

REPORT OF THE HIGH-LEVEL COMMISSION ON NICARAGUA OF THE ORGANIZATION OF AMERICAN STATES

EXECUTIVE SUMMARY

In keeping with Resolution AG/RES. 2943 (XLIX-O/19), adopted on June 28, 2019 at the Fourth Plenary Session of the forty-ninth regular session of the General Assembly of the Organization of American States (OAS), which stated that human rights violations that have taken place in Nicaragua and the overall situation since April 2018 'are leading to an alteration of the constitutional regime that seriously impairs the democratic order in the terms of Article 20 of the Inter-American Democratic Charter', and with Permanent Council resolution CP/RES. 1135 (2244/19), adopted at its regular meeting of August 28, 2019, the OAS High Level Commission on Nicaragua ('the Commission') was created to carry diplomatic efforts to seek a peaceful and effective solution to the political and social crisis in Nicaragua and to submit a report within a maximum of 75 days of its creation.

The Government of Nicaragua refused to meet the Commission which was duly created as a diplomatic effort by the General Assembly and prohibited its members from entering Nicaragua. Nevertheless, the Commission was able to hear testimonies from a number of victims and stakeholders that validated information already provided by independent international bodies on the situation in Nicaragua.

As mandated, the Commission is therefore submitting its report for consideration by the OAS Permanent Council. This report comprises three sections:

Section I describes the establishment of the Commission, which was created at the regular meeting of the Permanent Council of the Organization of American States (OAS) on August 28, 2019.

Section II highlights complaints and testimonies received by the Commission at all its meetings with Nicaraguan political groups and representatives of civil society, trade unions, campesinos, journalists, and business owners.

Finally, section III sets out the High Level Commission's conclusions and recommendations for the OAS Permanent Council.

In light of the analysis of the work carried out by the High Level Commission, the Commission is of the view that actions taken or permitted by the Government of Nicaragua since April 2018 are inconsistent with the rights and guarantees protected in the Nicaragua 1987 Constitution and that these are giving rise to an alteration of the constitutional regime that seriously impairs the democratic order in Nicaragua, as outlined in Article 20 of the Inter-American Democratic Charter.

The Commission would like to thank the OAS Secretariat, the Governments of Argentina, Canada, Jamaica, Paraguay and the United States for the support they provided, as well as the Government of El Salvador for allowing the Commission to meet with important witnesses in its country.

Finally, the Commission would like to thank the witnesses, who all showed courage and determination, risking their safety and security to share their experiences and inform the work of the Commission.

I. REPORT ON THE ACTIVITIES OF THE HIGH-LEVEL COMMISSION

In keeping with operative paragraph 5 of resolution AG/RES. 2943 (XLIX-O/19), adopted on June 28, 2019 at the Fourth Plenary Session of the forty-ninth regular session of the General Assembly of the Organization of American States (OAS), held in the city of Medellín, Colombia, which instructs the Organization's Permanent Council to appoint a Commission within the framework of Article 20 of the Inter-American Democratic Charter to carry out diplomatic efforts at the highest possible level to seek a peaceful and effective solution to the political and social crisis in Nicaragua and to submit a report within a maximum of 75 days; and with Permanent Council resolution CP/RES. 1135 (2244/19), adopted at its regular meeting of August 28, 2019, the Commission was created with the following members:

- Ambassador Leopoldo Francisco Sahores, Undersecretary for the Americas at the Ministry of Foreign Affairs and Worship of the Argentine Republic.
- Mr. Sébastien Sigouin, Director for Central America, Cuba, and the Dominican Republic at Global Affairs Canada.
- Ambassador Audrey Marks, Permanent Representative of Jamaica to the Organization of American States.
- Ambassador Elisa Ruíz Díaz Bareiro, Permanent Representative of Paraguay to the Organization of American States.
- Ambassador Carlos Trujillo, Permanent Representative of the United States of America to the Organization of American States.

Administrative and technical support for the Commission is provided by the General Secretariat of the Organization, while, by means of an invitation lodged with Secretary General Luis Almagro, it was agreed that Chief of Staff Gonzalo Koncke would provide the Commission with political assistance.

