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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 the Secretary-General**

## **Situation of human rights in Nicaragua**

### **Report of the United Nations High Commissioner for Human Rights\***

#### *Summary*

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

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

## I. Introduction

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

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 On 30 August 2018, the Minister of Foreign Affairs of Nicaragua rescinded its invitation to OHCHR.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

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

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

## II. Context

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

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<sup>1</sup> OHCHR report, available at: [www.ohchr.org/Documents/Countries/NI/HumanRightsViolationsNicaraguaApr\\_Aug2018\\_EN.pdf](http://www.ohchr.org/Documents/Countries/NI/HumanRightsViolationsNicaraguaApr_Aug2018_EN.pdf).

2,000 were injured.<sup>2</sup> The crisis prompted over 80,000 people to flee Nicaragua.<sup>3</sup> OHCHR documented a large number of human rights violations committed between 18 April and 18 August 2018, including gross violations, such as disproportionate use of force by the police that resulted in some extrajudicial killings, and prevalent ill-treatment and instances of torture and sexual violence in detention centres.<sup>4</sup> OHCHR was able to verify that pro-Government armed elements were involved in attacks against protesters and carried out detentions with the acquiescence of and, often, in a joint and coordinated manner with State authorities, mainly law enforcement agents. OHCHR also reported abuses committed by individuals involved in the protests, including the killing and injuring of police officers and members of the Sandinista political party, as well as the destruction of public infrastructure.<sup>5</sup>

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

7. During the period under review, the National Assembly – which is dominated by the ruling party – adopted legislation proposed by the Government that is not in line with international human rights norms and standards (see Sections IV and VIII below).<sup>8</sup> The national human rights institution, the *Procuraduría para la Defensa de los Derechos Humanos* (PDDH by its Spanish acronym), which also serves as the national mechanism for the prevention of torture, did not demonstrate any independence during this period. During the 40<sup>th</sup> session of the Human Rights Council, the State delegation was represented by the Deputy Commissioner of PDDH, who repeated the Government's justification of the failed coup d'état and indicated that his institution had not found any evidence of torture of protesters deprived of liberty. In March 2019 the status of PDDH was downgraded from "A" to "B" because its independence could not be established.<sup>9</sup>

8. On 19 December 2018, the Government suspended the visits of the Inter-American Commission on Human Rights and the presence of the Special Follow-up Mechanism for Nicaragua (MESENI by its Spanish acronym). It also considered the mission of the Interdisciplinary Group of Experts (GIEI by its Spanish acronym) had been accomplished,

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<sup>2</sup> *Ibidem*.

<sup>3</sup> According to the Regional Office of the United Nations High Commissioner for Refugees in Panama, as of July 2019, 52,330 asylum applications of Nicaraguans had been registered in Europe, Central and North America. According to the General Directorate of Migration and Foreign Nationals of Costa Rica, 30,258 additional people were waiting to file a request for asylum in Costa Rica.

<sup>4</sup> OHCHR report, *supra*.

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

<sup>6</sup> A National Dialogue between the Civic Alliance and the Government began on 16 May 2018 with the mediation of the Nicaragua's Episcopal. Negotiations stopped in June 2018, following the arson of a residence in the Carlo Marx neighbourhood, during which six members of a family perished.

<sup>7</sup> Between 27 February and 11 June 2019, the Ministry of Interior issued eight press releases with the number of people released, available at: <https://www.migob.gob.ni/noticias/>.

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

<sup>9</sup> Report and Recommendations of the Session of the Sub-Committee on Accreditation, March 2019, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAaccreditation/Documents/SCA%20Report%20March%202019%20-%20EN%20.pdf>.

just before the presentation of the latter's public report.<sup>10</sup> These decisions ended any on-site international human rights monitoring in Nicaragua. The GIEI report stated that the authorities had perpetrated actions amounting to crimes against humanity, including murder, arbitrary deprivation of liberty and persecution.<sup>11</sup>

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

### III. Right of peaceful assembly

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

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

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

13. In its intervention during the Universal Periodic Review (UPR) of Nicaragua, in May 2019, the Government asserted that the right of peaceful assembly was "fully ensured" and that, since September 2018, the National Police had issued four press releases and five

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<sup>10</sup> Established through an agreement between the General Secretariat of the Organization of American States, the Inter-American Commission on Human Rights and the Government of Nicaragua, GIEI started its work in Nicaragua on 2 July 2018.

