

# Persons Deprived of Liberty in Nicaragua



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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

# Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018

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# EXECUTIVE SUMMARY





## EXECUTIVE SUMMARY

1. In this report, the Inter-American Commission on Human Rights ("Commission," "Inter-American Commission" or "IACHR") analyzes the human rights situation of persons deprived of liberty in Nicaragua in connection with the severe human rights crisis that began on April 18, 2018.
2. The IACHR has repeatedly voiced its concern over the lack of official records that would make it possible to determine the exact number of persons deprived of liberty in the context of the social protests in Nicaragua. At the same time, it has urged the State to comply with its obligation to maintain and publish reliable information regarding persons detained and the victims of the crisis. Despite the dearth of information, the Commission has managed to establish that 1,614 people have been deprived of their liberty for taking part in or supporting the social demonstrations that began in April 2018. As of May 31, 2020, at least 80 people are reportedly still detained.
3. To arrive at those numbers, the IACHR has constructed a record based on analysis of the partial information provided by the State; data garnered by the Interdisciplinary Group of Independent Experts (GIEI-Nicaragua); figures and analyses contributed by international organizations; information obtained from civil society sources; victims' testimonies; amongst others. The IACHR stresses that the number cited is most likely just a fraction of a much larger reality that is difficult to estimate given the lack of official information and other factors related with the dynamics of arbitrary arrests, for instance, those carried out by police forces in coordination with groups of armed civilians, in which people were taken to illegal or clandestine detention centers, such as municipal or government party installations.
4. The IACHR underscores that this report has largely been built around statements made by victims, who reported their dire situation to the Commission, how detentions were carried out, what they endured while deprived of liberty, the failure of the national justice system to respond, and the consequences for their personal and family lives. From its first working visit in May 2018 to the completion of this report, the IACHR has received and sorted testimony from 266 persons deprived of liberty in connection with the protests that began in April 2018. That testimony was gathered in both Nicaragua and other countries in which the Commission interviewed people who had been deprived of liberty, their family members, and others close to them.
5. The Inter-American Commission has ascertained that, from the start of the social protests, arbitrary detentions and deprivation of liberty have been used primarily to repress any stand taken against the current regime and to send a message of fear

and control to the Nicaraguan population. According to the information at the Commission's disposal, detentions in connection with the repression and criminalization of protest have been carried out by the National Police and by parapolice groups or armed third parties, who are reportedly often hooded or with their faces covered, and heavily backed or supported by State agents.

6. The IACHR analyzes the patterns of the human rights violations observed in connection with the detentions, which are carried out in a variety of ways and using different tactics; for instance, they may be mass, selective and reiterated, or multiple, often deploying excessive and disproportionate force, including cruel, inhuman, and degrading practices, some of which are tantamount to torture. Detentions have also been accompanied by stigmatization, attacks in the media, persecution, and criminalization.
7. A large majority of those detained selectively in the context of the crisis were stigmatized as "coup mongers" (*golpistas*), "criminals," and "vandals." State authorities and pro-government media also accused them of committing "acts of terrorism and organized crime." This even happened before those detained were brought before a competent authority. The Commission has ascertained that the detentions in connection with the social protests were carried out without informing the detainees of the reason for their detention and without showing a court order or judicial warrant, regardless of whether the circumstances were supposedly in flagrante, as in disturbances of the peace (*escándalo público*) or alleged crimes punishable with deprivation of liberty. From the start of the protests, the Commission received numerous complaints stating that detainees were not brought before a judicial authority within 48 hours, as required by law, but rather deprived of liberty in police or clandestine centers or penitentiaries for periods of time ranging from days to months, before being brought before a judicial authority.
8. In its report, the IACHR identifies the establishments in which persons detained in connection with the crisis were confined and then analyzes the conditions under which they were kept, which typically included overcrowding, scant medical care, poor ventilation, the removal of detainees' possessions, impediments to receiving visits, and arbitrary use of solitary confinement. The complaints and testimonies received point to the infliction by State agents of cruel, inhuman, or degrading treatment or punishments. The IACHR also registered reprisals and other acts indicative of fury being vented against persons identified as opponents of the government or participants in protests. As the crisis dragged on in Nicaragua, the Commission found persons deprived of liberty being treated by the State as objects for "swaps" or "bargains" aimed at keeping their family members plunged into uncertainty and anguish, inhibiting any acts of social protest, and undermining actions by the opposition and civil society.
9. The IACHR observes the absence of any differentiated approach with regard to especially at-risk groups, such as adolescents, women, and lesbian, gay, bisexual, trans, and intersex (hereinafter "LGBTI") persons. In this regard, it notes with concern that women deprived of liberty in connection with the human rights crisis have suffered violations of their human rights exacerbated by their gender, including overcrowding, lack of access to medical care, poor nutrition, punishments,

and other reprisals. The Commission has also documented acts of sexual violence and rape that may be regarded as acts of torture and/or cruel, inhuman, or degrading treatment. In particular, the IACHR notes the existence of patterns that repeated themselves in acts of sexual violence against women, suggesting that they were perpetrated as an additional tool for punishment, repression, and humiliation within the framework of the State's violent response, especially when women detainees were identified as leaders or as persons who had helped those wounded in demonstrations.

10. In Nicaragua there is an ongoing systematic practice of violating the rights of family members through harassment, threats, intimidation, and denial of justice, especially by creating anguish and uncertainty about conditions in detention and reprisals against detainees. The IACHR has also ascertained the very serious human rights situation of persons released from jail due to the sequels of arbitrary deprivation of liberty, the lack of information regarding their legal status, and ongoing acts of harassment, threats, pressure, stigmatization, and permanent surveillance, all purportedly designed to inhibit any political organization or social demonstrations.
11. The IACHR analyzes the role of the Nicaraguan justice system in facilitating and condoning judicial persecution and criminalization in connection with the human rights crisis unleashed on April 18, 2018. Regarding that aspect, the IACHR addresses the violations of judicial guarantees and of the right to access justice entailed in the opening of baseless legal proceedings using pre-established, trumped-up charges, the fabrication and/or falsification of evidence, curtailments of the rights to a timely, technical, and appropriate legal defense, the centralization of proceedings and criminal trials, and pervasive use of pre-trial detention and disproportionate sentences. The IACHR highlights the fact that, as of the adoption of this report, the incidents it describes remain in impunity. The IACHR is also unaware of any indication that the State has investigated the very serious human rights violations perpetrated since the start of the social protests against persons deprived of liberty, be it at the time they were detained, during their confinement, or following their release. Nor has the Commission received information of any attempt to try and punish officials responsible for the serious violations committed, or any word of a plan to make reparation to the victims in accordance with international human rights standards.
12. The Commission insists that the independence of the Judicial Branch and its separation from the other branches of government must be respected and guaranteed, starting with regulatory acknowledgment of its independence and non-interference by the other branches. Apart from being rooted in Nicaragua's regulatory framework and its recognition of the principle of the separation of powers, that guarantee needs to be manifested in practice.
13. The IACHR also addresses the serious risk of contagion faced by persons deprived of their liberty during the global COVID-19 pandemic and the lack of information regarding State protocols and measures for containing and preventing the spread of the disease in detention centers.

14. Finally, the Commission makes a series of recommendations and reiterates those formulated in its Preliminary Observations on its working visit to Nicaragua on May 21, 2018; as well as the additional recommendations from the report entitled "Gross Human Rights Violations in the Context of Social Protests in Nicaragua" of June 21, 2018, and those made in Chapter IV.B of its 2018 Annual Report

CHAPTER 1  
INTRODUCTION





# INTRODUCTION

## ***A. Purpose of the Report***

15. The objective pursued by the present report of the Inter-American Commission on Human Rights ("Commission," "Inter-American Commission" or "IACHR") is to evaluate the human rights situation of persons deprived of liberty in Nicaragua in the context of the grave human rights crisis that started on April 18, 2018.
16. Since the State began repressing social protests in Nicaragua, the Inter-American Commission has kept close track of the deteriorating human rights situation in the country. Between May 17 and 21, 2018, the Commission conducted a working visit to Nicaragua and issued its preliminary observations along with 15 initial recommendations to the State.<sup>1</sup>
17. On June 21, 2018, the IACHR published its Country Report: "Gross Human Rights Violations in the Context of Social Protests in Nicaragua," in which it reiterated its 15 recommendations and issued a few more. In its report, the IACHR pointed out that from the findings of its working visit it had transpired that State violence, characterized by excessive and arbitrary use of force, including the use of lethal forces, had been geared to dissuade the population from demonstrating and to crush that expression of political dissent. The IACHR observed, inter alia, the existence of a pattern of mass, arbitrary arrests during the first days of social protests, of students, workers, and young people who took part in demonstrations or were in the vicinity of incidents. The IACHR also received abundant testimony that most of those detained had been subjected to various forms of cruel, inhuman, and degrading treatment, in some cases "bordering on torture," at the time of their detention and while they were deprived of liberty.<sup>2</sup>
18. On June 24, 2018, in Managua, the IACHR set up the Special Monitoring Mechanism for Nicaragua (MESENI), in order to be able to keep monitoring of the human rights situation on the field and to follow up on the IACHR recommendations made as a result of its visit to the country, such as those published in its Preliminary Observations and in the Report "Gross Human Rights Violations in the Context of

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<sup>1</sup> IACHR, Press Release 113/18, Preliminary Observations on the IACHR Working Visit to Nicaragua, Washington D.C., May 2, 2018.

<sup>2</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II, DOEA/Ser.L/V/II, Doc. 86, Thursday, June 21, 2018.

Social Protests in Nicaragua.”<sup>3</sup> In addition, on July 2, 2018, the Commission announced the installation of the Interdisciplinary Group of Independent Experts (GIEI) charged with investigating death that had occurred in connection with the violence in Nicaragua.<sup>4</sup>

19. From the start of the crisis, the IACHR observed and recorded the intensification and magnitude of State repression in a series of stages. The Commission denounced the same patterns of human rights violations that marked the first phase of repression of social demonstrations, such as the arbitrary use of force, including lethal force, by police and parapolice groups to discourage protests; the denial of medical care and obstruction of humanitarian work to assist those injured in the acts of violence; arbitrary detentions; violence and attacks against journalists and the media, and so on.
20. Later on, in July 2018, the Commission recorded the human rights violations perpetrated in a second phase that began with the so-called "clean-up operations" carried out by the National Police and parapolice groups to dismantle roadblocks and barricades throughout the country, which reportedly led to increases in the number of people killed since the protests began on April 18, 2018.<sup>5</sup> In August 2018, the Commission drew attention to the consolidation of a third phase of repression consisting mainly of the persecution and both selective and mass criminalization of demonstrators, human rights defenders, students, social leaders, and opponents of the government; serious problems for those charged with gaining access to legal defense and due process; and violations of the human rights of persons deprived of liberty and members of their families.<sup>6</sup>
21. Eight months after the protests began, due to information gathered in situ by the MESENI, the Commission pointed to a fourth phase of stepped-up state repression characterized by an increase in the number of acts of aggression and harassment against journalists; ongoing detention and prosecution of leaders, human rights defenders, and members of the opposition; and the arbitrary deportation -- or threat of expulsion of naturalized individuals or permanent residents for having taken part in protests. In this phase of State repression, the IACHR also observed the adoption of measures and decrees that, while feigning legality and pretending to follow formal requirements, in fact illegitimately curtailed the rights to freedom of expression, association, and assembly that are essential for any democratic society to be able to function effectively.

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<sup>3</sup> IACHR, Press Release 135/2018, IACHR Launches Special Monitoring Mechanism for Nicaragua (MESENI), Washington D.C., June 25, 2018.

<sup>4</sup> IACHR, Press Release 121/2018, IACHR to Create Interdisciplinary Group of Independent Experts to Help Investigate Recent Violence in Nicaragua, Washington D.C., May 30, 2018.

<sup>5</sup> IACHR, The Special Monitoring Mechanism for Nicaragua (MESENI) Completes Third Week in Action, Observes Tougher Repression and Raids by Police and Parapolice Groups, Washington, D.C. Managua, July 19, 2018.

<sup>6</sup> IACHR. IACHR Calls On the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families. Managua/Washington, D.C., August 24, 2018.