On September 13, 2019, the Commission informed the Government of Nicaragua that it would be conducting a visit to the country on September 15 to 18; nevertheless, the government reiterated its rejection of the Commission's creation and, consequently, did not give authorization for its members to enter Nicaraguan territory. In a communiqué dated September 14, the General Directorate of Foreigners and Migration stated that "as of this date the following citizens do not have authorization to enter Nicaragua nor may board aircraft destined for

Nicaragua” and gave the names of the Commission’s five members and two OAS officials. Furthermore, the Government of Nicaragua rejected the legitimacy of the Commission, which was duly created as a diplomatic effort by the General Assembly, and declined to engage in any kind of dialogue with the Commission.

In addition, various members of the High Level Commission sought to discuss the situation with the Representatives of Nicaragua, but Nicaraguan diplomats rejected any kind of dialogue on the topic.

Irrespective of the remarks made in the preceding paragraph, in the course of its work the Commission met with representatives of various organizations and actors from Nicaraguan society, including human rights organizations, civil society groups, experts in electoral affairs, relatives of victims and political prisoners, and representatives of political parties, of the Civic Alliance for Justice and Democracy, and of White and Blue National Unity.

On September 27, 2019, the Commission met with several groups from different sectors of Nicaraguan society in Washington, D.C. Representatives of the Nicaraguan news media also attended the meeting.

On that occasion, the Commission’s members were able to hear testimony from representatives of the Civic Alliance for Justice and Democracy and of White and Blue National Unity, reporters, and representatives of Race, Equality, and Human Rights, who gave a report on the human rights situation, with an emphasis on indigenous and Afro-descendent communities on the Caribbean coast.

Given the impossibility of the Commission’s members to travel to Nicaragua, a visit to El Salvador was organized in order to hold the meetings initially scheduled to take place in Managua. That visit took place with the consent of the Government of El Salvador on October 1 to 3, 2019.

The following organizations and groups spoke with the Commission during the visit:

- White and Blue National Unity
- Human rights groups, IACHR, CENIDH
- Experts on electoral affairs
- Civic Alliance
- Mothers of victims and political prisoners
- Campesino movements
- Videoconferences with representatives of the Association of Doctors in Exile in Costa Rica and a representative of the Nicaraguan Association for Human Rights in Costa Rica
- Media

On October 16, the Commission met at OAS Headquarters with representatives of His Excellency Msgr. Juan Abelardo Mata Guevara, Bishop of Esteli, Nicaragua.

II. FINDINGS OF THE COMMISSION

The Government of Nicaragua has shown an ongoing pattern of efforts designed to curtail the rights of its citizens, including: ongoing harassment and intimidation, restrictions of political rights, freedom of the press, freedom of expression, the right to personal liberty and human treatment.

1. Harassment and intimidation

Numerous human rights bodies have identified a serious and ongoing pattern of harassment and intimidation of any form of opposition to the government, including health professionals, journalists, student leaders, human rights defenders, released political prisoners and protestors. This pattern of behaviour has been documented in the 2018 country report on Nicaragua by the Inter-American Commission on Human Rights (IACHR), the 2018 report on Nicaragua conducted by the Interdisciplinary Group of Independent Experts (GIEI), as well as reports and investigations carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights Watch and Amnesty International. These cases of harassment and intimidation are ongoing, more insidious, with a view to creating a climate of fear.

Testimonies provided to the OAS Commission - The Commission received extensive testimonies about ongoing harassment and intimidation:

- It was reported that the police are using intimidation tactics to prevent people from lodging complaints of human rights violations. Two or three times a week, a group of between 40 and 60 police officers surround the headquarters of the Permanent Commission on Human Rights (CPDH), intimidating citizens who have come to lodge complaints, photographing them, and on occasions taking them into custody.
- There were also cases, such as that of Leyla Prado, an attorney with the CPDH, of people being forced to flee the country because of threats made against their children.
- Other employees of the CPDH have reported that their vehicles have been tampered with, in order to cause accidents.
- The Commission received reports of opposition members' homes being daubed with graffiti reading "bullets" or "coup plotter."
- A total of 220 requests for precautionary measures have been lodged with the IACHR.
- Numerous testimonies indicate that many former detainees are harassed in different ways by the regime's agents.
- There have been complaints of police harassment both at religious services held in memory of the victims and at the cemeteries where they are buried.

