated and operated a network of more than 1,300 fake social media accounts to implement pro-government disinformation campaigns.

4. *Pro-government armed groups*

1209. The GHREN has reasonable grounds to believe that since 18 April 2018, pro-Government armed groups, acting with the agreement, acquiescence, and/or consent of senior members of the National Police and the State hierarchy, systematically participated in the repression of protests against the Government. These armed groups deliberately and systematically used lethal force, resulting in the deaths of demonstrators. The GHREN has reasonable grounds to believe that members of pro-government armed groups were also often involved in the violent and arbitrary arrests of real or perceived opponents, as well as in perpetrating acts of torture and other cruel, inhuman, or degrading treatment.

1210. The GHREN identified a pattern of abuses of the right to life and physical safety perpetrated by pro-government armed groups since 18 April 2018. In most cases investigated by the GHREN, the National Police and pro-government armed groups acted jointly to suppress protests.

1211. The use of weapons of various calibres by members of pro-government armed groups is evident, even though, according to the Nicaraguan Constitution, only the National Police and the Army are authorized to carry firearms. Accordingly, the joint operations conducted by the National Police and pro-government armed groups were unlawful. The GHREN has reasonable grounds to believe that President Ortega and Vice President Murillo were aware of the nature of the pro-government armed groups and exploited their allegiance through individuals respected within the Sandinismo ideology to commit acts of violence against real or perceived Government opponents.<sup>1830</sup> The GHREN deems it necessary to further investigate the link between pro-government armed groups and the Government.

1212. The GHREN also documented the systematic detention of real or perceived opponents by pro-government armed groups in secret detention sites, where they were

<sup>1830</sup> GHREN interviews BBIV001, BBIV024, BBIV031.

subjected to torture with the knowledge and consent of the authorities. After being detained for hours or days, the victims were handed over to the police by the pro-government armed groups with visible signs of violence. Moreover, members of pro-government armed groups participated systematically in acts of surveillance, harassment, and intimidation of real or perceived opponents, acting with total impunity. The CPCs, along with departmental, local, and institutional structures of the ruling party, including the UVEs and CLS, played an essential role in the surveillance of real or perceived opponents.

1213. As described in Chapter II, the pro-government armed groups consist of Sandinista sympathizers, including the Sandinista Youth, youth at risk of social exclusion, employees of State institutions, former members of the army as well as the Sandinista Popular Army, police, and State security. According to various sources consulted by the GHREN, the pro-government armed groups acted pursuant to instructions from State authorities at both the national and local levels, and/or from territorial leaders of the ruling party.

1214. The GHREN received specific information on the particularly notorious and systematic participation of some municipalities, such as Estelí, Masaya, Jinotepe, Tipitapa (Managua), and Jinotega, in the recruitment, mobilization, and coordination of these pro-government groups. Similarly, there have been reports of retired ex-military and police officers, as well as local and national FSLN officials, systematically recruiting and coordinating members of pro-government armed groups through the use of local government structures.<sup>1831</sup> Furthermore, various state institutions, including municipalities, the Ministry of Labour, the Ministry of Health, the INSS, the DGI, the ENACAL, have been reported to systematically participate in the repression of demonstrations.<sup>1832</sup>

## B. State Responsibility

1215. The GHREN has reasonable grounds to believe that the State of Nicaragua has violated its international obligations. As detailed in this report, the acts and conduct of all the branches of the State, as well as of other public authorities at the national, regional, and local levels, constitute serious violations of these obligations. Specifically, the State's actions constitute systematic and flagrant violations of the international prohibitions of crimes against humanity and torture, which are preemptory norms of general international law (*jus cogens*).<sup>1833</sup>

1216. Furthermore, the GHREN has concluded with reasonable grounds to believe that, rather than protecting victims of human rights violations, abuses, and crimes, the Nicaraguan justice system has played a prominent role in the State's repression of real or perceived government opponents. Accordingly, the GHREN has reasonable grounds to believe that the State of Nicaragua has violated its obligation to ensure accessible and effective remedies for victims of human rights violations and abuses. The GHREN also has reasonable grounds to believe that the State of Nicaragua has failed in its obligation to investigate the violations, abuses, and crimes committed and documented in this report, as well as to punish those responsible for these actions.

1217. Consequently, the State of Nicaragua has committed and continues to commit serious violations of the international prohibitions on crimes against humanity and torture. Any State is entitled to invoke the responsibility of the State of Nicaragua for these violations. Consequently, States must cooperate through lawful methods to put an end to

<sup>1831</sup> The GHREN received specific information on the participation of the FSLN leadership in Carazo, Matagalpa and Masaya.

<sup>1832</sup> GHREN interviews DDIV024, DDIV017, DDIV032, DDIV034; photograph on file with GHREN CCDOC088.

<sup>1833</sup> *Furundžija*, Trial Judgment, paras. 153–154; IACtHR, *Case of Goiburú et al. v. Paraguay*, Judgment (Merits, Reparations and Costs), 22 September 2006, Series C No. 353, para. 128; ECtHR, *Al-Adsani v. the United Kingdom*, Application no. 35763/97, Judgment, November 2001, Grand Chamber, European Court of Human Rights, Reports Judgments and Decisions 2001-XI, Reports of Judgments and Decisions 2001-XI, para. 30. 35763/97, Judgment, 21 November 2001, Grand Chamber, European Court of Human Rights, Reports of Judgments and Decisions 2001-XI, para. 30.

the serious violations, refuse to recognize as lawful any situation resulting from such violations, and refrain from providing aid or assistance to maintain such a situation.<sup>1834</sup>

1218. The State of Nicaragua has committed and continues to commit serious violations of the international prohibitions on crimes against humanity and torture for the following reasons:

- The conduct of all branches of government and other public authorities, whether at the national, regional, or local level, are considered acts attributable to the State.<sup>1835</sup> The State may also be held internationally responsible for the wrongful conduct of non-State persons or groups when they act pursuant to the instructions, under the direction or effective control, or with the consent or acquiescence, of the State.<sup>1836</sup>
- States bear the primary responsibility of upholding international human rights obligations. Accordingly, the State must comply with its obligations under international law and customary international law to respect, protect, and fulfil human rights. The State of Nicaragua must also comply with the corresponding obligations to prevent, investigate, punish, and redress human rights violations. In particular, the State of Nicaragua has the responsibility to prevent crimes against humanity,<sup>1837</sup> protect its population against crimes against humanity,<sup>1838</sup> and not commit crimes against humanity.<sup>1839</sup>
- Notably, international prohibitions of crimes against humanity and torture apply both in times of peace and during armed conflict. The GHREN notes that since April 2018, Nicaraguan authorities have claimed to suffer an armed attack by opponents to overthrow the government. Without having found evidence on the validity of such an assertion, the GHREN notes that even in the event of an armed conflict, the international prohibition of crimes against humanity and torture would have remained an international obligation of the State of Nicaragua.