22. On December 19, 2018, the Nicaraguan State decided to temporarily suspend the presence of the MESENI in the country and visits by the IACHR and announced that expiration of the term, mandate, and mission of the GIEI.<sup>7</sup> Since then, the MESENI has been operating out of IACHR headquarters in Washington D.C. and continues to work closely with the civil society organizations still in Nicaragua as well as others that are outside the country and with victims and their next-of-kin.
23. For its part, on December 21, 2018, the Interdisciplinary Group of Independent Experts installed by the IACHR presented its “Final Report on the Violent Events between April 18 and May 30, 2018”. In it, the GIEI concluded that there had been acts carried out in the context of a widespread and systematic attack against the civilian population that, under international law, must be regarded as crimes against humanity, such as incarceration or other form of deprivation of physical liberty, persecution, rape, and torture.
24. In 2019, the Inter-American Commission reported the on-going human rights crisis in Nicaragua, the complete shutdown of democratic spaces, and the continuation of arbitrary detentions. Furthermore, the IACHR condemned the persistence of impunity surrounding the very serious acts that occurred in the course of the State's violent response to social protests that reportedly resulted in the deaths of at least 328 people, including children and adolescents, approximately 2,000 people injured,<sup>8</sup> more than 100,000 people forced to migrate,<sup>9</sup> and hundreds of arbitrary dismissals, especially of health professionals.
25. The IACHR has repeatedly voiced its concern at the lack of official records that would make it possible to determine the exact number of persons detained and deprived of liberty in the context of the social protests in Nicaragua. At the same time, the Commission has urged the State to comply with its obligation to keep and publish reliable information regarding persons detained and the victims of the crisis. To this day, the State of Nicaragua continues to fail to comply with this obligation. Despite the lack of official data, based on the information obtained by the IACHR for this report, since April 18, 2018, some 1,614 people have been arbitrarily deprived of liberty in connection with the human rights crisis in Nicaragua. As of May 31, 2020, at least 80 people are reportedly still detained.
26. In addition, the Nicaraguan population continues to suffer the recurrent practice of arbitrary detentions and the imposition of a police state that still shuts down any spaces for democratic participation and de facto curtails or suspends public freedoms. In the same vein, ever since the start of the protests, the IACHR has been receiving information regarding the irregularities committed in legal proceedings

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<sup>7</sup> IACHR, Press Release 274/18 - on Nicaragua. Washington, D.C., December 19, 2018.

<sup>8</sup> IACHR, Press Release 194/19, IACHR Expresses Concern over Nicaragua’s Announcement That It Will Not Continue Dialogue and Calls on the State to Comply with Its Obligations to Guarantee and Respect Human Rights, Washington D.C., August 6, 2019.

<sup>9</sup> UNHCR, Two years of political and social crisis in Nicaragua force more than 100,000 to flee, March 10, 2020.

and impairment of human rights associated with detention conditions incompatible with human dignity.<sup>10</sup>

27. For its part, the GIEI drew attention to the fact that the State had resorted to detaining hundreds of people in police raids during the protests. In those cases, the detainees were kept exclusively in National Police (PN) facilities, where they were subjected to various forms of mistreatment and abuse.<sup>11</sup>
28. The Commission continues to constantly monitor the situation of persons deprived of liberty in connection with the human rights crisis through the MESENI and through its Rapporteurship on the Rights of Persons Deprived of Liberty. Other actions it has undertaken include requesting the Inter-American Court of Human Rights ("Inter-American Court" or "I/A Court of H.R.") for provisional measures for persons deprived of liberty; holding public hearings on the subject; and the issuing of numerous pronouncements, newsletters, and period reports.
29. Given the scale of the events, the form they have taken, and the devastating conditions and sequels for hundreds of people, pursuant to Article 41 of the American Convention on Human Rights (hereinafter "the American Convention") and Article 58 of its Rules of Procedure, the IACHR has prepared this report on the situation of persons deprived of liberty in Nicaragua in connection with the grave human rights crisis in the country and makes recommendations to that State.

## ***B. Structure and Methodology***

30. To elaborate this report, the IACHR systematized and analyzed the information gathered through its constant monitoring of the situation from the start of the human rights crisis in Nicaragua. In particular, the information gathered during the first IACHR visit in May 2018; from the Rapporteurship on the Rights of Persons Deprived of Liberty in September 2018; and that obtained by the Special Monitoring Mechanism for Nicaragua (MESENI) and by the Interdisciplinary Group of Independent Experts (GIEI) on Nicaragua.
31. The Commission likewise used the information obtained in connection with the reports and precautionary measures filed by the IACHR, information submitted during public hearings, information available in press releases and annual reports, and that elicited by requests for information pursuant to Article 41 of the American Convention. The Commission likewise analyzes information provided by the State

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<sup>10</sup> Prior to its visit, the IACHR asked the State to facilitate its access to El Chipote and the La Esperanza and La Model prisons, as well as meetings with the Ministry of Foreign Affairs, the Public Prosecutors' Office (Ministerio Público), the National Police, and the Office of the Procurator for the Defense of Human Rights (Procuraduría para la Defensa de los Derechos Humanos), but never received a reply to those requests. That notwithstanding, the Rapporteurship held several meetings with representatives of civil society, defenders, and family members of persons deprived of liberty, and made recommendations to the State. IACHR, 210/18 Rapporteurship on the Rights of Persons Deprived of Liberty Makes Visit to Nicaragua. Managua/Washington, D.C., Wednesday, September 26, 2018.

<sup>11</sup> GIEI-Nicaragua, Report on the Violent Events between April 18 and May 30, 2018, December 2018.

and that provided by other human rights organizations and civil society organizations, as well as information in the public domain with a bearing on this report.

32. The IACHR underscores that this report has largely been built around statements made by victims, who reported their dire situation to the Commission, how detentions were carried out, what they endured while deprived of liberty, how the national justice system responded, and the consequences for their personal and family lives.
33. In particular, from its first working visit in May 2018 through to the completion of this report, the IACHR has received and sorted testimony from at least 266 persons deprived of liberty in connection with the protests that began in April 2018. That testimony was gathered in both Nicaragua and other countries in which the Commission directly interviewed people who had been deprived of liberty, their family members, and others close to them.
34. The Commission deeply values the testimony submitted because, apart from constituting a necessary act of denunciation, it demonstrates the bravery and commitment of the Nicaraguan population to prevent a recurrence of the very serious violations they have endured.
35. This report contains six chapters. The introductory chapter highlights general considerations. Chapter Two describes the detentions carried out during the crisis, the pattern of arbitrary arrests, the way they were conducted, their perpetrators, and human rights violations they entailed. Chapter Three analyzes the appalling conditions to which persons deprived of their liberty were subjected, both in National Police facilities and in units run by the National Penitentiary System. Chapter Four describes how the Nicaraguan justice system reacted. Chapter Five examines reported releases from prison. Chapter Six analyzes the rights of persons deprived of liberty in light of the impact of the COVID-19 pandemic. Finally, Chapter Seven presents the conclusions of the report and formulates a series of recommendations to the Nicaraguan State.
36. On August 24, 2020, the IACHR remitted a preliminary copy of this report to the State of Nicaragua and requested that it submit its observations within one month, pursuant to the Commission's Rules of Procedure. The State of Nicaragua did not present its observations. The IACHR approved the report on October 5, 2020.





CHAPTER 2  
DETENTIONS CARRIED OUT IN  
CONNECTION WITH THE CRISIS  
IN NICARAGUA



## DETENTIONS CARRIED OUT IN CONNECTION WITH THE CRISIS IN NICARAGUA

37. Based on the information obtained by the IACHR, since April 18, 2018, at least 1,614 people have been deprived of liberty in connection with the human rights crisis in Nicaragua. In this chapter, the Commission analyzes the patterns of human rights violations documented in connection with the detentions recorded, which, moreover, occurred under changing dynamics and modalities during the various phases of State repression.
38. In its Country Report, the Commission reported typical patterns of human rights violations during the first phase of repression of the social protests that began on April 18, 2018. The Commission noted that most arbitrary detentions took place during mass arrests. Very often, they were violent, accompanied by disproportionate and arbitrary use of force, even though no crime had been committed warranting detention. During this initial phase, the IACHR ascertained that the main intention behind the deprivation of liberty was to punish or suppress opposition to the current regime in Nicaragua and had nothing to do with legal grounds established in domestic laws.<sup>12</sup>
39. During the second phase of the repression, beginning in July 2018, the Commission noted a more intense pattern of selective and arbitrary arrests during what the State called "clean-up operations"<sup>13</sup> carried out by the National Police and parapolice groups, with the participation of "Citizenship Power Councils" (CPC), to dismantle roadblocks and barricades throughout the country.<sup>14</sup> In that context, the IACHR drew attention to the fact that, on July 16, 2018, the National Assembly passed Law No. 977 against Money Laundering, the Financing of Terrorism, and Financing of the Proliferation of Weapons of Mass Destruction,<sup>15</sup> amending articles in the Criminal Code regarding money laundering and the financing of terrorism and adding Article

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<sup>12</sup> CIDH, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, 2018, par. 180

<sup>13</sup> National Police, Nicaragua, Policía presenta resultados de "Operación por la Paz" [Police presents outcomes of the "Operation for Peace"], July 16, 2018.

<sup>14</sup> IACHR, The Special Monitoring Mechanism for Nicaragua (MESENI) Completes Third Week in Action, Observes Tougher Repression and Raids by Police and Parapolice Groups,, Washington, D.C. / Managua, July 19, 2019.

<sup>15</sup> Published in the Official Gazette on July 20, 2018. Its enabling regulations were adopted on September 27, 2018 and published in the Official Gazette on October 3, 2018.

404 on the proliferation and financing for the proliferation of weapons of mass destruction.<sup>16</sup>

40. In August 2018, the IACHR ascertained the consolidation of a third phase of the repression<sup>17</sup> comprising a continuation of the arbitrary detentions of protesters and persons attempting to protest; selective persecution and criminalization; and the generalization of criminal proceedings against persons deprived of liberty on baseless and disproportionate charges,<sup>18</sup> such as: kidnapping, organized crime, terrorism, the illegal bearing of arms, arson, damages, murder, the possession and use of restricted-use weapons, the transportation of weapons and ammunition, obstruction of public services, conspiracy, threats, and placing people in danger.<sup>19</sup> The IACHR likewise observed ongoing excessive use of force during detentions by the National Police and parastatal groups,<sup>20</sup> and patterns of human rights violations against persons deprived of liberty.<sup>21</sup>
41. In December 2018, the IACHR identified a new phase of the repression in Nicaragua characterized by the shutting down of democratic spaces in the country and the adoption of measures and decrees illegitimately restricting the rights to freedom of expression, association, and assembly. During this phase, the IACHR also noted ongoing criminalization and prosecution of leaders, and human rights defenders.<sup>22</sup>
42. During 2019, the IACHR drew attention to ongoing arbitrary detentions and judicial persecution of people involved in roadblocks and demonstrations, social leaders, and university students, and even well-known journalists working for independent media.<sup>23</sup> Thus, prior to the negotiation talks ("Dialogue Table ") convened by the

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<sup>16</sup> IACHR, Press release of the Special Procedures of the Human Rights Council "Nicaragua must end "witch-hunt" against dissenting voices, say UN experts", 9 August 2018; 210/2018 - Rapporteur on Rights of People Deprived of Liberty visits Nicaragua, Managua / Washington DC, September 26, 2018.

<sup>17</sup> IACHR, Press Release 169/2018- IACHR Confirms Reports of Criminalization and Legal Persecution in Nicaragua, Washington, DC, August 2, 2018; IACHR, Press Release 183/2018, IACHR expresses concern about the situation of Nicaraguan migrants and refugees and calls on the States of the region to adopt measures for their protection, Washington, DC, August 15, 2018; IACHR, Press Release 187/2018, IACHR Calls On the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families, Washington, DC, August 24, 2018.

<sup>18</sup> IACHR, Press release of the Special Procedures of the Human Rights Council "Nicaragua must end "witch-hunt" against dissenting voices, say UN experts", 9 August 2018; 210/2018 - Rapporteur on Rights of People Deprived of Liberty visits Nicaragua, Managua / Washington DC, September 26, 2018.

<sup>19</sup> Report of the State of Nicaragua to the Inter-American Commission on Human Rights on the Hearing convened to address the Topic "General situation of human rights in Nicaragua" during its 171st Session, held in Sucre, Bolivia, 2019, p. 15

<sup>20</sup> IACHR, Press Release 169/2018- IACHR Confirms Reports of Criminalization and Legal Persecution in Nicaragua, Washington, DC, August 2, 2018.

<sup>21</sup> IACHR, Press Release 210/2018- Rapporteurship on the Rights of Persons Deprived of Liberty Visits Nicaragua, Washington DC, September 26, 2018. IACHR, 2018 Annual Report, Chapter IV, Venezuela, par. 9.

<sup>22</sup> IACHR, Press Release 273/2018 - IACHR denounces aggravation of the repression and the closure of democratic spaces in Nicaragua, Washington, D.C. / Managua, December 19, 2018.

<sup>23</sup> In connection with the hearing "General Situation of Human Rights in Nicaragua, "the civil society organizations taking part told the IACHR that they had addressed 1,531 illegal detentions and 756 persons

Government, civil society organizations reported that 777 people were still being deprived of liberty. The State, for its part, acknowledged that the number of those detained and charged totaled 372.<sup>24</sup> Also in 2019, the IACHR became aware of a "new normal" in the pattern of arbitrary short-term detentions designed to intimidate social leaders and previously incarcerated people or to prevent social protests and demonstrations.<sup>25</sup>

43. Between February 27 and June 11, 2019, the State of Nicaragua announced the release of 493 people<sup>26</sup> involved in social protests. Of them, 160 were released following the passing of the Amnesty Law and 387 were released following unilateral announcements by the State.<sup>27</sup> While the IACHR welcomed the releases, it also received information of noncompliance with the terms established in a written agreement between the Alianza Cívica por la Justicia y la Democracia and the State of Nicaragua, due to mass unilateral releases<sup>28</sup> deliberately enacted at moments deemed "critical" for the Nicaraguan Government in the national and international agenda.<sup>29</sup> Subsequently, on December 30, 2019, the State reported the

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deprived of liberty since April 2018. The charges most commonly brought in the context of the crisis were for terrorism, the possession and bearing of arms, organized crime, torture, and murder. IACHR, 171st period of sessions, public hearing "General Situation of Human Rights in Nicaragua", February 14, 2019.