- Former political prisoners consistently claim that released detainees cannot live a normal life because of persecution and harassment against them.
- The Commission received numerous complaints from former political prisoners stating they were in a situation of “civil death,” unable to live in their homes or find work.
- Those individuals state they cannot find work because their professional ID cards or the licenses issued to them by the authorities have been marked with the legend “accused of placing road blocks, trial pending.”
- Another released political prisoner claimed that the police had made death threats against his family if he did not flee the country, or that he would be thrown into the Masaya volcano alive.
- One group of physicians was forced to relocate to Costa Rica because of political persecution. One doctor said she was expelled under the terms of Article 55. Other claims state that some 50 teaching staff were dismissed from the University and that they only learned about the dismissals when they were unable to withdraw money from their bank accounts.

2. Violation of political rights

The Government of Nicaragua has enacted several measures restricting the political rights of its citizens. In December 2018, the National Assembly revoked the legal permits of nine local human rights NGOs in response to their criticisms of the government. Since September 2018, the National Police have required permits for any type of demonstration and consistently denied authorization to numerous social groups to carry out marches or peaceful assemblies, even though prior permits for these type of events are not required by law¹. In addition to refusing permits for peaceful assemblies, the National Police has harassed and intimidated persons participating in spontaneous demonstrations. On June 17, 2019, the IACHR denounced the use of rubber bullets and tear gas against participants of a mass for released political prisoners in the Managua Cathedral. On March 17, 2019, the police attacked and arrested 107 persons participating in a protest in favour of political prisoners. In addition, police have harassed and detained persons carrying the national flag or dressed in white and blue, the colours linked to the opposition movement.

Testimonies provided to the OAS Commission – The Commission received various testimonies on violations to their political rights:

- Citizens reported facing criminal charges for carrying Nicaraguan flags.

¹ Examples of the some the protests which were denied permits include: “United by Freedom” (October 14, 2018), International Day for the Elimination of all Forms of Violence against Women (November 25, 2018), Human Rights Day (December 10, 2019), March of the Private Sector (January 24, 2019), “We are all April” (April 17, 2019), demonstration by the White and Blue National Unity (May 26, 2019) and National Student Day (July 25, 2019).

- A high number of opposition supporters reported having been accused of common crimes in order to intimidate them and invalidate their political actions.
- Other testimonies report that political prisoners who have been released are then charged with criminal offenses following their liberation.
- Complaints were received from Nicaraguans who returned to the country from Costa Rica, alleging that they were detained by government officials who investigated them and, upon finding they belonged to the opposition, took violent reprisals against them.

3. Violation of the freedom of the press/expression

Since the beginning of the crisis, the government has repeatedly inhibited freedoms of the press and expression. On April 18, 2018, the Nicaraguan Institute for Telecommunications and Post (Telcor) ordered cable providers to interrupt the signal of channels known to provide live broadcasts the protests. In December 2019, the police raided the offices of independent news agencies *Confidencial*, *Esta Semana* and *100% Noticias*, seizing their assets and equipment. Two senior staff members of *100% Noticias*, Lucía Pineda, and Miguel Mora, were imprisoned for nearly 6 months on charges of inciting violence and terrorism. The government has used customs seizures to block access of the newspaper *La Prensa* to paper and ink, forcing the paper to reduce its number of pages.

Testimonies provided to the OAS Commission - The Commission also received testimonies on violations of freedom of the press and freedom of expression:

- Representatives of the press told the Commission that the closure of *El Nuevo Diario* — one of Nicaragua’s biggest selling newspapers — on September 27, 2019, after 40 years of publishing history, was due to restrictions imposed by the government on purchases of newsprint.
- They further warned that *La Prensa*, the country’s leading daily, was facing the same threat on account of the obstacles imposed on access to newsprint.