<sup>11</sup> GIEI-Nicaragua, "Report on the violent events that took place between April 18th and May 30th 2018", available at: [https://gieinicaragua.org/giei-content/uploads/2019/05/GIEI\\_REPORT\\_ENGLISH\\_simplepage.pdf](https://gieinicaragua.org/giei-content/uploads/2019/05/GIEI_REPORT_ENGLISH_simplepage.pdf).

<sup>12</sup> Civic Alliance, press release of 20 May 2019, available at: <https://www.alianzavicivanicaragua.com/nos-retiramos-de-la-mesa-hasta-la-liberacion-de-presos-politicos-y-llamamos-a-paro-nacional/>.

<sup>13</sup> Law 872 on National Police organization, functions, career and social security special regulation, 26 June 2014, article 7(1)(p).

<sup>14</sup> Communication from the Ministry of Foreign Affairs of Nicaragua in response to the OHCHR questionnaire, 5 July 2019.

resolutions rejecting requests by civil society organizations critical of the Government to organize protests.

14. During the reporting period, OHCHR continued to document cases of pro-Government armed elements using firearms against protesters. In one incident in Managua, on 23 September 2018, a 16-year old boy was killed and, at least four men and a woman were injured. On 30 March 2019, also in Managua, an alleged member of the ruling party attacked demonstrators with a firearm around the Metrocentro shopping centre, injuring three men. On 30 March 2019, the National Police issued a press release indicating that, when the individual was assaulted, shots were fired, which wounded three people.<sup>15</sup> However, this statement differed from the videos of the incident, which showed an individual shooting at demonstrators before some managed to neutralize him. Other images showed some people beating the aggressor. During demonstrations that were generally carried out in a peaceful manner, a small number of protesters threw stones or fired homemade mortars at the police. OHCHR registered two police officers<sup>16</sup> and a man injured by protesters in September 2018 and did not receive any reports about the use of firearms by protesters.

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

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

## IV. Rights to freedoms of expression and association

### Freedom of expression

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

<sup>15</sup> National Police, Public Relations. Press Release 10-2019, 30 March 2019.

<sup>16</sup> National Police, Public Relations, Press Release 115-2018, 28 September 2018.

<sup>17</sup> A civil society organization reported a drastic decrease of demonstrations, from 56 in September 2018 alone, to 43 during the period from October 2018 to February 2019. FUNIDES, “Informe de Coyuntura”, May 2019, p. 12.

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

18. Media workers and journalists who have expressed criticism of the Government, and the media outlets for which they work,<sup>19</sup> were subjected to bans on publications or broadcasting, raids, cyber-attacks and confiscation of printed materials, films or audio recordings, among others. On 21 December 2018, after the police searched the headquarters of the TV station *100% Noticias*, Miguel Mora, owner and director of the outlet – previously threatened to death by police officers – and Lucía Pineda, the news director, were arrested and charged with incitement to hatred and terrorism-related crimes without sufficient evidence. Both were released on 11 June 2019, after being detained for over five months under difficult conditions, including solitary confinement, and without having due process. On 15 May 2019, during the UPR of Nicaragua, the Government stated that no journalist had been imprisoned for exercising the right to freedom of expression.

19. According to non-governmental sources, as of 8 July 2019, about 100 journalists (70 men and 30 women) had fled Nicaragua. The World Press Freedom Index reported that Nicaragua had lost 24 ranks in 2019 compared with 2018.<sup>20</sup> Between 19 August 2018 and 30 June 2019, a civil society organization registered 237 acts of repression by the police and pro-Government elements against media workers and journalists (173 targeting men and 64 directed at women), including threats, insults, physical attacks, detentions, searches of premises, seizure of material and closure of media outlets.<sup>21</sup> In June 2019, Canada and the United States of America imposed sanctions against the Director General of the Institute for Telecommunications and Mail for silencing news media.<sup>22</sup>

### **Freedom of association and targeted repression of dissenting voices**

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

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

<sup>20</sup> Available at: <https://rsf.org/en/nicaragua>.

<sup>21</sup> In addition, 113 acts of repression against media outlets were reported. Foundation Violeta B. de Chamorro, “*Un año de crisis socio-política, Tiempo de Hostilidad y Represión contra la prensa independiente*”, April 2019.

<sup>22</sup> Available at: [www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/sanctions/nicaragua.aspx?lang=eng](http://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/nicaragua.aspx?lang=eng) and <https://home.treasury.gov/news/press-releases/sm715>.