<sup>24</sup> IACHR, Press Release 51/2019, IACHR Calls for Conditions that Enable the Enjoyment of Human Rights during Nicaraguan Dialogue, Washington, D.C., February 28, 2019.

<sup>25</sup> IACHR, 2019 Annual Report, Chapter IV.B, Report on Nicaragua, April 2020, par. 60.

<sup>26</sup> The IACHR notes that 387 people were released via unilateral announcements and 104 were reportedly freed as a result of adoption of the Amnesty Law. Ministry of the Interior: , February 27, 2019, March 15, 2019; , April 5, 2019; , April 16, 2019; , May 20, 2019; , May 30, 2019; , May 30, 2019; Lista de 50 personas que se encontraban detenidas por haber cometido delitos contra la seguridad común y delitos contra la tranquilidad pública, que fueron liberadas el lunes 10/06/2019 en cumplimiento de la Ley de Amnistía N° 996, aprobada por la Asamblea Nacional el 8 de junio del 2019, June 10, 2019; Lista de 56 personas que se encontraban detenidas por haber cometido delitos contra la seguridad común y tranquilidad pública, que fueron liberadas y entregadas el martes 11/06/2019 al Comité Internacional de la Cruz Roja, en cumplimiento de la Ley de Amnistía N° 996, June 11, 2019.

<sup>27</sup> According to reports from civil society organizations, two people released as a result of the Amnesty law were not on the list of "political prisoners" drawn up at the Dialogue Table. IACHR, 174th regular period of sessions, public hearing "Amnesty Law", November 11, 2019.

<sup>28</sup> For instance 636 people were released on April 16. Even though, officially, those individuals were released under the label "common prisoner" (presos comunes), civil society identified 36 of them as listed by the Alianza Cívica por la Justicia y la Democracia.

<sup>29</sup> According to an analysis submitted by the International Crisis Group, the releases occurred as follows: the Government released 100 "political prisoners" at the start of the Dialogue on February 27; 50 more people on March 15, while the United Nations Human Rights Council was debating a resolution on Nicaragua; another 50 on April 5, a few hours before the OAS Permanent Council meeting on Nicaragua; 36 people were released on April 17, just prior to the anniversary of the protests, "hidden in a group of another 600 common prisoners"; another 100 were released on May 20, after the Alianza Cívica announced its withdrawal from the negotiations and one day before the OAS again met to discuss Nicaragua; 50 people were released on May 30, Mother's Day in Nicaragua, which in 2018 had marked one of the peaks of violence in the crisis, and 50 and 56 more prisoners were released on June 10 and 11, respectively, coinciding with U.S. Congress hearings on the situation in Nicaragua. International Crisis Group, The Keys to Restarting Nicaragua's Stalled Talks, Report N°74, Latin America & Caribbean, June 13, 2019. p. 11.



release of 90 people.<sup>30</sup> As the crisis dragged on in Nicaragua, the Commission found that persons arbitrarily deprived of liberty were being treated by the State as objects for "swaps" or "bargains" aimed at keeping their family members plunged into uncertainty and anguish, inhibiting any acts of social protest, and undermining actions by the opposition. In addition, the proceedings against the people benefiting from the Amnesty Law had reportedly been archived without being dismissed. That would leave open the possibility of criminal proceedings being reopened under the "non-repetition" clause in Article 3 of that Law.<sup>31</sup>

44. As this report went to press, criticism of the Government in Nicaragua continued to be criminalized in an environment devoid of impartiality or independence in the Nicaraguan judicial system. The IACHR likewise draws attention to a situation of impunity brought by the prolonged weakening of the country's democratic institutions, especially the absence of investigation into the gross violations since April 18, 2018. Below, the IACHR analyzes the types of detention practiced according to the information received and testimony gathered.

## ***A. Modes of Detentions***

### **1. Perpetrators of the Arrests**

45. According to the information at the Commission's disposal, detentions in connection with the repression and criminalization of protest have been carried out by the National Police and by parapolice groups or armed third parties, who are reportedly often hooded or with their faces covered, and heavily backed or supported by State agents.<sup>32</sup> The following testimony culled by the IACHR is particularly telling with respect to patterns of detention:

On April 21, at midday, I was minding my own business in the Medardo Andino district [...]. Half way down a block, a National Police patrol car with three officers inside intercepts me and without an

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<sup>30</sup> Ministry of the Interior, Nicaragua, December 30, 2019.

<sup>31</sup> This situation was reported by human rights defenders at the public hearing "Persecution, repression, criminalization, and prosecution of the forcibly displaced campesino population in Nicaragua," at the 173rd period of sessions, Washington, D.C., 2019; See also IACHR, 2019 Annual Report, Chapter IV.B, Report on Nicaragua, April 2020, par. 72,

<sup>32</sup> In its June 2018 report, the Commission described a pattern in which State agents -- mainly members of the National Police, its anti-riot squads, and parapolice groups acting with the acquiescence of the Police -- set in motion a repressive response designed to dissuade social participation in demonstrations. CIDH, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, 2018, par. 4.

arrest warrant they demand that I get into the vehicle and they take me to the Ticuantepe police station.<sup>33</sup>

I was on my way to my home in the Santa Rosa district. I am a transportation assistant and was covered with oil at the time because my truck had broken down. As I was heading home, two police patrol cars came out full of police, who beat me with their rifles and weapons, put me into a patrol car, and took me to the Chipote [prison]. There I was beaten and tortured. Then they took me to La Modelo [prison].<sup>34</sup>

46. Article 97 of the Political Constitution of Nicaragua establishes that the National Police is an armed, civilian body, whose Commander-in-Chief is the President of the Nation. Its organizational model is designed to be preventive, proactive, and community-oriented, with a key participatory role of the inhabitants, the family, and the community. Its mission is also to keep the peace (*garantizar el orden interno*) and guarantee the safety of persons and property, to prevent, combat, and investigate crime. As a professional institution, it must be apolitical, non-partisan, obedient, and non-deliberative.<sup>35</sup>
47. At the same time, the IACHR ascertained the participation of parapolice groups and armed third parties in connection with the human rights crisis, who are reported to have taken part in and carried out hundreds of arbitrary detentions, with the acquiescence, tolerance, and collaboration of State authorities, especially the National Police.<sup>36</sup> Created toward the end of 2007, those units comprise "clash groups" ("*grupos de choque*" or hit squads) or Sandinista mobs ("*turbas sandinistas*") and "paramilitary groups," as well as "parapolice groups." Ever since they were formed, hit squads or mobs have engaged in attacks and assaults against political opponents or manifestations of social discontent.<sup>37</sup> For its part, the IACHR has received abundant information about groups identified as parapolice squads

<sup>33</sup> Testimony received by the IACHR in May 2018 (PPLV5).

<sup>34</sup> Testimony received by the IACHR in May 2018 (PPLV9).

<sup>35</sup> Article 97 of the Political Constitution of Nicaragua. In addition, pursuant to Law No. 872 of 2014, "the human being is the center and *raison d'être* of police activity. Therefore, every person's life, safety, liberty, and the other guarantees enshrined in the Political Constitution, and in particular the defense and protection of the rights of women, children, and adolescents are a cross-cutting feature of our model." Article 5 of Law N° 872 Ley de organización, funciones, carrera y régimen especial de seguridad social de la Policía Nacional. [Law on the organization, functions, career services, and social security regime for the National Police].

<sup>36</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, June 21, 2018, par. 58. IACHR, Press Release 124/18 -IACHR Urges Nicaragua to Dismantle Parapolice Groups and Protect Right to Peaceful Protest. Washington, D.C., June 1, 2018.

<sup>37</sup> In 2008, the IACHR voiced its concern at the way they behaved during that year's municipal elections, when armed with sticks, stones, machetes, and home-made mortars they clashed with and attacked opposition sympathizers protesting the electoral vote counts in a number of municipalities in the country, in daylight and in full view of the police, and urged on by government officials. IACHR, 51/08 - IACHR expresses concern over situation in Nicaragua. Washington, D.C., November 25, 2008. See also the GIEI Nicaragua Report of December 2018, p. 56.

reportedly starting out to strengthen security for President Ortega, keeping a low profile for many years. However, in connection with the repression of the demonstrations of April 2018 and the dismantling of roadblocks, they came out into the open, as a clearly highly organized force using weapons of war.<sup>38</sup>

48. The IACHR observed that the State's repressive apparatus also comprised social and political vigilance and control organs organized throughout the country by Family Committees – formerly known as Citizenship Power Councils (CPC),<sup>39</sup>– and Sandinista Leadership Committees (CLS). The first are decentralized structures across the country and established at the local district (*barrio*) level. They combine formal institutions with local political authorities, which gives them substantial control over territory and the population.<sup>40</sup> During the crisis, the IACHR received numerous complaints pointing to active participation by the previously denominated CPCs geared to keeping a close watch on people regarded as opponents of the Government, and, in particular, reports of illegal raids and detentions carried out using lists of suspects compiled from CPC intelligence.<sup>41</sup>
49. For their part, the Sandinista Leadership Committees (CLS) are bodies that coexist alongside the party organs of the Sandinista National Liberation Front (Frente Sandinista para la Liberación Nacional – FSNL) and that are in charge of ensuring that government employees take part in activities, such as marches, manning traffic circles in Managua, counter-marches, fairs, and other public events. Another task reportedly assigned to them was to keep an eye on government employees who were not government sympathizers.<sup>42</sup>
50. At the start of the human rights crisis, the Nicaraguan State denied any ties between the National Police and parapolice forces.<sup>43</sup> Nevertheless, on July 20, 2018, the

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<sup>38</sup> According to the GIEI Nicaragua Report, this happened because, when the Government revamped its strategy for suppressing sustained social mobilization and protest, a group of historical pro-Ortega activists started recruiting former military officers, demobilized personnel from the Patriotic Military Service, former officials of the Ministry of Interior and historical activists to participate in these parapolice groups. GIEI Nicaragua Report of December 2018, p. 56.

<sup>39</sup> IACHR, The Forced Migration of Nicaraguans to Costa Rica, OEA/Ser.L/V.II. Doc. 150, September 8, 2019, par. 76.

<sup>40</sup> GIEI Nicaragua Report of December 2018, p. 56-57.

<sup>41</sup> IACHR, The Special Monitoring Mechanism for Nicaragua (MESENI) Completes Third Week in Action, Observes Tougher Repression and Raids by Police and Parapolice Groups, Washington, D.C. / Managua, July 19, 2019.

<sup>42</sup> GIEI Nicaragua Report of December 2018, p. 57.

<sup>43</sup> On May 27, the National Police pointed out that, as a result of the National Dialogue, the police would stay garrisoned in order to ensure peaceful marches and their officers would stay away from university premises. In the same communique, the police denied any ties to parapolice forces. National Police, Nicaragua, 25-2018, May 27, 2018; In public statements, the Vice President of Nicaragua declared: "In Nicaragua there are no riot squads or paramilitary groups with ties to the government, therefore we cannot accept accusations of painful and tragic events that we have not provoked, that we will never provoke, and that, on the basis of groundless accusations, attempts are made to restrict the enforcement of the Constitutional Duty of Law Enforcement Forces to contribute to the safety of the Families." El 19 Digital, Declaraciones de Rosario Vicepresidenta de Nicaragua en Edición del Mediodía de Multinoticias, May 31, 2018.

Executive claimed that the groups taking part in the clean-up operations were "volunteer police" and justified their covering up their faces as a security precaution.<sup>44</sup> Subsequently, in February 2019, the State told the Commission that "the only people taking part in all actions to restore order and tranquility are professional police officers and volunteers" and it denied "the existence of groups that political and opposition groups who oppose the legitimately constituted government call parapolice, mobs, or hit squads."<sup>45</sup> Thus, the State maintained that the "National Police is the only armed body, charged with complying with its constitutional mission and restoring order;[...] it does not ask for help from civilian personnel, third parties, or civilian organizations," and that the so-called "Voluntary Police" created in 1983 operates in accordance with its charter.<sup>46</sup>

51. The Commission has pointed out that the constitution and actions performed by the parapolice forces do not match the nature or the operational purposes of the Voluntary Police envisaged in Law No. 872,<sup>47</sup> according to which said police corps is required to be identified with its own uniforms and badges, to act under the coordination and supervision of a member of the National Police, and to abide by the institution's principles. Consequently, from the start of the protests, the IACHR called upon the State to dismantle the parapolice groups and to "adopt measures to prevent groups of armed third parties from continuing to operate, attacking and harassing the civilian population."<sup>48</sup>
52. The IACHR has extensively documented the fact that a large number of the detentions carried out since April 18, 2018 by the National Police were carried out jointly with parapolice groups, both "hit squads" or "Sandinista mobs" and paramilitary also known as "blue shirts." In that regard, the IACHR received the following testimonies:

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<sup>44</sup> Euronews, "Euronews entrevista al presidente de Nicaragua Daniel Ortega sobre la mortal crisis del país", July 20, 2018.