4. Inhuman treatment and arbitrary detention

In its report on the violence that occurred in Nicaragua in April and May 2018, the GIEI determined that there was evidence of crimes against humanity committed against protestors and members of the opposition. On October 18, 2018, Amnesty International revealed that it has documented at least six possible cases of extrajudicial killings and 12 cases of torture against civilians. The majority of persons detained between April 2018 and July 2019 were in pre-trial detention, however witness accounts indicate that they frequently shared cells with convicted criminals. In addition, minors were not separated from adults in detention. On May 21, 2019, the IACHR granted precautionary measures in favour of 17 persons in detention, assessing their access to legal counsel had been restricted.

Testimonies provided to the OAS Commission - Numerous reports of inhuman treatment, extrajudicial killings, prisoner abuse and arbitrary detention were received by the Commission:

- In 2018, the Permanent Commission on Human Rights (CPDH) received 4,000 complaints of human rights violations, of which 90 involved torture.
- There are more than 60,000 Nicaraguans in Costa Rica, who, in 2018, lodged 600 complaints of human rights with the CPDH.
- Over the first ten months of 2019, the CPDH received 2,000 complaints of human rights violations.
- The murders of 325 people have been reported since April 2018, the majority of whom died at the hands of the police, paramilitaries, or regime snipers.
- Other organizations and interviewees put the number of reported killings at 600.
- It was reported that over recent months evidence has emerged of targeted killings, numbering three or four cases a week, particularly in the north of Nicaragua. The CPDH has 19 documented cases.
- The Commission heard testimonies about campesinos who have been abducted, extra judicially executed, and their bodies found later mutilated with amputated extremities.
- Reports of decapitations were also received.
- Testimonies were received alleging cruel and inhuman treatment in the prison system, along with numerous complaints of torture at El Chipote and La Modelo detention centers. The Commission heard the case of the political prisoner Pedro José Gutiérrez, who is missing a leg and was forced to stand for several hours in spite of his serious health problems.
- The Nicaraguan prison system lacks basic conditions of habitability and threatens the health of detainees. La Modelo Prison provides an example of this, where the water supply is not drinkable and affects the inmates in numerous ways.
- Testimonies from numerous former detainees spoke of the presence of individuals with strong Cuban accents in the prisons, and that those persons were involved in acts of repression, torture, physical violence, and oversight within prisons. Detainees were certain that these individuals were Cuban agents.
- Several interviewees expressed fear about the existence of mass graves; mention was made of one case in San Juan del Sur where 11 corpses were found in mid-September 2019, and where the police refused the public access, arguing that the deceased were

elderly patients who had died in local hospitals and whose bodies had never been claimed.

- Another former prisoner described how detainees were subject to brutal physical punishments. In addition to the constant harassment, they claim that former prisoners have no access to health services.
- They claim that during visits by the Red Cross, the regime conceals large numbers of detainees: “We were four or six to a cell, and before the Red Cross arrived, they left just one prisoner in each cell.”
- Another former detainee claimed she had been raped while in detention and that her home and vehicle were confiscated. Reports state that a large number of foreigners have been arrested.

5. Subordination of the state by the executive

Numerous reports have identified a pattern of wide reaching executive control of state institutions, which is used to consolidate executive power and influence state institutions. For example, the impartiality and independence of the judicial system has been widely questioned. Under the 1987 Constitution, the Supreme Court is an independent branch of the government. However, Former judge of the Supreme Court Rafael Solís revealed in his resignation letter on January 8, 2019 that the Executive Power directly influences the decisions and resolutions of the courts. Investigations by both the GIEI and IACHR also documented numerous reports of police and other state forces working in collaboration with paramilitary groups to repress opposition. There are also numerous other reports on actions by the Government of Nicaragua to dismantle political opposition and to manipulate electoral processes to ensure the Executive power control over the electoral system.