<sup>23</sup> Law 147 on Non-Profit Organizations does not offer due process guarantees to organizations sanctioned with the cancellation of their legal status.

<sup>24</sup> The person has dual Nicaraguan and Costa Rican nationality.

21. Civil society groups created after the socio-political crisis began were also targeted by attacks and intimidation,<sup>25</sup> including the Blue and White National Unity<sup>26</sup> (UNAB by its Spanish acronym), the Civic Alliance, the Committee for the Release of Political Prisoners, the 19 April Student Movement, and Nicaragua's Union of Political Prisoners. Women human rights defenders were also targeted. An organization indicated to OHCHR that, from 19 August 2018 to June 2019, 299 women human rights defenders suffered attacks, such as intimidation, psychological harassment, smear campaigns, unlawful detention, and torture and ill-treatment, including sexual violence. According to it, 67 women human rights defenders had been forced into exile by July 2019. By April 2019, at least 15 men and eight women, including members of prominent organizations (including the Nicaraguan Centre for Human Rights and the Permanent Commission for Human Rights) who have been regularly sharing information with OHCHR, suffered harassment, attacks on their life and personal integrity, and constant surveillance of their homes. These acts could be considered as reprisals. In addition, the Nicaraguan Medical Unity estimated that more than 200 doctors and health workers, out of a total of 405 cases registered since the outset of the crisis, were arbitrarily dismissed between 19 August 2018 and 31 July 2019 in reprisal for having assisted people injured in the context of the protests. Similarly, more than 100 students were expelled from the National Autonomous University of Nicaragua after accusations for having allegedly damaged University properties.

## V. Right to Liberty

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

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

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

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

<sup>26</sup> A common front opposed to the Government, representing different civil society sectors, established in October 2018.

<sup>27</sup> Communication from the Ministry of Foreign Affairs of Nicaragua in response to the OHCHR questionnaire, *supra*, pp. 22-23.

<sup>28</sup> *Ibidem*.

<sup>29</sup> *Ibidem*.

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

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

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

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

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

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

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

31. Police and prison staff allegedly perpetrated torture and ill-treatment while arresting individuals perceived as political opponents, or during their detention at police stations and at the detention centre in Managua, known as *El Chipote*. OHCHR documented that several

<sup>30</sup> *Ibidem*.

<sup>31</sup> Between 27 February and 11 June 2019, the Ministry of Interior issued eight press releases available at: <https://www.migob.gob.ni/noticias/>.

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

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

persons detained in *El Chipote* were brought out of their cells at night, including several times per night, to be interrogated and, in numerous cases, beaten and threatened. In November 2018, seven Special Procedures mandate-holders issued a press release expressing concern about allegations of torture and ill-treatment of detainees.<sup>34</sup>

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

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

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

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

36. Some men and women detained in the context of the protests were subjected to solitary confinement, in some cases for months, in maximum-security cells of *La Modelo* and *La Esperanza*. Any imposition of solitary confinement beyond 15 consecutive days is prohibited under the United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>38</sup> and may amount to torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances. According to corroborated sources, the conditions in solitary confinement were precarious, with cells infested by bugs, and no

<sup>34</sup> Available at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23919&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23919&LangID=E).

<sup>35</sup> Communication from the Ministry of Foreign Affairs of Nicaragua in response to the OHCHR questionnaire, *supra*, pp. 36-37.

<sup>36</sup> *Ibidem*, pp. 4-5.

<sup>37</sup> *Ibidem*.

<sup>38</sup> Rules 43 and 44.

access to sunlight, natural light and poor ventilation despite high temperatures during the day.

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

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

## VII. Right to a fair trial

39. A former justice of the Supreme Court, who resigned in January 2019, stated that charges against people in relation to the 2018 protests were politically motivated, and that judges issued rulings following the Government's narrative of the failed coup for fear of dismissal.<sup>40</sup> According to information collected by OHCHR, prosecutors and public defenders were not perceived as independent and impartial when acting in cases related to the socio-political crisis.<sup>41</sup>

40. OHCHR documented violations of the right to a fair trial in cases of persons prosecuted for their involvement in demonstrations, sometimes based on a distorted application of the criminal legislation, which is not in line with international human rights norms and standards. For example, judges repeatedly issued arrest, search or seizure warrants *post factum*, which, although allowed by the Criminal Procedural Code to render police actions lawful, contravenes international norms and standards. Judges have also imposed mandatory pre-trial detention for particular crimes<sup>42</sup> almost systematically and without proper reasoning, which is contrary to international norms and standards, according to which the imposition of such measures has to be exceptional and consider the defendant's individual circumstances.<sup>43</sup>

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

<sup>39</sup> Hard copy of PDDH reports shared with OHCHR in March 2019. These reports are not available online.