<sup>45</sup> State of Nicaragua, Communication received on February 13, 2019, p. 50.

<sup>46</sup> Decree 1347. Organic Law of the Volunteer Police Corps, adopted on November 15, 1983 and published in La Gaceta (Official Gazette) No. 265 of November 22, 1983; State of Nicaragua, Communication received on February 13, 2019, p. 50.

<sup>47</sup> According to Law 782, members of the Voluntary Police Force shall only assist with prevention duties, such as" 1) Lending assistance to the Police with surveillance, patrolling, traffic control, and responses to natural disasters. 2) Helping the authorities be aware of crimes committed, preserving the crime scene, aiding any victims, and promptly notifying the competent authorities. Furthermore, "In the performance of their duties, members of the Voluntary Police Force shall be duly identified with their own uniforms and badges; their work must always be coordinated and supervised by a member of the National Police; and their action shall always be guided by the fundamental principles governing the institution." Nicaragua Law 872. Organization, functions, career services, and social security regime for the National Police, July 7, 2014: IACHR, 2018 Annual Report, Chapter IV.B, Nicaragua, par. 57.

<sup>48</sup> IACHR, Press Release 113/18, Preliminary observations on the IACHR working visit to Nicaragua, Washington D.C., May 2, 2018; CIDH, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, June 21, 2018.

I was at the National University of Nicaragua [UNI] on April 20, when I was intercepted by the police and Government hit squads. They detained me illegally for three days, beat me, and told me it was because I opposed "the big family." In El Chipote, they just showed a list (*presentaron lista*); they did not let me speak to my family.<sup>49</sup>

I was with some fellow students in a taxi when a patrol car crossed in front, forcing us to put the brakes on, and shouted "get out you criminals." They were police officers and paramilitary. I said "how come you are treating us like this" and the police officer took out his weapon and pointed it at my head. I told him to go ahead and shoot because I wasn't afraid of dying and the police officer was taken by surprise. They took us to Police District 1, beating us on the way.<sup>50</sup>

53. The IACHR also draws attention to arrests by those groups without the National Police being present, as the following testimonies recount:

I was detained by Sandinista Youth mobs, who searched my vehicle and all of us inside it. They hit us and took us to El Chipote, where we were held for two days. They interrogated and accused us and then took us to La Modelo, where they held us for another two days without clothing.<sup>51</sup>

I left my house to go and buy oranges, when suddenly on the corner the government political secretary for that district waved his arms up and down and out came some 20 men on motorbikes and in a truck, ground to a halt, lifted me up, tossed me into the truck, and took me to the Jinotepe police station. All of them were civilian paramilitary.<sup>52</sup>

I was with two people in a vehicle on the road to Nindirí when a Hilux pick-up truck suddenly crossed in front of us with about 8 armed civilians armed with M16 rifles. They made us get out and began searching us. [...] In our vehicle, they found the materials we were taking to the people operating the roadblock, so then they began beating us, firing shots in the air with their weapons. Then they took us to the Indira police station. When they detained us, none of them identified themselves as a police officer. They just said they were government sympathizers and accused us of being road blockers.<sup>53</sup>

54. Under article 231 of the Code of Criminal Procedure, detention by the National Police without a warrant may be pursued if the perpetrator of a punishable act is caught at the time of committing it, is fleeing from the scene of the act or is caught

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<sup>49</sup> Testimony received by the IACHR in May 2018 (PPLV8).

<sup>50</sup> Testimony received by the IACHR in January 2020 (IPPL21).

<sup>51</sup> Testimony received by the IACHR in May 2018 (PPLV7).

<sup>52</sup> Testimony received by the IACHR in January 2020 (IPPL30).

<sup>53</sup> Testimony received by the IACHR in January 2020 (IPPL14).

in the place of the incident or near it with weapons, instruments or other objects that in any way suggest the person's immediate participation in the act. Likewise, in the aforementioned cases of flagrante delicto, any private citizen may proceed with the detention if the offense is punishable with prison, although that citizen is required to hand over the detainee to the nearest authority. The same article grants special authority to heads of National Police stations to issue an arrest warrant on their own personal responsibility, stating the reasons why they deem it essential, against persons in respect of whom there are grounds to believe that in all probability they committed an offense punishable with imprisonment, within 12 hours of their being apprised of the fact. It adds that such cases shall not be regarded as current and immediate persecution of a criminal for the purpose of a house search.

55. In all other cases, the aforementioned Article 231 establishes that a judicial warrant is required for detention. Article 33 of the Political Constitution likewise establishes that no person may be subjected to detention or arbitrary arrest, or be deprived of liberty, except on grounds established by law in accordance with a legal procedure. Consequently, "detention may only be carried out by virtue of a written warrant issued by a competent judge or the authorities expressly empowered by law, except in cases of flagrante delicto."<sup>54</sup>
56. Despite those provisions under domestic law, the IACHR observes that since the start of the human rights crisis in Nicaragua and through to this day, the actions of the National Police and parapolice groups, in addition to being tolerated and abetted by the State, have constituted a mechanism for breaking up protests and detaining demonstrators or persons deemed to oppose the Government, as well as a form of punishment and intimidation.
57. The IACHR reiterates that Article 1.1 of the American Convention imposes on States Parties the fundamental obligations to respect and guarantee rights, so that any violation of the human rights established in the Convention that can be attributed, according to the rules of international law, to the act or omission of any public authority, constitutes a fact attributable to the State, which entails its international responsibility. The State's international responsibility may also arise from attribution to it of human rights violations committed by third parties or private individuals, within the framework of the State's obligations to guarantee respect for those rights between individuals.<sup>55</sup>

## 2. Massive, Selective and Reiterated Detentions

58. The IACHR draws attention to the fact that during the various phases of the State's suppression of protests, detentions were carried out in a variety of ways: mass,

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<sup>54</sup> Article 33 of the Political Constitution of Nicaragua.

<sup>55</sup> IACHR, Report on Citizen Security and Human Rights. OEA/Ser.L/V/II.Doc. 57, December 31, 2009, par. 39.

selective, and multiple. In most cases, the main intention behind deprivation of liberty was to suppress opposition to the current regime in Nicaragua.

59. During the first phase of repression, the Nicaraguan State opted for mass detentions of students, workers, and young people in the vicinity of protests. They were carried out by the National Police and by parapolice groups, making disproportionate and illegitimate use of force. In some instances, the legal ground adduced was in flagrante breaches of the peace, contemplated in Article 537 of the Criminal Code.
60. The GIEI ascertained that most detentions took place on those dates when public demonstrations occurred, particularly between April 19th and 22nd, May 7th, between May 12th and 14th, May 25th, and between May 28th and 30th. On some days, hundreds of detentions were carried out. Moreover, the massive nature of the detentions coincides with the large number of release orders granted on the dates immediately thereafter, as on average detainees were released within 24 or 48 hours.<sup>56</sup>
61. In this regard, the Report of the Special Rapporteur for Freedom of Expression of the IACHR on "Protest and Human Rights" points out that in social protest contexts States must refrain from resorting to mass, collective, or indiscriminate detentions,<sup>57</sup> and issues a reminder that the Inter-American Court has held that police tactics using collective detentions or "razzias"<sup>58</sup> are incompatible with respect for fundamental rights, including the presumption of innocence, the need for a court order to make a detention –except in situations of flagrancy– and the obligation to notify the persons responsible for minors."<sup>59</sup>
62. For its part, the Inter-American Court has determined, with regard to mass detentions in social protest contexts, that if they are used with no demonstrable circumstantial evidence of a crime having been committed, they constitute illegal and arbitrary arrest: "a massive and programmed arrest of people without legal grounds, in which the State massively arrests people that the authority considers may represent a risk or danger to the security of others, without substantiated evidence of the commission of a crime, constitutes an illegal and arbitrary arrest."<sup>60</sup>
63. The IACHR also identified a pattern of selective detentions carried out since the start of the second phase of State repression, when the State reportedly activated a

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<sup>56</sup> GIEI Nicaragua Report of December 2018, p. 195.

<sup>57</sup> IACHR, Report Protest and Human Rights (2019), September 2019, par. 138.

<sup>58</sup> Police operations aimed at surrounding a property, street, district, or event to prevent the people trapped from escaping, deprive them of liberty, or take them to police stations. I/A Court H.R. Case of Bulacio v. Argentina. Judgment of September 18, 2003 (Merits, Reparations and Costs), par. 56.

<sup>59</sup> I/A Court H.R. Case of Bulacio v. Argentina. Judgment of September 18, 2003 (Merits, Reparations and Costs), par. 137.

<sup>60</sup> I/A Court H.R., Case of Servellón García et al. v. Honduras, Judgment of September 21, 2006. Series C No. 152, par. 134; Case of Bulacio v. Argentina, par. 137.



strategy of judicial prosecution and criminalization designed to deter demonstrators, social leaders, journalists, and human rights defenders. As this report analyzes later on, those selective arrests were reportedly carried out by the National Police and/or parapolice groups, typically without a judicial warrant, with no precise information given as to charges or the reason for the detention, and without the family receiving prompt notification of where their family member was being held.<sup>61</sup> During 2018, the IACHR became aware of the arbitrary detentions of, among others, Irlanda Jerez Barrera, one of the leaders of the "self-convened" (*autoconvocados*) traders of the Mercado Oriental; Christian Rodrigo Fajardo Caballero and María Dilia Peralta Cerrato, leaders of the April 19 movement in Masaya; and campesino leaders Medardo Mairena and Pedro Mena.<sup>62</sup> Likewise, in 2018, the following university leaders were arrested: Edwin Carcache, Byron Corea Estrada, Christopher Nahirobi Olivas, Yaritza Rostrán Mairena, Luis Arnulfo Hernández, Levis Josué Artola, Juan Pablo Alvarado, and Victoria Obando, a transgender woman and activist for the rights of LGBTI persons<sup>63</sup>.

64. The Commission also received information of criminal charges against Lucía Pineda Ubau and Miguel Mora, the Press Officer and the Director of the 100% Noticias television channel, who were arrested on December 21, 2018 and then accused of "inciting and conspiracy to commit terrorist acts and of eulogizing and incitement to commit hate crimes," along with three other media workers, Jaime Arellano, Jackson Orozco, and Luis Chavarría Galeano, who had reportedly left the country.<sup>64</sup>
65. Finally, with respect to multiple detentions, the Commission has observed reiterated use of short-term detention of persons who had previously been detained and released. Some of those detentions reportedly took place at borders or at the airport after these persons had taken part in international meetings and were apparently meant to intimidate and discourage them from adopting leadership stances.<sup>65</sup> On August 8, 2019, the IACHR was apprised of the detention (all for between one and three days) of 21 previously released persons.<sup>66</sup>

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<sup>61</sup> IACHR, Press Release 187/2018, IACHR Calls On the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families, Washington, DC, August 24, 2018.

<sup>62</sup> IACHR, Press Release 169/2018- IACHR Confirms Reports of Criminalization and Legal Persecution in Nicaragua, Washington, DC, August 2, 2018.

<sup>63</sup> Between August 24 and 25, civil society reported more than 50 arbitrary detentions, over half of them involving student members of the "Coordinadora Universitaria por la Justicia y la Democracia (CUJD)," an organization taking part in the National Dialogue discussions ("National Dialogue Table"). Iniciativa Mesoamericana de defensoras de derechos humanos, Alerta detención de integrantes de la CUDJ, August 26, 2018; IACHR, Press Release 223/2018 – IACHR warns of new wave of repression in Nicaragua, Washington, DC, October 18, 2018.

<sup>64</sup> IACHR, Press Release 026/19, IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua, February 6, 2019.

<sup>65</sup> IACHR, Press Release 220/19 - IACHR Speaks Out Against Ongoing Repression in Nicaragua and Expresses Its Concern at Increased Harassment of Human Rights Defenders and People Who Have Been Released from Prison, September 6, 2019.

<sup>66</sup> Unidad de Defensa Jurídica de Nicaragua, Report entitled "Nuevos patrones de represión y violaciones al debido proceso entre el 27 de febrero y el 8 de agosto de 2019," August 8, 2019. IACHR archive. IACHR, 2019 Annual Report.