Testimonies provided to the OAS Commission - Testimonies provided to the Commission supported reports of extensive executive influence across the state apparatus:

- Information has been received on the biased position adopted by the Ombudsman’s office and its extreme defense of the government. In its most recent appearance before the UN, it said that there were no human rights violations in Nicaragua and no political prisoners, and it denied any form of torture or mistreatment in the country’s prisons.
- One complaint received claimed that the former Health Minister, Sonia Castro, gave a direct order for hospitals to refuse treatment to people who were protesting.
- In connection with the hospital system in León, a complaint was received alleging that Ms. Judith Lejarza gave an express order for no care to be given to protesters, but for them to be injected with water instead.

- The Association of Mothers of April stated that the government has kept silent about and has not ordered the requisite formalities in connection with the killings of students that occurred during the protests of April, May and June 2018.
- The mothers claim that their complaints lodged with the Attorney General's office are sent to the archives and do not receive proper processing. They presented five cases in which autopsy reports were requested and in which the authorities refused to hand over the forensic and ballistic findings.
- Testimony was received indicating that the paramilitary groups are made up of members of the army.

6. Constitutional order

The Nicaraguan Constitution, promulgated on January 1, 1987, establishes a democratic system of government based on a separation of powers that guarantees civil and political rights as stated in its Article 7:

‘Nicaragua is a democratic, participatory and representative republic. Government bodies are: The Legislative Power, the Executive Power, the Judicial Power and the Electoral Power.’

The Constitution establishes a set of principles to which the government must conform to ensure that the country is a functioning democracy. It provides for a number of rights, duties and guarantees of the Nicaraguan people, including:

- Right to individual freedom, safety and recognition of his personality and legal capacity (a. 25);
- Right to a private life, inviolability of their home and respect of their honor and reputation (a. 26);
- Right to freedom of conscience, of thought and of professing or not a religion (a. 29);
- Right to freely express their thoughts in public or in private, individually or collectively, orally, in writing or by any other means (a. 30);
- Right to not be subjected to arbitrary detention or imprisonment, nor be deprived of their liberty, except for reasons established by law and in accordance with a legal procedure (a. 33);
- Right to be presumed innocent until proven guilty under the law and to be tried without delay by competent court established by law (a. 34);

- Right to have his physical, psychic and moral integrity respected. No one will be subjected to torture, procedures, penalties or cruel, inhuman or degrading treatment. Violation of this right constitutes a crime and will be punishable by law (a. 36);
- Right to exercise freely political rights (a. 48);
- Right of workers, women, youth, agricultural producers, artisans, professionals, technicians, intellectuals, artists, religious, and communities to establish organizations (a. 49);
- Right to participate in in public affairs (a. 50);
- Right to peaceful assembly (a. 51);
- Right to public demonstration and mobilization in accordance with the law (a. 53);
- Right to elect and be elected (a. 54);
- Right to organize or join political parties (a. 55);
- Right to decent, comfortable and secure housing that guarantees family privacy (a. 64);
- Right to truthful information, to seek, receive and disseminate information and ideas (a. 65).

Beyond the specific rights and guarantees it establishes, the Constitution defines the nation and its goals. While recognizing in Article 1 of the Constitution the principle of national sovereignty, it establishes in Article 2 that:

‘National sovereignty resides in the people, source of all power and forger of their own destiny. The people exercise democracy by freely deciding and participating in the construction of the economic, political and social system that best suits their interests. The power is exercised by the people directly and through their freely elected representatives according to universal, equal, direct, free and secret suffrage.’

The principle of the independence of the four branches of government is also explicitly stated in article 129:

“The Legislative, Executive, Judicial and Electoral Powers are independent of one another and coordinate harmoniously, subordinated only to the supreme interests of the nation and to what is established in this Constitution.”

Protecting the rights, democratic principles and the separation of powers guaranteed in the 1987 Constitution is an essential responsibility of the Government of Nicaragua. It is its *raison d’être*, as the guarantor of the constitutional order, democracy and the rule of law, and the expression of the free will of its people. These are the pillars of Nicaragua as a nation.