1219. The GHREN highlights that the Constitution of Nicaragua itself expressly recognizes its international obligations to human rights.<sup>1840</sup> The actions, public statements, and arguments made by Nicaragua's agents in the case of *Nicaragua v. United States of America* before the ICJ, as well as the subsequent judgment, serve as evidence of Nicaragua's acceptance of its international obligations as a State to the fundamental principles of humanity, of its legal nature, and of its responsibility for the violation of these obligations, including by "paramilitary" groups.<sup>1841</sup>

<sup>1834</sup> Article 41(1) of the ILC Draft Articles on Responsibility of States for internationally wrongful acts; Conclusion 19(1) of the ILC Draft Conclusions on peremptory norms of general international law (*jus cogens*), 73rd session (18 April–3 June and 4 July–5 August 2022), A/77/10, Supplement No. 10, para. 43.

<sup>1835</sup> Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004), para. 4. See ILC Article 4, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission, Fifty-third session (23 April–1 June and 2 July–10 August 2001), A/56/10, Supplement No. 10, para. 77.

<sup>1836</sup> See ICJ, Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, 26 February 2007, 43–240, pp. 205, 207–208, paras. 392, 397, 399–401.

<sup>1837</sup> See article 4 and commentaries with jurisprudential references to the ILC draft, Draft Articles on the Prevention and Punishment of Crimes against Humanity, Report of the International Law Commission, 71st session (29 April–7 June and 8 July–9 August 2019), A/74/10, Supplement No. 10, para. 45.

<sup>1838</sup> Security Council, Resolution 2250 (2015), S/RES/2250 (2015), para. 8; Resolution 2171 (2014), S/RES/2171(2014), preamble para. 7; Resolution 2117(2013), S/RES/2117(2013), preamble para. 16.

<sup>1839</sup> See, *mutatis mutandis* with the treaty obligation to prevent genocide, the logical reasoning in ICJ, *Bosnia and Herzegovina v. Serbia and Montenegro*, pp. 113–114, paras. 166–167.

<sup>1840</sup> See Constitution of Nicaragua, art. 46.

<sup>1841</sup> Véase CIJ, Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgment, 26 June 1986, ICJ Reports 1986, 14–150, pp. 62–63, paras. 109–111.

1220. The State of Nicaragua must ensure that individuals have accessible and effective remedies in cases of human rights violations and abuses, and must thoroughly investigate and prosecute the violations and abuses.<sup>1842</sup> For State investigations to be effective, they must be conducted promptly and thoroughly by impartial and independent bodies and/or officials, as well as be open to public scrutiny.<sup>1843</sup> As part of the duty to provide effective remedies, the State of Nicaragua is also obligated to guarantee reparations for the harm these victims suffered, uphold the inalienable right of victims to know the truth about violations and abuses, and take other necessary measures to prevent the recurrence of violations and abuses.<sup>1844</sup>

1221. The failure of Nicaragua to investigate and prosecute perpetrators of serious human rights violations and abuses may give rise to a separate violation of the State's international obligations. As documented by the GHREN in this report, Nicaragua bears the primary obligation to ensure accountability for the crimes and serious human rights violations and abuses committed on its territory, particularly when they amount to crimes against humanity.<sup>1845</sup>

1222. The subsequent acts of the State of Nicaragua recorded by the GHREN, which are notorious and publicly acknowledged, demonstrate the refusal of the State to comply with its obligations to punish the violations, abuses, and crimes documented throughout this report. These acts of the State include: (i) the lack of cooperation with universal and regional multilateral human rights mechanisms; (ii) the permanent state of judicial contempt before the IACtHR; (iii) the failure to investigate, prosecute, and convict those responsible for crimes against humanity; and (iv) the lack of guarantees to ensure non-repetition of these international crimes.

### C. Individual criminal responsibility

1223. The international responsibility of the State of Nicaragua for the crimes against humanity that occurred is without prejudice to the individual criminal responsibility for these crimes. The violations and crimes documented in this report give rise to individual criminal responsibility under either international criminal law or Nicaraguan law. Individual criminal responsibility can be incurred through various modes of participation: commission, planning, issuing orders, instigating, aiding and abetting, and being of superior or command rank.

1224. The GHREN has reasonable grounds to believe that officials and authorities from all branches of government and at all levels engaged in a gross and systematic pattern of violating the human rights of real or perceived opponents. These violations comprise extrajudicial executions, arbitrary detentions, acts of torture, including acts of sexual violence, and other cruel, inhuman, and degrading treatment or punishment, the arbitrary deprivation of nationality and the right of all persons to remain in their own country. These violations occurred on 18 April and persist up to the date of this report.

1225. As established in chapter III.IV of this report, the violations and abuses documented by the GHREN correspond to conduct that legally qualify as crimes against humanity of murder, imprisonment, torture, sexual violence, other cruel, inhuman, and degrading treatment, deportation, and politically motivated persecution.

<sup>1842</sup> See art. 2; CCPR/C/21/Rev.1/Add. 13, para. 15; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 1 March 2006, para. 9.

<sup>1843</sup> CCPR/C/21/Rev.1/Add. 13, para. 15.

<sup>1844</sup> ICCPR, art. 2.3. See UNGA, A/RES/60/147, paras. 15-23. See also ICRC, Customary International Humanitarian Law, Volume I: Rules (2005), rule 150; Economic and Social Council, E/CN.4/2005/102Add.1, principles 31-38.

<sup>1845</sup> ICC, Appeals Chamber, Prosecutor v. Germain Katanga, Case No. ICC-01/04-01/07 OA 8, Judgement, 25 September 2009, para. 85.

1226. The GHREN emphasizes that its findings are based on the “reasonable grounds to believe” standard of proof. While the GHREN is mandated to undertake thorough and independent investigations into all alleged human rights abuses and violations perpetrated in Nicaragua since April 2018 and, if possible, to identify those responsible, such a mandate is not judicial. Any determination regarding individual criminal responsibility for the violations, abuses, and crimes documented in this report must be made by competent authorities through procedures that safeguard the right to a defence and uphold all due process guarantees.