### 3. Disproportionate Use of Force in connection with Detentions

66. Based on the information and testimonies it has received, the IACHR draws attention to the fact that the detentions carried out by both the National Police and parapolice groups used excessive, disproportionate force, in the form of threats, punches, kicking, and the use of weapons, including shots fired at people, be they participating in protests, located in the vicinity, or the objects of selective detentions. Some of the testimonies received by the IACHR describe what happened:

On April 24, 2018, at the La Merced church, a white station wagon full of anti-riot police intercepted us, pointing a gun at our heads. They threw us to the ground, beat us, and put us in a pick-up truck. Then they transferred us to a private pick-up truck and told me that they had firearms. Then they took me to the pre-trial detention unit at El Chipote. They put me in an unlit cell with seven other people and took away our clothes. One of the inmates saw that they were taking the boys away, handcuffed (*con bridas*) and then they put us onto a bus. That same day they released us.<sup>67</sup>

At around 4:30 pm, I was going back home following a visit to a friend who lives in the San Jacinto district when I saw several policemen approaching and all of them said "run." I did, out of fear. They managed to trap me and then the blows began, one of them in my right eye using the butt of one of the rifles they were carrying. They made me get onto a motorbike and drove me to District VI. On Sunday, April 22, they moved me to El Chipote, hitting me all the way there. On the night of that same Sunday, they transferred us to La Modelo prison and put us in a long line of 120 prisoners and the officers there then began hitting us one by one, as we were on our knees without heads pointing down. I remained there until Tuesday, April 23 when they put us in a bus and pushed us out onto the road at intervals, dumping me in Cofradía.<sup>68</sup>

67. Based on the testimonies received by the IACHR, the disproportionate deployment of dozens of armed individuals to carry out the detentions is noted. In most such cases, those agents employed excessive use of force.

I was at the Roberto Huembe market in Managua. I went to a meeting to which I had been summoned by a "self-convened" colleague (*compañero autoconvocado*). I was on my way back from Masaya and went directly to the appointment [...]. When we were walking by the parking lot, I saw a white pick-up truck approaching, with polarized windows. I couldn't see who was inside. But then, another pick-up truck came up on the other side, locking me in, and several men in plain clothes got out. They grabbed me by the shoulder and I tried to

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<sup>67</sup> Testimony received by the IACHR in May 2018 (PPLV2).

<sup>68</sup> Testimony received by the IACHR in May 2018 (PPLV4).

free myself, but they got me in an arm lock. I was frightened because I didn't know who they were, but I imagined they were paramilitary and then I realized that I had fallen into a trap arranged by the boy who had summoned me to the meeting; that he was an infiltrator. I continued to struggle and try and get away, but they put a gun to my head between the eyes and told me that if I didn't keep still they would kill me. At that point, they and several other men began hitting me. I began to bleed from the blows. They were a group of civilians, all armed, and no badges to show their identity. They managed to force me and the other guy with me into a pick-up truck. Throughout the journey, they kept me face down with a gun pointed at me. I realized that all in all there were about five pick-up trucks involved. They took me to Chipote Nuevo.<sup>69</sup>

We were intercepted by six pick-up trucks of different colors, most of them dark. More than 20 paramilitary detained us. They pointed guns at our heads, told us to get out, and threw us on the ground. Then they took us away in different pick-up trucks, with four or five paramilitary in each one. All of them, except the commander, had their faces covered. I know that there was one police officer among them, because he was wearing a police jacket.<sup>70</sup>

68. According to information received by the Commission, disproportionate use of force was used indiscriminately for men and women:

I was detained coming back from a march. I was with my sister who had also taken part in peaceful marches and two other friends. As we were heading home, the driver of a pick-up truck gave us a lift (*nos dio rai*). The detention was completely violent, brutal. They shot straight at us on the road, we hit a roadblock and the car turned over. They dragged us out by the hair, while the driver of the van came out with gunshot wounds. They handcuffed us. They started shooting again and beating us. My sister was hit in both her legs by shrapnel from the gunshots. They took us to the police station and 10 minutes later put us on a bus and took us to El Chipote. We survived that terrible detention. [...] Those who carried out the detention were police in blue uniforms, but those who fired the shots and dragged us by the hair were paramilitary.<sup>71</sup>

The same paramilitary who had grabbed hold of me took me and another detainee out of the police station and took us away in the same Hilux pick-up truck. On the way, they said "Let's kill her here, go

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<sup>69</sup> Testimony received by the IACHR in January 2020 (IPPL06).

<sup>70</sup> Testimony received by the IACHR in May 2018 (PPL035).

<sup>71</sup> Testimony received by the IACHR in January 2020 (IPPL39).

in there, and let's kill her", then they would drive down a road laughing while they threatened me until we reached El Chipote.<sup>72</sup>

69. The IACHR was also apprised of detentions carried out with disproportionate use of weapons, death threats, or threats of attacks on members of detainees' families:

I was at home and, after having breakfast with my family, I open the door of my house on my way out and find myself faced with a large number of policemen and paramilitaries. There were some 4 pick-up trucks and about 30 paramilitary. I tried to go back inside and they started throwing explosives, some three shells, and firing bullets at us. They said nothing to me. Suddenly I saw blood coming out of my chest and I thought they were going to kill me. My wife was seated at the table with my son. In desperation, I asked her to pass me the machete, because I wanted to defend myself. I struggled a bit to prevent them entering my home, but the situation got out of control; they fired at my wife and son, and shot me three times. Then all of them grabbed me, hit me, kicked me, and insulted me. I had no more strength left and they dragged me 60 meters to a pick-up truck, by which time I was almost unconscious. While they had me handcuffed and thrown onto the floor of the truck one of them hit me in the leg and broke it. At that point I didn't know what was happening except that I was drenched in blood. When we got to the Alta Gracia police station, they forced me to stand up, but I did not want to tread on the ground because my shin-bone was broken. They also captured my wife. They humiliated and insulted her. The three bullet wounds I suffered were to the knee, my spine, and my stomach. The whole time, they threatened to kill me.<sup>73</sup>

70. In some instances, the operations took the form of house searches and the raiding of private homes, always with an inordinate deployment of officers and excessive use of force.

That day I heard them knocking down the door. I went out and saw them taking out my brother-in-law. At that point they hit him with an AK rifle on the head and I asked them why they were hitting him. They were policemen wearing hoods. I told them not to hit him because he wasn't resisting. They threw him onto a pick-up truck and kept hitting him, as they asked him who his accomplices were. They searched his house and found money, his life savings. Now he is being held in La Modelo, accused of terrorism and financing roadblocks. He was in Las Esquinas, then in El Chipote, and finally in La Modelo. At the time of his detention, his brother had been stripped and beaten and had had

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<sup>72</sup> Testimony received by the IACHR in January 2020 (IPPL30).

<sup>73</sup> Testimony received by the IACHR in January 2020 (IPPL04 and IPPL05).

a pistol thrust into his mouth. They asked him who his accomplices were.<sup>74</sup>

71. Based on the information and testimonies received, the IACHR draws attention to the fact that since the start of the social protests in April 2018, the detentions carried out in Nicaragua by both State agents and armed third parties have followed a systematic pattern of excessive and disproportionate use of force and of violence, including at times sexual violence as a tool for repression and establishing "law and order".
72. In this regard, the Commission reiterates that States have an obligation to guarantee that, in making an arrest, general principles regarding the use of force are respected. In the same vein, the use of force by police officers to arrest someone, particularly in a demonstration, must be strictly proportional to the established objective and applied only to the extent required based on the resistance from the person against whom there is a need to use force. In particular, the use of State force to violate women's rights not only affects them directly; it may also be designed to impact society through such violations and send a message or lesson, as the consequences of sexual violence often extend beyond the harm done to the victim herself.
73. The Commission reiterates its call to the State to ensure that detentions are carried out strictly according to protocols in line with international standards regarding the use of force by agents responsible for law enforcement. Moreover, within the framework of its due diligence duty, the State must adopt measures to prevent a repetition of abuses and train the security forces regarding the absolute prohibition of torture and sexual or other violence against women, while sending a clear message of repudiation of such acts<sup>75</sup>.

#### 4. Stigmatization, Defamatory Exposure in the Media, and Persecution

74. The IACHR observes that a large majority of those detained selectively in the context of the crisis were stigmatized as "coup mongers" (*golpistas*), "criminals," and "vandals." State authorities and pro-government media also accused them of committing "acts of terrorism and organized crime." This occurred prior to being placed before a competent judicial authority, which constitutes a violation of several rights, including the presumption of innocence and the rights to defense, honor, and dignity. In that regard, the IACHR received the following testimonies:

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<sup>74</sup> Testimony received by the IACHR in August 2018 (IPP019).

<sup>75</sup> I/A Court H.R., *Case of Women Victims of Sexual Torture in Atenco v. Mexico*. Judgment of November 28, 2018. Series C No. 371, par. 192; *Cantoral Benavides Case v. Peru*, Judgment of December 3, 2001, Series C No. 88, par. 166 y 221.

I was working in my office and around 2 p.m. I saw police patrol cars, but had no idea they were looking for me. They entered the office without an arrest warrant, handcuffed me, put a hood over my face, and forced me into the police patrol vehicle and took me to the National Judicial Support Directorate, El Chipote. As soon as they had me inside, they began calling me old road blocker, old coup monger, and then the interviews began. I'm an older adult and couldn't take it.<sup>76</sup>

In Nindirí, the police out on a show and began taking photos of us with weapons, bullets, and the equipment we had in the car. They made it all look like all those things were ours. Then they published those photos.<sup>77</sup>

One day they took me and two other detainees to Plaza del Sol, put us in an auditorium, facing lots of their cameras. I didn't know what they were doing and then without our realizing they made a video showing us with weapons and the like. One of the boys detained I had never seen before but they presented him as having to do with my case. The whole thing was illegal.<sup>78</sup>

75. The IACHR likewise received information regarding one practice involving persecution of people identified as opposition or had taken part in protests or roadblocks in different parts of the country.

In his papers they said he had been detained on September 8, but in reality they had taken him away on September 6 [...]. They had been looking for him because they said he was one of those putting up roadblocks; they caught him and accused him of having stolen a telephone. He was detained by something like 50 police officers and members of anti-riot squads all with balaclavas covering their faces, saying, "now we've got the terrorist."<sup>79</sup>

I was hunted down by the police for four months but they hadn't managed to catch me. That day I was coming back from work, around 9 p.m., and heading for home when about three patrol cars with 20 police and paramilitaries inside who detained me at gunpoint and then took me to the Sutiaba police station. From the moment they arrested me, the verbal insults began, with them calling me a criminal, a coup-monger [...]. Around 6 a.m., they took me to the León

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<sup>76</sup> Testimony received by the IACHR in January 2020 (IPPL02).

<sup>77</sup> Testimony received by the IACHR in January 2020 (IPPL14).

<sup>78</sup> Testimony received by the IACHR in January 2020 (IPPL30).

<sup>79</sup> Testimony received by the IACHR in January 2020 (IPPL36).

headquarters, where the interrogations began. They began torturing me, hitting me on different parts of my body to make me talk.<sup>80</sup>

## 5. Failure to Provide Information on the Reasons for Detention, and/or Failure to Show an Arrest Warrant, and Keeping Detainees in Solitary Confinement

76. The Commission has ascertained that the detentions in connection with the social protests were carried out without informing the detainees of the reason for their detention and without showing a court order or judicial warrant, regardless of whether the circumstances were supposedly in flagrante, as in disturbances of the peace (*escándalo público*) or alleged crimes punishable with deprivation of liberty.<sup>81</sup> The testimonies received by the IACHR in connection with this report speak for themselves:

At no point did they tell me why I had been detained, even though I asked the police several times, especially after each interrogation. I repeatedly asked to make a phone call, but was not allowed to.<sup>82</sup>

I was at home with my wife and daughter. The police came along with plainclothes personnel, searched the house, rummaged through everything we had, then took me away without showing an arrest warrant. One of the policemen shoved at my wife who was holding the baby. Then they took me to the police station in Matagalpa.<sup>83</sup>

77. The IACHR notes with concern the practice of keeping detainees in isolation and the authorities' refusal to inform family members and/or defense lawyers of the detainee's whereabouts. The IACHR had the opportunity to interview a few detainees in a visit to El Chipote conducted on June 30, 2018 and, from at least 10 testimonies it received from both detainees and family members outside the detention center, it ascertained the lack of access, communication, and information between the detainees and their families, which contravened both domestic<sup>84</sup> and international law on this matter.

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<sup>80</sup> Testimony received by the IACHR in January 2020 (IPPL03).

<sup>81</sup> IACHR, Press Release 148/18 - IACHR Denounces Worsening, Deepening and Diversifying Repression in Nicaragua and Expresses Concern over the Situation of Children and Adolescents in the Country. Managua, Nicaragua, July 11, 2018; 169/18 - IACHR Confirms Reports of Criminalization and Legal Persecution in Nicaragua Washington, D.C., August 2, 2018; 210/2018 - Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua / Washington DC, September 26, 2018.

<sup>82</sup> Testimony received by the IACHR in October 2018 (PPL003).

<sup>83</sup> Testimony received by the IACHR in January 2020 (IPPL08).