<sup>40</sup> Available at: [www.elnuevodiario.com.ni/nacionales/483132-rafael-solis-renuncia-corte-suprema-justicia/](http://www.elnuevodiario.com.ni/nacionales/483132-rafael-solis-renuncia-corte-suprema-justicia/).

<sup>41</sup> The Directorate of Public Defenders depends from the Supreme Court of Justice.

<sup>42</sup> For instance, terrorism and organized crime (Law 735, article 37.b).

<sup>43</sup> United Nations Human Rights Committee, CCPR/C/GC/35, para. 38.

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

43. The authorities violated the right to presumption of innocence of most people detained in the context of the protests.<sup>47</sup> After a person would be arrested, he / she would be publicly accused of being a terrorist and then, placed in mandatory pre-trial detention.<sup>48</sup> Many were kept in prison for more than six months, others for almost a year, without any judicial review.<sup>49</sup>

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

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

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

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

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

<sup>47</sup> United Nations Human Rights Committee, CCPR/C/GC/32, para. 30.

<sup>48</sup> United Nations Human Rights Committee, CCPR/C/GC/35, para. 38.

<sup>49</sup> *Ibidem*.

<sup>50</sup> In a few cases, defence lawyers were able to interview their clients in prison after waiting from 6:00 am to 3:00 pm. The interviews would usually last 10 minutes, in the presence of a guard. Some older and sick detainees were exceptionally allowed to communicate more privately and for a longer time with their lawyers.

<sup>51</sup> Communication from the Ministry of Foreign Affairs of Nicaragua in response to the OHCHR questionnaire p. 11 *supra*.

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

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

47. All convictions related to the demonstrations and socio-political crisis have so far been imposed on individuals involved in the protests, with the exception of a private security guard condemned for the homicide of a Brazilian university student.<sup>55</sup> On 15 July 2019, a court ordered the release of the security guard in application of the Amnesty Law.

### VIII. Victims' right to a remedy and reparation

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

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

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

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<sup>53</sup> This was the case of peasant leaders Medardo Mairena and Pedro Mena, condemned to 216 and 210 years, respectively.

<sup>54</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24193&LangID=E>.

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

<sup>56</sup> National Assembly Resolution No. 01-2018 of 29 April 2018.

<sup>57</sup> Third Preliminary Report of the Truth, Justice and Peace Commission, February 2019.

<sup>58</sup> Communication from the Ministry of Foreign Affairs of Nicaragua of 23 August 2019, with comments on the United Nations High Commissioner for Human Rights report, p. 21.

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

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

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

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

54. During the last decade, national authorities have implemented policies and measures, which generated a reduction of general poverty from 42.5 to 24.9 per cent between 2009 and 2016, while extreme poverty fell from 14.6 to 6.9 per cent during that period.<sup>60</sup> Nicaragua was “one of the first Latin American countries to meet the Millennium Development Goals of halving poverty and hunger between 1990 and 2015”, as recognized by the Food and Agriculture Organization of the United Nations and the World Food Programme. It also met Millennium Development Goal 4 of reducing the under-5 child mortality rate per 1,000 live births by two thirds by 2015.<sup>61</sup>

55. Nevertheless, the persistent socio-political crisis has had an adverse impact on the enjoyment of economic and social rights. After a growth rate of more than 4.5 per cent in 2016 and 2017, Nicaragua’s economy experienced a 3.8 per cent contraction in 2018 which, according to the World Bank, is expected to worsen in 2019.<sup>62</sup> Hotels, restaurants, and retail business, where women are predominantly employed, have been among the most affected sectors.

56. According to the National Institute for Social Security, from March 2018 to February 2019, more than 140,000 formal jobs were lost, which account for 15.7 per cent of the total number of jobs. According to a civil society organization, 66 per cent of the

<sup>59</sup> High Commissioner for Human Rights press release of 8 June 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24684&LangID=E>.

<sup>60</sup> Fifth and sixth periodic reports to the United Nations Committee on Economic Social and Cultural Rights, available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx).