1227. The GHREN has reasonable grounds to believe that since April 2018, President Ortega, Vice President Murillo, agents, officials of various agencies and structures of the government, and non-State actors have committed and continue to commit serious and systematic human rights violations, abuses, and crimes against humanity.

1228. The GHREN has not determined the individual criminal responsibility, in either international or domestic jurisdictions, that may be incurred by current and former officials of the various State agencies and institutions mentioned throughout this report. The GHREN has, however, recorded the names of several individuals whom victims and witnesses have identified as being directly responsible for the documented violations, abuses, and crimes. The GHREN has identified individuals whose contributions within the State system could give rise to their eventual individual criminal responsibility at both the international and national levels.

1229. The GHREN has compiled a list with the names of all these individuals in its database. The eventual determination of individual criminal responsibility of these individuals for crimes committed through acts or omissions must be conducted by competent authorities through an additional investigation.

#### **D. Access to justice in third countries**

1230. Access to justice for victims is an inalienable and obligatory right, and is guaranteed in international law. Given the impunity of the facts in Nicaragua, and considering the limited jurisdiction of States connected to the victim’s nationality, initiatives undertaken by third countries to promote access to justice for the victims and accountability for human rights violations, abuses, and crimes in Nicaragua take on special relevance. As noted, crimes against humanity are crimes against the international order, and they empower the intervention of States other than the State in whose territory the crimes were committed or whose citizens were victims of the crimes. This establishes jurisdiction for third countries to interfere in the sovereignty of the State and does not require the bond of citizenship.

1231. Nicaragua expressly recognizes the seriousness of crimes against the international order in its domestic legal system<sup>1846</sup> and the principle of universality of its criminal jurisdiction.<sup>1847</sup> The Government of Nicaragua is fully aware that it is obligated to abide by these norms and guarantee that such crimes are not met with impunity and not repeated. The Criminal Code itself recognizes the supremacy of international law concerning the non-application of amnesty or pardons in cases involving crimes against the international order.<sup>1848</sup>

<sup>1846</sup> Criminal Code, Title XXII, crimes against international order, arts. 484–488.

<sup>1847</sup> Criminal Code, art. 16 (d): “Nicaraguan criminal laws shall also be applicable to Nicaraguans or foreigners who have committed outside the national territory any of the following crimes [...] (d) Crimes against international order”.

<sup>1848</sup> See Criminal Code, art.130, Extinction. “Criminal liability is extinguished by: [...] c) Pardon, the effect of which is limited to the total or partial extinction of the sentence, to be determined in each case by the National Assembly. Those sentenced for crimes against international order are excluded from this benefit; d) Amnesty, which completely extinguishes the principal and accessory penalties and all their effects. Those sentenced for crimes against international order are excluded from this benefit [...]”

1232. Although there is a need for precision and concreteness in a specific case,<sup>1849</sup> the principle of universality generally considers the commission of crimes against humanity as a criterion for the attribution of extraterritorial criminal jurisdiction. It does not require a link between the crime against humanity committed and the State exercising universal criminal jurisdiction. The principle of universality permits national jurisdiction and declares it competent to hear crimes, regardless of where the crimes were committed or the nationality of the purported perpetrator or victim.<sup>1850</sup> In practice, especially following the Nuremberg trials after World War II, States have increasingly invoked the principle of universal criminal jurisdiction in their fight against impunity for egregious international crimes, such as crimes against humanity.<sup>1851</sup>

1233. States within the international community that have recognized this principle of universality in their domestic law, and its application to the exercise of extraterritorial criminal jurisdiction over crimes against humanity, have the necessary tools to ensure that these atrocious crimes do not go unpunished. One example is the decision of the Argentine judicial authorities to consider exercising its extraterritorial criminal jurisdiction, based on its domestic law recognizing this universal criterion, concerning the crimes against humanity in Nicaragua that have been investigated by the GHREN.<sup>1852</sup>

## VI. Recommendations

**1234. The GHREN has reasonable grounds to believe that President Daniel Ortega, Vice President Rosario Murillo, agents, officials of various agencies, government structures, and non-State actors have carried out, and continue to carry out as of the date of this report, serious and systematic human rights violations and abuses against a sector of the Nicaraguan civilian population. These violations and abuses include extrajudicial executions, arbitrary detentions, torture, cruel, inhuman or degrading treatment, and arbitrary deprivation of nationality. They also include violations of the right to remain in one's own country, the right to participate in public affairs, and the freedoms of expression, opinion, association, assembly, conscience, and religion.**

**1235. The GHREN concluded that such violations and abuses are prohibited acts and constitute a systematic and generalized attack against a civilian population, carried out through a discriminatory policy that includes the commission of human rights violations and crimes under international law. These violations and abuses have not only resulted in the verified destruction of the civic and democratic space in Nicaragua, but have also sustained the existence of crimes against humanity.**

### A. Recommendations to the Republic of Nicaragua:

- 1236. The GHREN urges the authorities of the Republic of Nicaragua to:**
- a) Immediately release all persons arbitrarily deprived of their liberty.**

<sup>1849</sup> Christian Tomuschat, Universal Criminal Jurisdiction in Troubled Waters, in F. Jeßberger et al. (eds.), *Strafrecht und Systemunrecht, Festschrift für Gerhard Werle zum 70. Geburtstag*, Tübingen, Mohr Siebeck 2022, 511-522, p. 522. For an overview of the controversial issues, see “The scope and application of the principle of universal jurisdiction, Informal Working Paper prepared by the Chairperson for discussion in the Working Group” (Nov. 4, 2016), available at: <[https://www.un.org/en/ga/sixth/75/universal\\_jurisdiction/wg\\_uj\\_informal\\_wp.pdf](https://www.un.org/en/ga/sixth/75/universal_jurisdiction/wg_uj_informal_wp.pdf)>.

<sup>1850</sup> See Jan-Michael Simon, *Universal Jurisdiction: The Public International Law Perspective*, Anuario de Derecho Constitucional Latinoamericano, 2001, 283–318.

<sup>1851</sup> See ILC, *Universal Criminal Jurisdiction*, Report of the International Law Commission, 70th Session (30 April–1 June and 2 July–10 August 2018), A/73/10, Supplement No. 10, A/73/10, Annex, para. 3.