<sup>84</sup> The Commission observes that Article 33.2.1 of the Political Constitution of Nicaragua establishes that any person detained has the right to be "informed without delay, in detail and in a language he or she understands,

While I was at the police station, they did not let me talk to anyone. My family knew nothing of what had happened to me until some friends told them that they had caught me and that I was in the District 1 station. My mother went there and the police told my poor mother that I was not there and that she should go and ask at the morgue.<sup>85</sup>

On April 23, I was told that three neighbors had been illegally detained, including my brother. All the boys were from the La Reynaga district. We went to the District IV police station, where they denied that they were being held there. The police station gate was closed and they told me that all the detainees were at the Judicial Support Directorate [El Chipote]. The next day they gave out a list of detainees in the Judicial Support Directorate, and all three guys were on the list. The atmosphere was tense, we waited a long time, until around 12 when they let us pass food through for the detainees. At 1 p.m., they told us that there would be a march to El Chipote. Police armed with AK47 rifles arrived to guard the gate of the unit. At 2 p.m., they told us they were referring the detainees to the penitentiary system. At 5 p.m., they told us again that they were going to move more young people to the penitentiary system, but in fact by that time they had already been taken to Tipitapa. There were women who had fainted, a lot of suffering. They just made fun of us.<sup>86</sup>

78. Raids and searches conducted without a judicial warrant also contravene Article 217 of the Code of Criminal Procedure, which establishes that whenever a search is to be conducted in a place that is inhabited, in units attached to it, business premises or an office, the raid and search shall be conducted with a judicial warrant, which must be applied for and issued in writing with the reasons explained.<sup>87</sup> Article 26 of

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of the causes for their detention and the accusation against them; to have his or her detention reported by the police and reported by himself or herself to his family or another person of his or her choice; also to be treated with due respect for the dignity inherent in every human being." Likewise, Article 95.2 of Nicaragua's Code of Criminal Procedure established the right to be "informed at the moment of appearance or detention, clearly, precisely, in concrete detail, and specifically of the charges brought," while Article 95.3 states that a detainee shall be entitled to "communicate with a family member, attorney, or legal counsel association of his or her choice, to report his or detention within the first three hours, in rural areas with communication difficulties, that time limit may be extended to up to 12 hours,"

<sup>85</sup> Testimony received by the IACHR in January 2020 (IPPL21).

<sup>86</sup> Testimony received by the IACHR in May 2018 (PPLI12).

<sup>87</sup> Article 217 adds that a search of premises must be carried out between 6 a.m. and 6 p.m. It may proceed at any time if the person dwelling on the premises or his or her representative grant their consent or in extremely serious and urgent cases, in which judges shall rule within no more than one hour on applications filed by the public prosecutor or head of the police unit in charge of the investigation. The urgency of the situation must be placed on record in the resolution authorizing the search.

the Political Constitution of Nicaragua also establishes that a home may only be raided with a court order from the competent judge.<sup>88</sup>

79. Here, the Commission stresses that States have an obligation to immediately inform the detainee, his family members, and representatives of the grounds and reasons for the detention. They also have a duty to disclose the place in which a person is being deprived of liberty. That duty "constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of imprisonment and, at the same time, ensures the individual's right to defense."<sup>89</sup> Article 7.4 of the American Convention clearly establishes that anyone who is detained or remanded shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
80. The Commission reiterates its call upon the State of Nicaragua to cease its practice of detaining people without a warrant in writing from an official expressly authorized by law to issue it and in cases that do not involve in flagrante commission of a crime, and to guarantee due process of law for all detainees. In particular, the IACHR reminds the State of its obligation to immediately notify a detainee and his or her family and representatives of the reasons for the detention and to produce the corresponding judicial warrant or court order.<sup>90</sup>

## 6. Failure to Bring Detainees before a Judicial Authority within the Time Prescribed by Law

81. From the start of the protests, the Commission received numerous complaints stating that detainees were not brought before a judicial authority within 48 hours, as required by law, but rather deprived of liberty in police or clandestine centers or penitentiaries for periods of time ranging from days to months, before being brought before a judicial authority.<sup>91</sup>

I don't know much about laws, but when they took me to El Chipote I imagined that at least they should have brought me before a court in

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<sup>88</sup> The exceptions contemplated in Article 26 of the Political Constitution are: a) If persons inhabiting a house state that a crime is being committed there or a request for help is received from that house; b) If, due to fire, flooding, a disaster or the like, the lives of the inhabitants, or the property itself, are threatened; c) When a complaint is filed that strangers have been seen at a home, clearly bent on committing a crime; d) In a case of a current or immediate hunt for a criminal; e) To save a person being kidnapped.

<sup>89</sup> IACHR, Annual Report, Chapter IV. A "Use of Force", 2014, par. 122. See also I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. Judgment of June 7, 2003. Series C No. 99, par. 96.

<sup>90</sup> IACHR, Press Release 210/2018 - Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua / Washington DC, September 26, 2018, Recommendation 5.

<sup>91</sup> IACHR, Press Release 113/18, - Preliminary observations on the IACHR working visit to Nicaragua Managua, May 21, 2018; OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua 18 April – 18 August 2018", August 2018, para. 83.



72 or 24 hours. I was hoping to speak to a lawyer or that they would let me call my family. They didn't allow me to talk to anyone. I spent 57 days in El Chipote.<sup>92</sup>

They were going to take us to the court, but didn't. They didn't tell us why we were detained, I had no lawyer, nor could I make a call. I wasn't brought before a judge.<sup>93</sup>

82. In the first months of the crisis, the Commission observed with concern that in several cases, based on testimony provided by family members, the elements of forced disappearance may have been present: a) deprivation of liberty; b) direct intervention by State agents or with their acquiescence; and c) refusal to acknowledge the detention and disclose the fate or whereabouts of the person concerned. In that regard, the Office of the United Nations High Commissioner for Human Rights established that for a period of time Medardo Mairena, Pedro Mena, Christian Fajardo, and María Adilia Peralta were victims of forced disappearance. Medardo Mairena and Pedro Mena were arrested on July 13 by the police and not brought before the judicial authorities until four days later. Christian Fajardo and María Adilia Peralta were detained by the Army on July 22 and handed over to the judicial authorities on July 28. After they were detained by the police and the army, respectively, the authorities in charge refused to provide information to their families or lawyers regarding their whereabouts; habeas corpus suits and applications for information were filed to no avail. All four were brought before the judicial authorities after the 48 hour limit required under domestic law had expired.<sup>94</sup>
83. Likewise, the IACHR received with concern the testimony of a 15-year-old adolescent from Mulukukú, who was accused of killing several policemen and spent more than three months deprived of liberty without being brought before a judicial authority. According to the testimony in this case, he had been detained since July 2, 2018, didn't know how to read, but had been forced by the public prosecutor's office to memorize the contents of a document in order to incriminate another detainee.<sup>95</sup>
84. Another case documented by the Commission was the detention of Jorge García and Salvador Orozco, on January 11, 2019, for "paintings protesting" against the Government on public billboards. After being detained they were taken to the Jícaro police station and then to the departmental headquarters in Jocotal. For four days following their detention, their families did not know where they were, neither of the two had been brought before a judge, nor was there any information of any legal

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<sup>92</sup> Testimony received by the IACHR in January 2020 (IPPL08).

<sup>93</sup> Testimony received by the IACHR in 2018 (PPL 756, 935, and 752).

<sup>94</sup> OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua 18 April – 18 August 2018", August 2018, para. 70.

<sup>95</sup> Testimony received by the IACHR in October 2018 (PPL007B).

charges justifying their detention. Both were released from the police station on January 19.<sup>96</sup>

24 hours have gone by and I have received no news from the National Police of Nicaragua. I don't know where my son is or about what physical and emotional state he is in. I am terribly worried for his life and safety.<sup>97</sup>

85. Finally, the Commission received testimony from next of kin regarding persons detained by police, paramilitary and anti-riot squads on October 28, 2018 during a procession with blue, white, and yellow balloons in a municipality in the department of Chinandega. For several days, their families were denied information, at both the police station and in El Chipote regarding where they were being held.<sup>98</sup>
86. Nicaraguan law sets a legal time limit of 48 hours for a detainee to be brought before a judicial authority, established in Article 33.2.2 of the Political Constitution,<sup>99</sup> and in Article 95.9 of the Code of Criminal Procedure.<sup>100</sup>
87. Immediate judicial control is a measure that seeks to avoid arbitrariness or unlawfulness of detentions, taking into account that under the rule of law the judge must ensure the detainee's rights, authorize precautionary or coercive measures, when strictly necessary, and in general make sure that the accused is treated in a manner consistent with the presumption of innocence.<sup>101</sup> States have an obligation to immediately inform the detainee, the detainee's family members and representatives of the grounds and reasons for the detention. They also have a duty to disclose the place in which a person is being deprived of liberty. That duty "constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of imprisonment and, at the same time, ensures the individual's right to defense."<sup>102</sup> Likewise, Article 7 of the Convention requires prompt and effective

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<sup>96</sup> IACHR, Press Release 26/18 - IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua. Washington, D.C., February 6, 2019.

<sup>97</sup> Testimony received by the IACHR in August 2018 (PP0098 and PPL018).

<sup>98</sup> Testimony received by the IACHR in October 2018 (PPLO-009).

<sup>99</sup> Every detainee is entitled [...] to be released or to be placed at the disposal of the competent authority within 48 hours of his or her detention." Political Constitution of Nicaragua, adopted on January 21, 1948, published in La Gaceta, the Official Gazette, No. 16 of January 22, 1948.

<sup>100</sup> Code of Criminal Procedure of Nicaragua, Law no. 406, passed on November 13, 2001.

<sup>101</sup> I/A Court H.R., Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparation, and Costs Judgment of July 8, 2004. Series C No. 110, par. 96, Case of Maritza Urrutia v. Guatemala. Merits, Reparation, and Costs Judgment of November 27, 2003. Series C No. 103, par. 66, and Case of Bulacio v. Argentina. Merits, Reparation, and Costs Judgment of September 18, 2003. Series C No. 100, par. 129.

<sup>102</sup> IACHR, Annual Report, Chapter IV. A "Use of Force", 2014, par. 122. See also I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. Judgment of June 7, 2003. Series C No. 99, par. 96.

judicial supervision of the entities involved in the detention in order to protect the integrity of detainees.<sup>103</sup>

88. In its report on the human rights situation in Nicaragua, the Commission established that the isolation of persons detained during the protests -- albeit for a few days -- in a context, of widespread violence and lack of judicial oversight as the current one, constituted a violation of their right to humane treatment and a failure by the State to fulfill its enhanced duty to act as the guarantor of the rights of detainees. Moreover, the lack of access to defense and judicial oversight constitutes a failure by the State of Nicaragua to comply with its duty to take the necessary steps to guarantee the right to due process and access to justice of detainees pursuant to international standards in this field.<sup>104</sup> The Commission reiterates its call for detainees to be brought before a judicial authority within a legally established period of time not to exceed 48 hours.

## ***B. Records of the Detentions in Nicaragua***

89. The IACHR has repeatedly maintained that one of the main challenges encountered during the crisis in Nicaragua has been the impossibility of eliciting exact and periodic official figures on the number of people detained.
90. On June 21, 2018, the State for the first time provided information on the number of persons deprived of liberty in connection with the social protests that began on April 18, 2018. On that date, it informed the IACHR that, between April 18, 2018 and June 6, 2018, they had registered 507 detainees, including 24 women.<sup>105</sup> According to that information, 421 of the detainees (that is to say 83% of the total) corresponded to 65 adolescents (aged between 14 and 17) and 356 young adults (aged between 18 and 35). The information did not include the places where they were being held, despite the large number of adolescents involved, or any other information.
91. In August 2018, the IACHR underscored the seriousness of the lack of official State information concerning the number of persons detained and the restrictions

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<sup>103</sup> IACHR, Honduras: Human Rights and the Coup d'Etat. OEA/Ser.L/V/II. Doc. 55, December 30, 2009, par.339. Thus, as the Court has pointed out on several occasions, "Inasmuch as it is responsible for detention facilities, the State is the guarantor of the rights of detainees." I/A Court H.R., Case of Neira Alegría et al. v. Peru, Judgment of January 19, 1995. Series C No. 20, par. 60; Cantoral Benavides Case v. Peru. Judgment of August 18, 2000. Series C No. 69, par. 87.

<sup>104</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II, DOEA/Ser.L/V/II, Doc. 86, June 21, 2018, par. 195.

<sup>105</sup> According to the State, the detentions were carried out due to serious disturbances of the peace (graves alteraciones al orden público); there is a file on each detainee detailing the crimes committed. Observations by the State of Nicaragua, dated June 21, 2018, on the draft report of the IACHR entitled "Gross Human Rights Violations in the Context of Social Protests in Nicaragua," p. 51.

imposed on the MESENI with regard to its accessing judicial facilities or penitentiaries, which hampered its human rights monitoring and follow-up work.<sup>106</sup> In September 2018, during the visit by the Rapporteur on the Rights of Persons Deprived of Liberty to Nicaragua, the IACHR reiterated its request to the State to provide access to the El Chipote installations and the La Esperanza and La Modelo prisons, but did not receive a reply. That same day, the Vice Minister of the Interior stated publicly that 204 people remained deprived of liberty in the National Penitentiary System for acts relating to the protests, including 17 women. Out of the 204 people detained, seven had been convicted and 197 were in pre-trial detention. Those figures did not include persons deprived of liberty in the Judicial Support Directorate, or in other detention centers.<sup>107</sup>

92. In the hearing on the "Situation of Human Rights Defenders in Nicaragua: complaints of arbitrary detentions and lack of access to justice," held on October 2, 2018, civil society organizations told the IACHR that up to that date more than 400 people were deprived of liberty and at least 1,900 people had been detained over the whole period.<sup>108</sup> On October 18, 2018, the Commission again called upon the State to provide the exact updated official figures on persons detained and tried and repeated its request for access to the country's prisons.<sup>109</sup>
93. On November 5, 2018, the State of Nicaragua notified the IACHR via the Ministry of Foreign Affairs that in the National Penitentiary System there were "273 detainees arrested, accused, tried and/or convicted for their participation in crimes committed in connection with the failed attempted coup d'état," including 256 men and 17 women. That figure referred only to persons deprived of liberty in the La Modelo penitentiary and the comprehensive women's prison "La Esperanza." Consequently, the IACHR pointed out that the State had not provided information about persons deprived of liberty in other detention centers, such as the Judicial Support Directorate or police stations in various parts of the country.<sup>110</sup>
94. The IACHR likewise notes that most of the 273 persons deprived of liberty listed by the State had been detained after its report of June 2018, which recorded 507 detentions. That means that, in the course of 2018, the Government of Nicaragua

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<sup>106</sup> IACHR, Press Release 187/18 - IACHR Calls On the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families, August 24, 2018.