<sup>61</sup> National Report to the Working Group on the UPR, 28 January 2019, A/HRC/WG.6/33/NIC/1, p. 5, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/NIindex.aspx>.

<sup>62</sup> Available at: <https://www.worldbank.org/en/country/nicaragua/overview>.

affected people were men and 44 were women. As of April 2019, annual inflation had reached 3.1 per cent, and the Ministry of Finance indicated that prices of basic consumer goods had increased by 2 per cent on average, while the price of water and power utilities had increased by 8.9 and 3.7 per cent respectively.<sup>63</sup> All these factors led to decreasing the purchasing power of households.

57. On 28 February 2019, in an attempt to compensate these harmful effects, the National Assembly adopted, by a large majority, a tax reform – amendment to Law 822 – to increase tax revenues in 2019.<sup>64</sup> On 1 February 2019, Presidential Decree No. 06-19 came into effect, introducing reforms to the Social Security Law Regulations that increased employers’ contributions to social security and reduced future retirement pensions. According to the business sector, both reforms may lead to a further deterioration of “the national economy and the well-being of Nicaraguan people”.<sup>65</sup>

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

59. In addition, despite the adoption of an advanced legal framework that allowed the State to recognize more than 120,000 square kilometres of collective land tenure,<sup>66</sup> indigenous and Afro-descendant peoples continued to suffer limitations to the use of their land and territories due to the presence of land settlers.

## X. Conclusions

60. **OHCHR, the Inter-American Commission on Human Rights and GIEI have documented gross human rights violations committed since mid-April 2018 in the context of the protests. Yet, State authorities have so far denied any responsibility and have instead blamed social and opposition leaders, human rights defenders and demonstrators for what they call the “coup-related violence” and the negative impact on the country’s economy. With the exception of one sentence, the investigations and prosecutions carried out at the time of writing had only targeted individuals who participated in protests, provided support to those protesting or were critical of the Government. OHCHR is not aware of any other investigation into allegations of violations and abuses committed by police or pro-Government elements in the context of the protests. This situation reflects a lack of will to ensure accountability and entrenches impunity for human rights violations, denying victims’ rights to justice, truth, reparation and guarantees of non-recurrence. It also further erodes public trust in State institutions.**

61. **Institutional and legislative measures adopted with the stated purpose of reconciliation and guaranteeing reparation for all victims of the socio-political crisis, were imposed without consultations and do not comply with relevant international principles. Independence from the Government and inclusion of all stakeholders,**

<sup>63</sup> Communication from the Ministry of Foreign Affairs of Nicaragua in response to the OHCHR questionnaire, *supra*, p. 40.

<sup>64</sup> Government of Nicaragua’s statement published on 28 January 2019 by the newspaper *El 19 Digital* indicating “to compensate serious damages to [Nicaraguan] economy caused by coup mongers”, available at: [https://www.el19digital.com/app/webroot/tiny\\_mce/source/2019/00-Enero/Del28a131Enero/UNA%20REFORMA%20FISCAL%20PARA%20PROTEGER%20DERECHOS%20DE%20LAS%20FAMILIAS%20NIC-%2026%20ENERO%202019.pdf](https://www.el19digital.com/app/webroot/tiny_mce/source/2019/00-Enero/Del28a131Enero/UNA%20REFORMA%20FISCAL%20PARA%20PROTEGER%20DERECHOS%20DE%20LAS%20FAMILIAS%20NIC-%2026%20ENERO%202019.pdf).

<sup>65</sup> FUNIDES, “Informe de Coyuntura”, *supra*, p. 12.

<sup>66</sup> Periodic report to the Committee on the Elimination of Racial Discrimination, May 2019, available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx).

especially victims, are essential conditions for any initiative seeking justice and reparation.

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

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

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

## **XI. Recommendations**

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

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

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

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

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

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

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

(iii) Following consultation with associations of victims of human rights violations in the context of the protests, development and implementation of a comprehensive package of measures that ensure access to justice and reparation (restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence) to all victims of human rights violations that have occurred since 18 April 2018, including the repeal of Laws 994 and 996;

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

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

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

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

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

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

(i) Fully comply with its mandate, including as National Mechanism for the Prevention of Torture, in line with the Paris Principles and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to effectively and independently promote and protect human rights, in accordance with Nicaragua's international obligations;

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

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

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

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

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

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