<sup>1852</sup> The investigation of the case has been pending before Federal Judge Ariel Lijo (Federal Criminal and Correctional Court No. 4, Secretariat No. 8 CFP 2981/2022) since 5 October 2022.

- b) Immediately cease politically motivated persecutions involving criminalization, arbitrary detention, arbitrary deprivation of nationality, and deportation.
- c) Conduct thorough, independent, and transparent investigations of documented violations, abuses, and crimes to ensure accountability for those involved in their commission, including those who bear the highest level of responsibility.
- d) Guarantee comprehensive reparation to the victims, redress for the crimes, non-repetition of the crimes, and the right of victims to know the truth.
- e) Implement legislative and public policy measures to guarantee democratic principles and the separation of powers between the Executive, Legislative, Electoral, and Judicial branches.
- f) Cooperate with OHCHR, treaty bodies, and any other body established by the Human Rights Council.
- g) Implement the recommendations of the special procedures of the Human Rights Council, as well as treaty mechanisms, in particular the Human Rights Committee in *CCPR/C/NIC/CO/4* (30 November 2022) and the Committee against Torture in *CAT/C/NIC/CO/2* (7 December 2022).

## **B. Recommendations to the international community**

1237. The GHREN urges the international community to:

- a) Take measures to protect and guarantee the rights of stateless persons due to the arbitrary deprivations of Nicaraguan nationality, as well as persons who were forced to leave Nicaragua due to the violations described in this report.
- b) Initiate legal action against individuals responsible for the documented violations, abuses, and crimes under its domestic legislation.
- c) Extend sanctions to institutions and individuals involved in committing violations and crimes under international law.
- d) When negotiating on development cooperation and investment projects in Nicaragua, governments and multilateral organizations should include human rights guarantees and prioritize actions to improve the human rights situation in Nicaragua.

## Annex

### Annex 1: Timeline of legislation passed in relation to security and defence matters

Name	Legal instrument	Date	Description
Fundamental Statute of the Republic of Nicaragua	Government of National Reconstruction of the Republic of Nicaragua Act. <sup>1853</sup>	22 August 1979	Dissolves the National Guard, the National Security Office and the Military Intelligence Service. The National Army will be made up of FSLN combatants and those members of the National Guard who participated in the struggle.
Creation of the Sandinista Popular Army	Executive Order No. 53 <sup>1854</sup>	18 September 1979	Creates the Sandinista Popular Army (EPS) as the only armed force of the Republic.
Appointments of Commanders of the Sandinista Popular Army (Ejército Popular Sandinista)	Executive Order No. 54 <sup>1855</sup>	18 September 1979	Appoints the main commanders of the EPS and initiates a process of conformation of military structures throughout the country, integrated by the guerrilla forces.
Creation of the Sandinista Popular Militias	Decree Law No. 313 <sup>1856</sup>	21 February 1980	Creates the Sandinista Popular Militias as a national organization of voluntary participation, under the direction of the Ministry of Defence.
Law Creating the Military Degrees of Honour, Office and Military Degrees	Decree Law No. 429 <sup>1857</sup>	7 June 1980	Creates the Honorary Degrees, Military Offices and Military Degrees.
Law on the Mobilization of the Sandinista Popular Militias	Decree Law No. 555 <sup>1858</sup>	22 October 1980	Establishes the conditions for the mobilization of the Sandinista Popular Militias.
Law on the Jurisdictional Functions of the Sandinista Police	Decree Law No. 599 <sup>1859</sup>	3 November 1980	Creates the Sandinista Police as a military corps under the Ministry of the Interior.
Law on the Organization of Military Auditing and Military Criminal Procedure	Decree Law No. 591 <sup>1860</sup>	18 December 1980	Creates the Military Audit as the body in charge of military justice and develops the military criminal procedure.
Provisional Law on Military Offenses	Decree Law No. 600 <sup>1861</sup>	23 December 1980	Establishes the crimes and principles of military criminal responsibility.

<sup>1853</sup> Fundamental Statute of 1979, published in *La Gaceta, Diario Oficial* No. 1 of 22 August 1979.

<sup>1854</sup> Executive Decree No. 53 of 1979, published in *La Gaceta, Diario Oficial* No. 12 of 18 September 1979.

<sup>1855</sup> Executive Decree No. 54 of 1979, published in *La Gaceta, Diario Oficial* No. 12 of 18 September 1979.

<sup>1856</sup> Decree No. 313 of 1980, published in *La Gaceta, Diario Oficial* No. 44 of 21 February 1980.

<sup>1857</sup> Decree Law No. 429 of 1980, published in *La Gaceta, Diario Oficial* No. 128 of 7 June 1980.

<sup>1858</sup> Decree Law No. 555 of 1980, published in *La Gaceta, Diario Oficial* No. 243 of 22 October 1980.

<sup>1859</sup> Decree Law No. 599 of 1980, published in *La Gaceta, Diario Oficial* No. 253 of 3 November 1980.

<sup>1860</sup> Decree Law No. 591 of 1980, published in *La Gaceta, Diario Oficial* No. 292 of 18 December 1980.

<sup>1861</sup> Decree Law No. 600 of 1980, published in *La Gaceta, Diario Oficial* No. 296 of 23 December 1980.



Name	Legal instrument	Date	Description
Maintenance of Public Order and Security Act	Law No. 1074 <sup>1862</sup>	17 July 1982	Reforms and reorganizes Decree No. 5 of July 20, 1979 “Law on the Maintenance of Order and Public Security”, which typifies crimes against public security and the corresponding penalties.
Patriotic Military Service Act	Law No. 1327 <sup>1863</sup>	6 October 1983	Regulates the exercise of the patriotic duty of all Nicaraguan citizens to render Military Service.
Reform of the Act Creating the Military Degrees of Honour, Positions and Military Grades	Law No. 19 <sup>1864</sup>	23 July 1986	Amends Arts. 3 and 4 of the Law Creating the Military Grades of Honour, Positions and Degrees and establishes the military ranks in accordance with the structure and development of the EPS and the Ministry of the Interior.
Regulations to the Act Creating Honorary Degrees, Military Positions and Military Degrees	Executive Decree No. 214 <sup>1865</sup>	8 September 1986	Regulates the conditions for the granting of military ranks to members of the EPS and the Ministry of the Interior; it also regulates the categories of officers, the use of military ranks and the bodies empowered to grant them.
Title V of the Constitution - National Defence	Constitution <sup>1866</sup>	2 January 1987	Establishes that the EPS “is the armed wing of the people and direct heir of the Army Defender of National Sovereignty”, without explicitly mentioning the Police.
Functions of the Sandinista Police Act	Law No. 65 <sup>1867</sup>	26 December 1989	Establishes the functions of the Sandinista Police, as an organ of the Ministry of the Interior.
Amendment to the Act Creating the Military Degrees of Honour, Office and Military Degrees	Law No. 74 <sup>1868</sup>	22 February 1990	Amends Article 4 of Decree No. 429 empowering the Military Council to grant superior officer ranks. It determines that the Commander in Chief of the EPS is empowered to issue the directives, orders and other provisions necessary to regulate the granting of other military ranks.
Military Organization of the Sandinista People's	Law No. 75 <sup>1869</sup>	23 February 1990	Establishes the functions and structure of the military institution, as well as the provisions