<sup>107</sup> IACHR, Press Release 210/2018 - Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua / Washington DC, September 26, 2018.

<sup>108</sup> IACHR, Press Release 220/18 - IACHR Concludes 169th Period of Sessions in Boulder, Colorado , October 5, 2018; Appendix: Public Hearings held during the 169th Period of Sessions

<sup>109</sup> IACHR, 223/18 -IACHR warns of new wave of repression in Nicaragua. Washington, D.C., October 18, 2018.

<sup>110</sup> Ministry of Foreign Affairs of Nicaragua, Communication MRE/DM-DMC/00519/11/18 addressed to the IACHR regarding the "Complete Report on the National Penitentiary System relating to 273 detainees arrested, accused, tried and/or convicted for their participation in crimes committed in connection with the failed attempted coup d'etat," November 5, 2018.

acknowledged in its own reports that more than 700 people had been detained in connection with its suppression of social protests.

95. At the same time, the Commission for Truth, Justice and Peace (*Comisión de la Verdad*), established by the National Assembly on April 29, 2018 with the objective to analyze and monitor acts of violence since April 2018,<sup>111</sup> contradicted the figures reported by the Government. In its report from October 15, 2018, that Commission stated that, between April 19 and August 16, 2018, 1,248 people detained in connection with the protests had been registered, 1178 men and 70 women. Of that total 1,075 had been detained for "breach of the peace" (*escándalo público*)." In its report, the Commission for Truth stated that the information obtained "was the result of a process of investigation and verification with official sources, social networks and the media updated to October 15, 2018,"<sup>112</sup> from which it transpires that the State was keeping official records.
96. On December 19, 2018, the IACHR stated that at least 550 people were still being deprived of liberty, at least 90 of whom had reportedly been convicted. Once again, the IACHR called upon the State to provide information about the situation of persons deprived of liberty who were being prosecuted.<sup>113</sup> For their part, on December 24, 2018, media identified as being pro-government reported that 340 "male and female coup-mongers" were being held in the National Penitentiary System.<sup>114</sup>
97. In February 2019, the Truth Commission determined that 438 people were being deprived of liberty. Of them, 337 men were being held in La Modelo and 25 women in La Esperanza. In its report, it further asserted that 76 people had been found "not guilty" and released, leaving a total of 362 people deprived of liberty as of that date.<sup>115</sup> The IACHR stresses that said report makes no mention of persons being held at the Judicial Support Directorate or in other units outside the capital.

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<sup>111</sup> The IACHR considers that in order to guarantee the legitimacy of a truth commission, the Government of Nicaragua must ensure that certain minimum conditions are given, such as: transparency from the start (when it is established), as well as a mandate and functions in which all social sectors and the victims can participate; taking steps to ensure its independence and impartiality; and clearly establishing investigative procedures. Likewise, the selection of members of the highest moral standing and professional reputation must be subject to the scrutiny and participation of all sectors involved. IACHR Gross Human Rights Violations in the Context of Social Protests in Nicaragua, 2018, par. 251.

<sup>112</sup> Commission for Truth, Justice and Peace of Nicaragua II Preliminary Report October 15, 2018.

<sup>113</sup> IACHR, Press Release 273/2018 - IACHR denounces aggravation of the repression and the closure of democratic spaces in Nicaragua., Washington, D.C. / Managua, December 19, 2018; See also IACHR, 006/19 - IACHR denounces the weakening of the rule of law in the face of serious human rights violations and crimes against humanity in Nicaragua, January 10, 2019.

<sup>114</sup> El 19 Digital, Presos golpistas recibieron visita extraordinaria este 24 de diciembre, December 24, 2018; Radio Ya, Presos golpistas recibieron visita extraordinaria este 24 de diciembre, December 24, 2018.

<sup>115</sup> Comisión de la Verdad, Justicia, y Paz [Commission for Truth, Justice and Peace], III Informe de la Comisión de la Verdad, Justicia y Paz a la Asamblea Nacional, February 5, 2019.

98. On February 13, 2019, the State informed the IACHR that 371 people were being held in the National Penitentiary System pending criminal proceedings (344 men and 27 women). It stated that they had been investigated and charged mainly for the crimes of "kidnapping, organized crime, terrorism, the illegal bearing of arms, arson, wreaking damage, murder, the possession and use of restricted-use weapons, the transportation of arms and ammunition, obstruction of public services, conspiracy, threats, endangerment of others, and others." Regarding women, the State added that the Judiciary was hearing 24 cases involving 42 women defendants, 27 of whom were deprived of liberty, while the others had not been detained.<sup>116</sup> For their part, on February 15, 2019, civil society had reported that 777 people were being detained, of whom 407 were being prosecuted and 138 had been convicted.<sup>117</sup>
99. Between February 27 and June 11, 2019, the State of Nicaragua announced the release of 493 people<sup>118</sup> involved in social protests. Of them, 160 were released following the passing of the Amnesty Law and 387 were released following unilateral announcements by the State.<sup>119</sup> Subsequently, on December 30, 2019, the State reported the release of 90 people.<sup>120</sup> However, information at the disposal of the IACHR indicates that those releases did not contemplate all those deprived of liberty for acts relating to the social protests, particularly since arbitrary detentions have continued. As of May 31, 2020, at least 80 people were reportedly still detained.
100. In its report entitled "Gross Human Rights Violations in the Context of Social Protests in Nicaragua," the Inter-American Commission recommended to the State of Nicaragua that it draw up and give notice of a public record containing the following information: (a) number of persons who have been detained from the beginning of the protests on April 18; (b) causes of detention; (c) duration of the deprivation of liberty; (d) place of detention; (e) number of persons currently detained in the context of the protests that began April 18; and (f) the number of

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<sup>116</sup> State of Nicaragua, Communication received on February 13, 2019, pp. 4, 47, 48, and 50.

<sup>117</sup> IACHR, Press Release 51/19 - IACHR Calls for Conditions that Enable the Enjoyment of Human Rights during Nicaraguan Dialogue Washington, D.C., February 28, 2019. IACHR, 2018 Annual Report, Chapter IV.B, Nicaragua, par 13.

<sup>118</sup> The IACHR notes that 387 people were released via unilateral announcements and 104 were reportedly freed as a result of adoption of the Amnesty Law. Ministry of the Interior: , February 27, 2019, March 15, 2019; , April 5, 2019; , April 16, 2019; , May 20, 2019; , May 30, 2019; , May 30, 2019; Lista de 50 personas que se encontraban detenidas por haber cometido delitos contra la seguridad común y delitos contra la tranquilidad pública, que fueron liberadas el lunes 10/06/2019 en cumplimiento de la Ley de Amnistía N° 996, aprobada por la Asamblea Nacional el 8 de junio del 2019, June 10, 2019; Lista de 56 personas que se encontraban detenidas por haber cometido delitos contra la seguridad común y tranquilidad pública, que fueron liberadas y entregadas el martes 11/06/2019 al Comité Internacional de la Cruz Roja, en cumplimiento de la Ley de Amnistía N° 996, June 11, 2019.

<sup>119</sup> According to reports from civil society organizations, two people released as a result of the Amnesty law were not on the list of "political prisoners" drawn up at the Dialogue Table. IACHR, 174th regular period of sessions, public hearing "Amnesty Law", November 11, 2019.

<sup>120</sup> Ministry of the Interior, Nicaragua, December 30, 2019.

persons released. The information should include data on the persons' gender, age, and occupation.<sup>121</sup>

101. With respect to persons deprived of liberty, the Inter-American Commission has underscored that the State has the obligation to produce and preserve archives or registries of police detentions. That duty is essential for fulfilling the right of access to information of detained individuals and their families. Indeed, as it pertains to detentions, it is crucial for the State to keep records of all detained individuals, with complete personal details of the person arrested, the circumstances of the arrest – including time, manner, and place of detention – and other legal formalities.<sup>122</sup>
102. In addition, the State must implement judicial and correctional information management systems at all detention centers so as to have accessible, up-to-date, information on the judicial proceedings and situation of everyone deprived of their liberty in the country. These information management systems should make it possible to process information in an organized and efficient way at every prison facility, and make all information available in centralized information management systems, to which prison administration officials can resort in order to obtain up-to-date data and reliable statistics.<sup>123</sup>
103. Moreover, this information must be recorded, safeguarded, and not manipulated, since it is a mechanism of exceptional importance for administrative control in matters as delicate as the deprivation of liberty of persons and possible subsequent violations of their human rights. According to the IACHR, the non-existence, manipulation, or destruction of archives or police records can constitute not only a hindrance to the adequate fulfillment of justice in many cases, but also cause a violation of the right to access public information, generating, moreover, fertile ground for impunity.<sup>124</sup>
104. For its part, the Inter-American Court has considered that any detention, irrespective of the reason or its duration, must be duly registered in the pertinent

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<sup>121</sup> IACHR Gross Human Rights Violations in the Context of Social Protests in Nicaragua, 2018, par. 286.

<sup>122</sup> IACHR, The Inter-American Legal Framework regarding the Right to Access to Information, OEA Ser.L/V/II CIDH/RELE/INF.9/12, March 7, 2011, par. 75

<sup>123</sup> IACHR, The Human Rights Situation in Guatemala, OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 405; the Commission has also underscored that in order to be of the greatest use for human rights monitoring, the official data that is gathered must be disaggregated. For example, official statistics should distinguish between the context of use of force incidents (e.g., at public demonstrations, in the context of evictions, in the context of raids on homes and on other locations, incidents at detention centers or other State facilities, regular policing activities, and states of emergency, among others), actors involved (both State actors and victims), quantifying and disaggregating them by race, color, gender identity, sexual orientation, age, language, origin, education level, etc.. In the case of State agents, also indicating the security agency to which they belong), weapons used, rights violated (e.g., life, humane treatment, personal liberty, property, etc.), and circumstances of time and place, among others. IACHR, African Americans, Police Use of Force, and Human Rights in the United States OEA/Ser.L/V/II. Doc. 156, November 26, 2018, par. 260.

<sup>124</sup> IACHR, The Inter-American Legal Framework regarding the Right to Access to Information, OEA Ser.L/V/II CIDH/RELE/INF.9/12, March 7, 2011, par. 75-76



document, indicating clearly, at least, the reasons for the detention, who executed it, the time of detention and the time of release, as well as a record that the competent judge was advised, at a minimum, in order to protect the physical liberty of the individual against any illegal or arbitrary interference. Said obligation also exists in police detention centers. The Inter-American Court notes that the registration of the detention is even more important when the detention is carried out without a court order.<sup>125</sup> Likewise, the existence of records of persons detained constitutes one of the fundamental safeguards against forced disappearance.<sup>126</sup>

105. In the context of the human rights crisis in the country, the IACHR reiterates that guaranteeing the right to the truth, to access to information, and to freedom of expression constitutes a vital tool for shedding light on past atrocities. It is on the basis of these rights that it would be possible to acknowledge the mistakes committed, make amends to the victims and form a vigorous public opinion that would contribute to the recovery of democracy and the reconstruction of the rule of law.<sup>127</sup>

## 1. Minimum Number of Persons Detained Established by the Commission

106. In this report, the Commission has managed to establish that, since April 18, 2018, at least 1,614 people have been deprived of their liberty for taking part in or supporting social demonstrations. To arrive at those numbers, the IACHR has constructed a record based on analysis of the partial information provided by the State; data garnered by the Interdisciplinary Group of Independent Experts (GIEI-Nicaragua); figures and analyses contributed by international organizations; victims' testimonies; and information published in the press. Likewise, the IACHR analyzed information recorded by the MESENI via collaborative work it does with human rights organizations and defenders and legal counsel of persons detained and prosecuted in Nicaragua.
107. To consolidate this figure, each of the 1,614 persons identified has been individualized with filial data in order to avoid any slants or double-counting. The IACHR stresses that this number reportedly represents only a fraction of a real, larger total that is difficult to ascertain given the State repression in Nicaragua. This is due to a number of factors, including the dearth of official information and the dynamics proper to arbitrary arrests.

<sup>125</sup> See, for example, I/A Court H.R., Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, par. 152; I/A Court H.R., Case of Galindo Cárdenas et al. v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 2, 2015. Series C No. 301, par. 194; I/A Court H.R., Case of Espinoza González v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014, Series C No. 289, par. 122.