CONCLUSIONS

1. From an analysis of the work carried out by the High Level Commission, the testimonies received, the contributions made by the different actors involved in the Nicaraguan process, and the reports of the Inter-American Commission on Human Rights (IACHR), it is clear that Nicaragua is experiencing a critical human rights situation that urgently demands the attention of the Inter-American community and the world at large.
2. The Commission understands that the control and subordination mechanisms that the Government of Nicaragua has been developing with respect to other branches of government, including the judiciary, the legislature, the Supreme Electoral Council, and others, make the democratic functioning of the country impossible, thus making it a co-opted state that is incompatible with the rule of law.
3. To reestablish the democratic system in the country, institutional reforms are indispensable and urgent, starting with a comprehensive reform of the electoral system to allow the holding of fair, free, and transparent elections in the country, in accordance with Inter-American standards.
4. The lack of freedoms in the country has become desperate, creating a critical situation with regards to civil and political liberties, which must be reestablished in order to restore the rule of law in the country. The restoration of freedoms in the country, including its suppressed civil and political liberties, is a matter of urgency, and the Commission calls on the State of Nicaragua to act accordingly, particularly with respect to the freedoms of expression, of assembly, and of demonstration and the right of protest.
5. The Commission understands that it is imperative to create conditions in the country that will halt human rights violations, ensure they are not repeated, and provide the victims with justice and redress. Without that, it will be impossible to restore the peace and stability that the country and the Nicaraguan people deserve.
6. The High Level Commission sees that essential elements of representative democracy, such as respect for human rights and fundamental freedoms and the separation and independence of the branches of government (Article 3 of the Inter-American Democratic Charter), are currently absent in Nicaragua, undermining the Nicaraguan people's right to democracy and in violation of the Government of Nicaragua's obligation of promoting and defending it (Article 1 of the Inter-American Democratic Charter).
7. Actions taken or permitted by the Government of Nicaragua, including the numerous and grave human rights violations documented by the IACHR, others and those witnessed by testimonies presented to the Commission, are clearly inconsistent with the Nicaragua Constitution as promulgated in 1987 and the fundamental principles of democracy it protects.

8. Consequently, in light of the analysis of the work carried out by the High Level Commission, testimonies gathered, contributions made by the different actors involved in the Nicaraguan process, and in accordance with Inter-American standards, the OAS Charter, the Inter-American Democratic Charter, and other human rights instruments, the Commission is of the view that ongoing grave human rights violations and abuses of power by the Government of Nicaragua are inconsistent with the Nicaragua Constitution of 1987 and are giving rise to an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in Nicaragua, as described in Article 20 of the Inter-American Democratic Charter.

RECOMMENDATIONS

1. In light of the refusal of the Government Nicaragua to engage with the Commission, to return to the dialogue table, and to take any action that would restore human rights and democracy in Nicaragua, the Commission's diplomatic efforts have been unsuccessful. This, and the testimony and information received from various stakeholders, leads the Commission to recommend that the Permanent Council, within the framework of article 20 of the Inter-American Democratic Charter:
 - i. Endorses the above conclusions;
 - ii. Declares there is an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in Nicaragua;
 - iii. Immediately convenes a special session of the General Assembly to review the matter.
2. Based on the testimony provided to the Commission, the Commission believes that any peaceful solution to the situation in Nicaragua must include:
 - i. An end of repression;
 - ii. The restoration of human rights, including freedom of expression, freedom of assembly, and freedom of the press; and
 - iii. A sincere effort by all parties to return to the dialogue table.
3. The Commission reiterates the urgent need for human rights mechanisms to return to the country: the Inter-American Commission on Human Rights and, in particular, the Follow-up Mechanism for Nicaragua (MESENI), along with the teams from the Office of the United Nations High Commissioner for Human Rights (UNHCHR).
4. Finally, the Commission notes that an Agreement was signed in 2017 between the Government of Nicaragua and the OAS to launch an electoral reform process. The Commission is of the view that priority should be given to implementing this Agreement and that efforts should be made to further explore measures that will guarantee the independence of electoral authorities, that will allow for international electoral observation, and that will ensure the free and transparent registration of political parties.