<sup>1862</sup> Decree Law No. 1074 of 1982, published in *La Gaceta, Diario Oficial* No. 167 of 17 July 1982.

<sup>1863</sup> Decree Law No. 1327 of 1983. Available in: [http://legislacion.asamblea.gob.ni/normaweb.nsf/\(\\$All\)/4316A8EDC3B3CC37062570D50076E915?OpenDocument](http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/4316A8EDC3B3CC37062570D50076E915?OpenDocument)

<sup>1864</sup> Law No. 19 of 1986. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92aaea87dac762406257265005d21f7/3d2a6ca702bbd0bf062570a1005781e9?OpenDocument>.

<sup>1865</sup> Executive Decree No. 214 of 1986. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/fb58ab753ee cb613062570a10057a645?OpenDocument>.

<sup>1866</sup> Constitution of the Republic of Nicaragua of 1987. Available at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=2966](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=2966).

<sup>1867</sup> Law No. 65 of 1989. Available at: <http://legislacion.asamblea.gob.ni/Normaweb.nsf/0/752DBF59A1F72D9D062570A10058331F?OpenDocument>.

<sup>1868</sup> Law No. 74 of 1990. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/d0c69e2c91d9955906256a400077164a/9f6272abd5a15792062570a100577c9d?OpenDocument>

<sup>1869</sup> Law No. 75 of 1989. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/3133c0d121ea3897062568a1005e0f89/1fabe626463b2a62062570a100577d2e?OpenDocument>.

<i>Name</i>	<i>Legal instrument</i>	<i>Date</i>	<i>Description</i>
Army Act			related to the exercise of national defence.
Amendments to the Regulations to the Acts Creating Honorary Degrees, Posts and Military Grades	Executive Decree No. 491 <sup>1870</sup>	27 February 1990	It confers on the Military Council and the Commander of the Sandinista People's Army, the power to grant and/or deprive senior officers of promotions for First Officers, Junior Officers and Classes respectively, and to serve in the Ministries or State Entities, preserving their Grade and condition of Active Duty Military.
Toncontín Agreements		23 March 1990	Agreement signed in Honduras between the Government of Nicaragua and Representatives of the Nicaraguan Resistance (RN).
Transition Agreement	Protocol for the Transfer of Presidential Command of the Government of the Republic of Nicaragua	27 March 1990	Transition Protocol between the outgoing and incoming governments, to promote the de-partisanization of the Police and its professionalization.
Managua Agreement		18 April 1990	On the demobilization process of the Nicaraguan Resistance.
Establishment and organization of the EPS Social Security Institute	Decree No. 521 <sup>1871</sup>	23 April 1990	Creates the Social Welfare Institute of the Sandinista Popular Army (Instituto de Previsión Social del Ejército Popular Sandinista).
Anti-Crime Plan	Plan <sup>1872</sup>	1990-1991	Plan to control the actions of members of the Nicaraguan Resistance in rural areas.
Amendment to the Act Creating Honorary Degrees, Military Positions and Military Degrees	Decree Law No. 1-91 <sup>1873</sup>	8 February 1991	It empowers the President, in his capacity as Supreme Chief of the Army, to grant the Military ranks of General of the Army, Lieutenant General, Major General and Brigadier General, as proposed by the Military Council.
Reform to the Military Organization of the Sandinista Popular Army Act	Decree Law No. 2-91 <sup>1874</sup>	8 February 1991	Determines that the EPS is the only legally recognized armed military corps in the Nicaraguan territory and is subordinate to the Constitution, under the authority of the President of the Republic. It removes the possibility that its members in active service may hold executive

<sup>1870</sup> Executive Decree No. 491 of 1990. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/3133c0d121ea3897062568a1005e0f89/8600760b498a8c6b062570a10057b6ab?OpenDocument>.

<sup>1871</sup> Decree No. 521 of 1990. Available at: [http://legislacion.asamblea.gob.ni/normaweb.nsf/\(\\$All\)/7B526B31427542B1062570A10057B60C?OpenDocument](http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/7B526B31427542B1062570A10057B60C?OpenDocument).

<sup>1872</sup> Ejército de Nicaragua 30 años de vida institucional: (1979-2009), p. 80. Available at: <https://www.ejercito.mil.ni/contenido/relaciones-publicas/publicaciones/docs/memoria-1979-2009.pdf>.

<sup>1873</sup> Decree Law No. 1 of 1991. Available at: <http://legislacion.asamblea.gob.ni/Normaweb.nsf/d0c69e2c91d9955906256a400077164a/f5ade05ce8900575062570a100578486>.

<sup>1874</sup> Decree Law No. 2 of 1991. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/d0c69e2c91d9955906256a400077164a/68f848d4d3278dcb062570a100578491?OpenDocument>.

Name	Legal instrument	Date	Description
			positions in any political party or exercise public positions of a civilian nature.
Functions of the National Police in Judicial Assistance Matters Act	Law No. 144 <sup>1875</sup>	25 March 1992	It establishes that, in the investigation of the crime, the National Police will execute the orders and instructions received from the judicial authorities.
Organic Law of the Police	Executive Order No. 45 <sup>1876</sup>	7 September 1992	It defines the command of the Supreme Command of the Police, which corresponds to the President through the Minister or Vice-Minister of the Interior.
Military Jurisdictional Organization and Social Welfare Code	Law No. 181 <sup>1877</sup>	2 September 1994	It establishes that the Army is the only legally recognized armed military corps in Nicaraguan territory.
Partial Amendment to the Constitution of the Republic of Nicaragua Act	Law No. 192 <sup>1878</sup>	4 July 1995	Reforms articles 92-97 of the Constitution regarding the definition, responsibilities and command of the Army and the National Police.
Statutory Regulations of the Military Social Security Institute	Executive Order No. 55 <sup>1879</sup>	11 December 1995	It establishes that the Military Social Welfare System comprises the social security and economic improvement of officers, classes and soldiers of the Army, and their families.
Framework Treaty for Democratic Security in Central America	Treaty <sup>1880</sup>	15 December 1995	Agreement signed between the governments of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama to promote a new regional security model.
National Police Act	Law No. 228 <sup>1881</sup>	28 August 1996	Regulates the vision, mission, and functions of the National Police, creates the National Headquarters and decreases the number of personnel.
Regulation of the	Decree No. 26 <sup>1882</sup>	6 October	Approves the Regulations of the National Police.

<sup>1875</sup> Law No. 144 of 1992. Available at: [http://legislacion.asamblea.gob.ni/normaweb.nsf/\(\\$All\)/EBF8669C11B7A154062570A100577C13?OpenDocument](http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/EBF8669C11B7A154062570A100577C13?OpenDocument).

<sup>1876</sup> Law No. 45 of 1992. Available at: <https://legislacion.asamblea.gob.ni/indice.nsf/c3639d8c1d72577006256fe800533609/70d06356a765458d06257045006233bd?OpenDocument>.

<sup>1877</sup> Law No. 181 of 1994. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92a87dac762406257265005d21f7/7ef0d84d63d78f5c0625803d005874de?OpenDocument>.

<sup>1878</sup> Law No. 192 of 1995. Available at: [http://legislacion.asamblea.gob.ni/normaweb.nsf/\(\\$All\)/927804DC295D0AE5062573080056DA6D?OpenDocument](http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/927804DC295D0AE5062573080056DA6D?OpenDocument).

<sup>1879</sup> Executive Decree No. 55 of 1995. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92a87dac762406257265005d21f7/84ab55d284d8dbc80625718c004c0421?OpenDocument>.

<sup>1880</sup> [https://www.iidh.ed.cr/multic/UserFiles/Biblioteca/IIDHSeguridad/12\\_2010/4b294167-d00a-4804-8336-0a6739d1e0a6.pdf](https://www.iidh.ed.cr/multic/UserFiles/Biblioteca/IIDHSeguridad/12_2010/4b294167-d00a-4804-8336-0a6739d1e0a6.pdf)

<sup>1881</sup> Law No. 228 of 1996. Available at: <https://policehumanrightsresources.org/content/uploads/2016/10/Ley-de-la-Policia-Nacional-Nicaragua.pdf?x19059>.

Name	Legal instrument	Date	Description
National Police Act		1996	
Organization, Competence and Procedure of the Executive Power Act	Law No. 290 <sup>1883</sup>	3 June 1998	It regulates the relations between the armed forces and the civilian institutions of the administration.
Amendments to the Statutory Regulations of the Military Social Security Institute	Executive Order No. 21 <sup>1884</sup>	3 April 1998	Establishes the military authorities that make up the Board of Directors of the Instituto de Previsión Social Militar (IPSM) and the mechanism for filling any vacancies of its members.
Internal military regulations	Standard Technique <sup>1885</sup>	15 December 2009	Updates the Code of Organization, Jurisdiction and Military Social Welfare (Military Code). Updates the levels of command of the Army (Supreme Command, High Command, Superior Command, Unit Command and Other Organs) in order to ensure the fulfilment of the Army's constitutional missions.
Integrated Police-Community and Human Rights Policy	Policy <sup>1886</sup>	February 2002	Establishes guidelines for strengthening the relationship between the National Police and the communities.
Creation of the National Commission for Coexistence and Citizen Security	Decree No. 83 <sup>1887</sup>	3 August 2004	Creates the National Commission for Coexistence and Citizen Security.
Amendments and Incorporations to the Regulations of Law No. 290, Organization, Competence and Procedures of the Executive Branch Act	Decree No. 84 <sup>1888</sup>	3 August 2004	It incorporates regulations in the Executive Branch, aimed at improving the Public Administration and its operation by Directorates (Superior, General and Specific).
Control and Regulation	Law No. 510 <sup>1889</sup>	25 February	Regulates the purchase, sale and destruction of

<sup>1882</sup> Decree No. 26 of 1996. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/7601426cd51db3df0625755f007c70be?OpenDocument>.

<sup>1883</sup> Law No. 290 of 1998. Available at: [http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5\\_nic\\_resp\\_ane\\_2.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_nic_resp_ane_2.pdf).

<sup>1884</sup> Executive Decree No. 21 of 1998. Available at: <http://legislacion.asamblea.gob.ni/Indice.nsf/353128c118c7a240062576dc00538447/7264ad45c2afac040625702300574f36?OpenDocument>.

<sup>1885</sup> Internal Military Regulations, approved on December 15, 2009. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92aaea87dac762406257265005d21f7/543080c6a0c5d0e306257a4f005eb137?OpenDocument>.

<sup>1886</sup> Integrated Police-Community and Human Rights Policy, February 2002. Available at: [www.policia.gob.ni/cedoc/sector/prevenc/PolitIntegral\\_PolComun.pdf](http://www.policia.gob.ni/cedoc/sector/prevenc/PolitIntegral_PolComun.pdf).

<sup>1887</sup> Decree No. 83 of 2004. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92aaea87dac762406257265005d21f7/c90d3d8ec03524ab062573d700651360?OpenDocument>.

<sup>1888</sup> Decree No. 84 of 2004. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/d0c69e2c91d9955906256a400077164a/10f90d952b9b122e062570a40076254c?OpenDocument>.

Name	Legal instrument	Date	Description
of Firearms, Ammunition, Explosives and other Related Materials Special Act and its Amendments		2005	weapons owned by the National Army, the National Police and the Prison System.
Organic Law of Military Courts	Law No. 523 <sup>1890</sup>	5 April 2005	Establishes the organization and competencies of military courts.
Defence Policy	Ministry of Defence, Nicaraguan Army <sup>1891</sup>	1 May 2005	First Book of the National Defence of Nicaragua, which presents the policy and strategy of the State of Nicaragua including the general guidelines of national defence, scenarios, economy and defence forces.
Addendum to Law No. 523 “Organic Law of Military Courts” Act	Law No. 567 <sup>1892</sup>	19 December 2005	Establishes the administration and exercise of the jurisdictional power of the military courts.
Military Criminal Code	Law No. 566 <sup>1893</sup>	5 January 2006	Regulates applicable legal principles (including the principle of universality) and legislates on military criminal jurisdiction, crimes, military misdemeanours and criminal liability.
Amendments and additions to Decree No. 71 of 1998.	Executive Order No. 25 <sup>1894</sup>	12 May 2006	Creates the Directorate of Coexistence and Citizen Security under the Ministry of the Interior.
Special Regulations for Retirement for Years of Service by the National Police	Executive Order No. 47 <sup>1895</sup>	16 August 2006	Establishes the special regulations for the “National Police Retirement Program for Years of Service” and guarantees the rights of those subject to the program.
Amendment to Decree No. 26-96, Regulation of Law No. 228, National	Decree No. 65 <sup>1896</sup>	6 October 2006	Extends benefits for retired police officers.

<sup>1889</sup> Law No. 510 of 2005. Available at: <http://legislacion.asamblea.gob.ni/Normaweb.nsf/4c9d05860ddef1c50625725e0051e506/6947580f016026cd062570a60064a6d4?OpenDocument>.

<sup>1890</sup> Law No. 523 of 2005. Available at: [https://www.poderjudicial.gob.ni/pjupload/spenal/pdf/2005\\_ley02.pdf](https://www.poderjudicial.gob.ni/pjupload/spenal/pdf/2005_ley02.pdf).

<sup>1891</sup> Ministry of Defence, “Nicaragua. Libro de la Defensa Nacional”, 1 May 2005, Ira. ed. - Managua: Impresión Comercial La Prensa, ISBN: 99924-902-0-9. Available at: <https://www.resdal.org/Archivo/nica-libro-blanco.html>.

<sup>1892</sup> Law No. 567 of 2005. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/bbe90a5bb646d50906257265005d21f8/5960fbdcb85cd91a062570f8006f8353?OpenDocument>.

<sup>1893</sup> Law No. 566 of 2005, available at: [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/9DDA1F7C3867326B0625754C00741374?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/9DDA1F7C3867326B0625754C00741374?OpenDocument)

<sup>1894</sup> Executive Decree No. 25 of 2006. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/54b86d7cf4a7b77d0625755f007a11a8?OpenDocument>.

<sup>1895</sup> Executive Decree. No. 47 of 2006. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92aaea87dac762406257265005d21f7/8b8a503ebcf9cbd10625755f007bf4f2?OpenDocument>.

<sup>1896</sup> Decree No. 65 of 2006. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92aaea87dac762406257265005d21f7/7601426cd51db3df0625755f007c70be?OpenDocument>.

<i>Name</i>	<i>Legal instrument</i>	<i>Date</i>	<i>Description</i>
Police Law.			
Reform of Law No. 228, National Police Act.	Law No. 589 <sup>1897</sup>	15 November 2006	Establishes the Voluntary Affiliation Program (PAV), to preserve and improve the Social Security rights and future pensions of persons who have served in the Ministry of the Interior or any of its organs.
Amendment and Addition to Law No. 290, Organization, Competence and Procedures of the Executive Branch Act	Law No. 612 <sup>1898</sup>	29 January 2007	It modifies the internal organization of the Executive Power, determining that it is exercised by the President, who is the Head of State, Head of Government and Supreme Chief of the Army. It creates Secretariats, Ministries, decentralized entities and determines their competencies. It also establishes that the National Police is subject to the civil authority exercised by the President through the Ministry of the Interior, as established by the Constitution and the law on the matter.
The Directorate of Coexistence and Citizen Security is created under the National Police.	Executive Order No. 15 <sup>1899</sup>	5 February 2007	It establishes that the Directorate of Coexistence and Citizen Security, which previously depended on the Ministry of the Interior, will now report to the National Police.
Military Code of Criminal Procedure of the Republic of Nicaragua	Law No. 617 <sup>1900</sup>	29 August 2007	It establishes the competence of the military courts and their procedure, which must conform to the rights and guarantees enshrined in the Constitution, in the Code itself and in the international treaties, conventions and agreements signed and ratified by Nicaragua.
Reform of the National Commission for Citizen Coexistence and Security	Executive Decree No. 110 <sup>1901</sup>	23 November 2007	It updates the functioning of the National Commission for Coexistence and Citizen Security, determines its mission and modifies its name to "Council", reflecting the different authorities, institutions and organizations that comprise it, including the President of the Republic and various organs, Ministries and decentralized entities of the Executive Branch, the Attorney General's Office, representatives of the Church and of the Civil Society. The Council promotes citizen participation in the Social Crime

<sup>1897</sup> Law No. 589 of 2006. Available at: <http://legislacion.asamblea.gob.ni/SILEG/Gacetas.nsf/5eea6480fc3d3d90062576e300504635/197026bdd3bd254306257d7200516899?OpenDocument>.

<sup>1898</sup> Law No. 612 of 2007. Available at: <http://legislacion.asamblea.gob.ni/SILEG/Gacetas.nsf/5eea6480fc3d3d90062576e300504635/608c442ccfac598d06257d6d006d6beb?OpenDocument>.

<sup>1899</sup> Executive Decree No. 15 of 2007. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92aeea87dac762406257265005d21f7/94dcb072e67ed0b1062572a0006ec107?OpenDocument>.

<sup>1900</sup> Law No. 617 of 2007. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/079be1fbf0d5f50a0625803d0056818d?OpenDocument>.

<sup>1901</sup> Executive Decree No. 110 of 2007. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92aeea87dac762406257265005d21f7/c90d3d8ec03524ab062573d700651360?OpenDocument>.

<i>Name</i>	<i>Legal instrument</i>	<i>Date</i>	<i>Description</i>
			Prevention Committees organized by the Police.
Decree Regulating the Ordinary Retirement and Pension Procedures for Members of the National Police.	Executive Decree No. 94 <sup>1902</sup>	30 December 2009	Regulates the Procedures to make effective the rights and exercise the rights to an Ordinary Retirement and Pensions for the Members of the National Police.
Prevention, Investigation and Prosecution of Organized Crime and the Administration of Seized, Forfeited and Abandoned Property Act	Law No. 735 <sup>1903</sup>	20 October 2010	It coordinates the policies, plans and actions to fight against these illegal activities through the bodies in charge of preserving internal order, citizen security and national sovereignty.
Democratic Security Act	Law No. 750 <sup>1904</sup>	23 December 2010	Its purpose is to preserve and maintain National Security, in the face of any risk, threat or international armed conflict, regulating the activity of the State, society, institutions and authorities in charge; establishing their scope, principles, purposes, organization, competencies, management, control and coordination mechanisms, respecting Human Rights and the norms of International Humanitarian Law. The provisions of this Law are an integral part of the National Security and Defence Policy.
Disciplinary Regulations of the National Police	Decree No. 51 <sup>1905</sup>	21 December 2012	It is the instrument with which the National Police guarantees the hierarchical order, compliance with laws and discipline of its members.
Partial Amendment to the Constitution of the Republic of Nicaragua Act	Law No. 854 <sup>1906</sup>	10 February 2014	Title V of the Constitution was renamed “Defence and National Security. Citizen Security” and reforms Articles 92, 93, 95 and 97 in relation to the Nicaraguan Army and Police.
Organization, Functions, Career and Special Social Security Regime of the National Police	Law No. 872 <sup>1907</sup>	7 July 2014	Subordinates the National Police to the direct control of the Presidency. It grants the President the power to remove or maintain in office the First Commissioner and to summon retired officers to

<sup>1902</sup> Executive Decree No. 94 of 2009. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/dd083c05cf2ba97b062576c60053238f?OpenDocument>.

<sup>1903</sup> Law No. 735 of 2010. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/7350ba83a74d6b10062577f400790cdf?OpenDocument>.

<sup>1904</sup> Law No. 750 of 2010. Available at: <http://legislacion.asamblea.gob.ni/Indice.nsf/353128c118c7a240062576dc00538447/37178bb4beaea40f06257822005fe655?OpenDocument>.

<sup>1905</sup> Executive Decree No. 51 of 2012. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92a87dac762406257265005d21f7/aa3b3a683bef05c306257afc006f8e32?OpenDocument>.

<sup>1906</sup> Law No. 854 of 2014. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92a87dac762406257265005d21f7/a0c959ffe15fdf4906257c7e0059f947?OpenDocument>.

<sup>1907</sup> Law No. 872 of 2014. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92a87dac762406257265005d21f7/0f03308df36e772206257d0800829eb4?OpenDocument>.

<i>Name</i>	<i>Legal instrument</i>	<i>Date</i>	<i>Description</i>
			reinstate and increases the length of police service to 40 years.
Amendments and Additions to Law No. 181, “Code of Organization, Jurisdiction and Military Social Security” Act	Law No. 855 <sup>1908</sup>	11 February 2014	It determines that the Army is the only armed military corps of Nicaragua. It is indivisible and has a national, patriotic, non-partisan, apolitical, professional, obedient and non-deliberative character. The Army exercises its mission in strict compliance with the Constitution and the laws, including international instruments on Human Rights, International Humanitarian Law and other instruments of International Public Law ratified and approved by Nicaragua.
Law Amending Law No. 290 “Law of Organization, Competence and Procedures of the Executive Branch”	Law No. 864 <sup>1909</sup>	15 May 2014	It removes the Ministry of the Interior from the chain of command and coordination of the Police. The Ministry of Defence is responsible for directing the development of policies and strategies for the defence of sovereignty, independence and territorial integrity.
Sovereign Security Act	Law No. 919 <sup>1910</sup>	18 December 2015	The purpose of the law is to preserve and maintain National Security and ensure the full validity and respect of the rights, guarantees and fundamental freedoms of Nicaraguans, in the face of international and internal risks and threats to human and democratic security, the rule of law, and/or organized crime and drug trafficking or international armed conflict. It establishes that the National Assembly shall integrate a Special Commission on National Democratic Security.
National Defence of the Republic of Nicaragua Act	Law No. 748 <sup>1911</sup>	1 June 2020	It determines that the National Defence is prepared and carried out under the direction of the President as Head of State, Head of Government and Supreme Chief of the Army. The President has the power in the Council of Ministers to decree a state of emergency or alert, in accordance with the provisions of the Constitution, the Emergency Law of 1988 and the Law of Natural and Anthropogenic Disasters.
Nicaraguan Legal Digest	Law No. 1009 <sup>1912</sup>	1 June 2020	Consolidates current legislation on national

<sup>1908</sup> Law No. 855 of 2014. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92aaca87dac762406257265005d21f7/a89bab2de4154e4306257c83007ba9e7?OpenDocument>.

<sup>1909</sup> Law No. 864 of 2014. Available at: <http://legislacion.asamblea.gob.ni/SILEG/Gacetan.nsf/5eea6480fc3d3d90062576e300504635/f3ae2eb377e0b12e06257cdf005d9e9a?OpenDocument>.

<sup>1910</sup> Law No. 919 of 2015. <http://legislacion.asamblea.gob.ni/Indice.nsf/353128c118c7a240062576dc00538447/37178bb4beaea40f06257822005fe655?OpenDocument>.

<sup>1911</sup> Law No. 748 of 2019. Available at: [http://legislacion.asamblea.gob.ni/normaweb.nsf/\(\\$All\)/935DB7C5198A2B3F0625860F00798AE7?OpenDocument](http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/935DB7C5198A2B3F0625860F00798AE7?OpenDocument)



<i>Name</i>	<i>Legal instrument</i>	<i>Date</i>	<i>Description</i>
of the National Security and Defence Matter Act			security and defence.
Statutory Regulations of the Military Social Security Institute	Presidential Decree No. 12 <sup>1913</sup>	2 June 2020	The Institute is in charge of the execution and administration of the State Military Social Welfare.

<sup>1912</sup> Law No. 1009 of 2019. Available at: <http://legislacion.asamblea.gob.ni/Normaweb.nsf/9e314815a08d4a6206257265005d21f9/86d7ccc4703088e6062585b6005c1c8c?OpenDocument>.

<sup>1913</sup> Presidential Decree No. 12 of 2020. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/b92aeea87dac762406257265005d21f7/3fe66aed663d7ebb0625857c0079d886?OpenDocument>.

## Annex 2: Organisational Chart of the Nicaraguan Army



### Annex 3: Organisational Chart of the National Police of Nicaragua