<sup>126</sup> I/A Court H.R., Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, Reparation, and Costs Judgment of November 20, 2012, Series C No. 253, par. 200.

<sup>127</sup> IACHR, The Inter-American Legal Framework regarding the Right to Access to Information, OEA Ser.L/V/II CIDH/RELE/INF.9/12, March 7, 2011, par. 76



108. In this regard, first the IACHR draws attention to the fact that the total number of registered detentions bears no direct relation to the total number of persons who were deprived of their liberty due to many of them being detained more than once, as happened, for instance, to social leaders, students, and campesinos, which would make the number of detentions much higher.
109. In the same vein, the IACHR points out that the number of persons deprived of liberty could be notably higher due to detentions that went unreported by the State or else due to the fact that, often, the victims themselves chose not to complain for fear of reprisals. The IACHR notes detentions reportedly carried out by the police forces in coordination with armed groups of civilians, in which the detainees were not taken to official detention centers but spent hours or days in unknown places, mayors' offices, or government party houses. In addition, neither the Commission for Truth's reports nor Government communications included information on detainees at the Judicial Support Directorate.
110. Of its 1,614 total number of persons deprived of liberty, the IACHR constructed a sample of 1,359 cases as a basis for illustrating a series of categories and specifics. This sample allows for the identification of trends and patterns in the dynamics of detentions and profiles of those deprived of liberty.
111. Amongst the principal data if this sample was the exact date of detention, thus enabling the periods to be discerned in which detentions were carried out since the start of the crisis in April 2018. As the following chart shows, most of the detentions occurred in the first months of the protests and during the "clean-up" operation carried out in July to dismantle the roadblocks. The chart also shows the number of detentions of persons who were deprived of liberty gradually begins to decline in the months following the peak in the crisis, a period that also coincides with the ban on demonstrations and curtailment by State authorities of the right to mobilize.

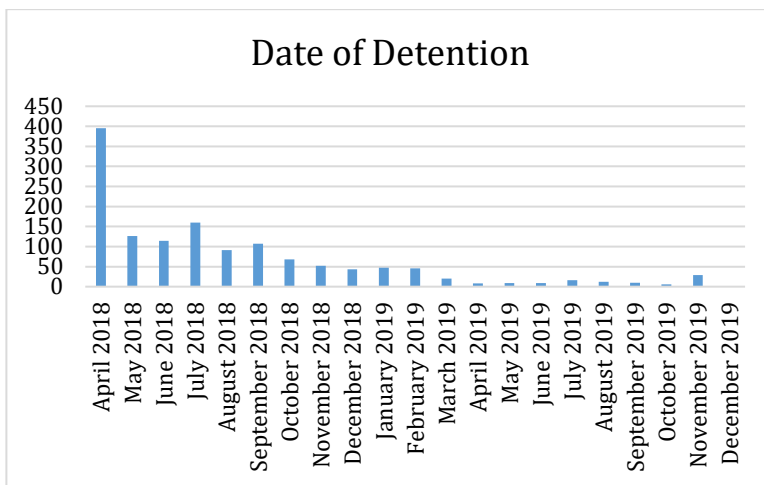


Chart No. 1. Distribution of the sample of persons deprived of liberty between April 2018 and December 2019 by month of detention (n=1359).

112. Based on the systematized data, the IACHR observes that, of the sample of 1,359 people deprived of liberty, a large majority, approximately 92%, are men (1,251). The remaining almost 8% are women (108), including three trans women. These figures indicate that the amount of trans women who would have been detained in the context of the crisis is significant compared to their share of the general population.

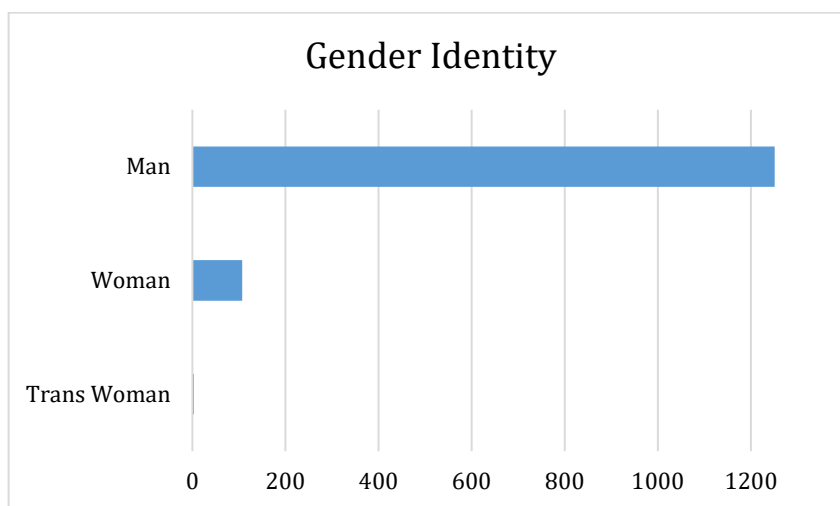


Chart No. 2. Distribution of the sample of persons deprived of liberty by gender identity ( $n=1359$ ).

113. As regards to age at the moment of detention, the IACHR managed to obtain that datum for approximately 80% of the sample. As the following chart shows, the repression mainly impacted younger people, aged between 18 and 35. This chart also highlights the fact that almost 7% of the persons deprived of liberty were minors at the time of their detention.

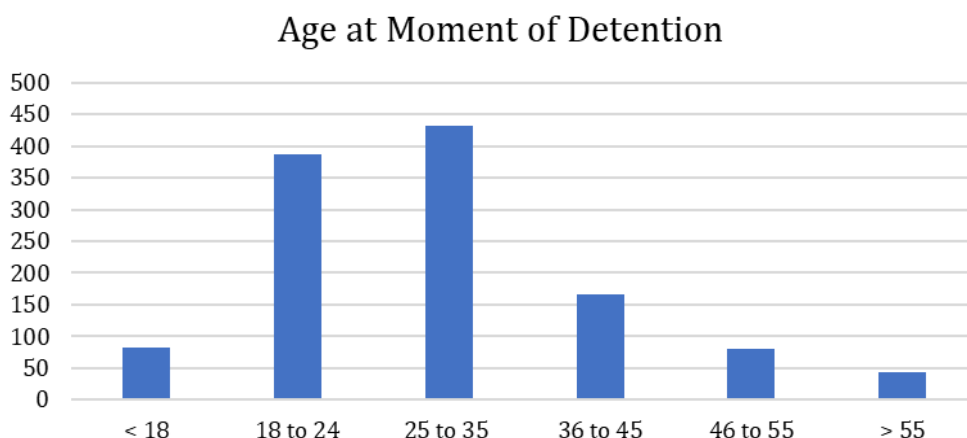


Chart No. 3. Distribution of the sample of persons deprived of liberty in Nicaragua by age ( $n=1193$ ).

114. Finally, for more than half of this sample, the place where people deprived of liberty were detained was also ascertained. In terms of the distribution of detentions by department, the IACHR highlights the fact that almost 80% of these would have concentrated in Managua. As is analyzed later on, that distribution appears to be consistent with the centralization of judicial proceedings, as one of the criminalization patterns registered by the Commission.

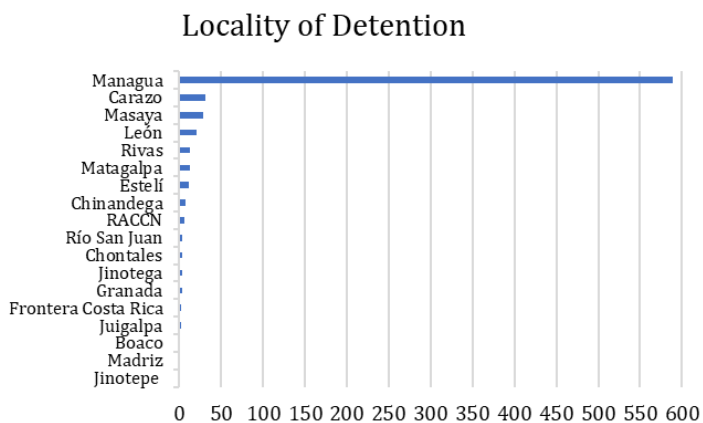


Chart No. 4. Distribution of the sample of persons deprived of liberty in Nicaragua by the department where they were detained (n=741).

CHAPTER 3  
CONDITIONS OF DETENTION



## CONDITIONS OF DETENTION

115. In this Chapter, the Inter-American Commission identifies the establishments where persons who were detained in the context of the crisis were held and then analyzes the conditions of detention observed that constituted a risk to the life and personal integrity of persons deprived of liberty. Those conditions typically entailed overcrowding, negligent medical care, inadequate ventilation, deprivation of personal belongings, impediments to personal visits, and the application of solitary confinement without objective criteria. The IACHR also received information and complaints regarding mistreatment, reprisals and other acts indicative of particular harshness being vented against persons deprived of liberty who had been identified as opponents of the government or participants in protests. Finally, the IACHR analyzes the absence of differentiated treatment of persons pertaining to groups in situations of special risk.

### ***A. Centers for Deprivation of Liberty in Nicaragua***

116. According to Article 39 of the Nicaraguan Constitution, the National Penitentiary System "is humanitarian and its principal objective is to rehabilitate inmates for their reintegration into society. Using the progressive system [sic], it promotes family unity, health, educational and cultural advancement and productive, paid occupation for inmates. Sentences pursue a re-educational purpose [...]" Along the same lines, Law No. 473 on the "Penitentiary Regime and Execution of Sentence" establishes that the objectives of the Penitentiary System are to: execute the judgments and precautionary measures involving deprivation of liberty handed down by courts; re-educate inmates for their reintegration into society; and foster family unity, health, and productive employment for inmates.<sup>128</sup> The National Penitentiary System is run by a Director General appointed by the Minister of the Interior. It is headquartered in Managua and comprises at least nine facilities: Estelí, Matagalpa, Chinandega, Tipitapa, Granada, Chontales, Bluefields, I. Mujeres [Women's Facility], and Máxima Seguridad [Maximum Security Facility].<sup>129</sup>

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<sup>128</sup> Law N° 473 "Ley del Régimen Penitenciario y Ejecución de la pena".

<sup>129</sup> Justice System in Nicaragua. Diagnostic Assessment of the Justice System (2006) points to capacity being exceeded in each of the penitentiaries pertaining to the National Penitentiary System in 2006: Estelí (500), Chinandega (466), Tipitapa (2400), Veracruz (110), Granada (550), Juigalpa (594), Matagalpa (750), Bluefields (76).

117. In the human rights crisis in Nicaragua, the IACHR ascertained that the first places where persons detained in connection with protests were held were the National Police station cells throughout the country. Later on, persons deprived of liberty were transferred to the Judicial Assistance Directorate in Managua, also known as "El Chipote,"<sup>130</sup> and eventually to the prisons of "La Esperanza" and "La Modelo." In 2018, that pattern, documented by the IACHR, formed part of a centralization of proceedings to prosecute members of the opposition and demonstrators in courts in Managua, even when the facts under investigation occurred in other municipalities.<sup>131</sup>
118. Moreover, as was analyzed in the Chapter on failure to bring detainees before a judicial authority within the time allowed by law (even though Article 33 of the Political Constitution of Nicaragua establishes that persons deprived of liberty may only be held in police stations for at most 48 hours before being released or brought before the judiciary), since April 18, 2018, the IACHR received testimony from people who spent days, and even months, in the installations of the Judicial Support Directorate without being prosecuted or released for lack of proof or because the times allowed for initial inquiries had elapsed.

I spent four days in the Matagalpa police station. They interrogated me twice without ever telling me why I was detained. All they said was that I was a road blocker. They showed me photographs of other people, asking me if I knew them, while hitting and insulting me all the time. It was pretty humiliating. Then they took me to the old El Chipote and put me in a tiny pre-trial detention cell, where you can only stand up. They are single-person cells, where they stuff two or three people. They took away my belongings, although I had almost nothing, just a rosary, which they took and broke. They wrote down our information, and took photos of us.<sup>132</sup>

119. The Commission also received numerous testimonies from people who had been detained temporarily and illegally, in municipal facilities, mayors' offices, or government party houses, before being transferred to police stations.<sup>133</sup>

When they detained me, they handcuffed me, placed a hood on my head, put me in a small bus and took me to what I deduced was an Albanisa house. I realized because of the design, the way it was built [...] I was kept there handcuffed and blindfolded for nine days. As I

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<sup>130</sup> In January 2019, new Judicial Support Directorate facilities were inaugurated and became known as "The New Chipote."

<sup>131</sup> IACHR. IACHR Calls On the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families. August 24, 2018.

<sup>132</sup> Testimony received by the IACHR in January 2020 (IPPL.08).

<sup>133</sup> IACHR, 2018 Annual Report, Chapter IV.B, Nicaragua, par 188; IACHR, Rapporteurship on the Rights of Persons Deprived of Liberty Visits Nicaragua., September 26, 2018.

suffer from diabetes, I almost died there. Daily interrogations began, in which they threatened to kill me, used psychological torture, everything. They said again and again that they were going to kill all of us who protested. At one point they took out a pistol, pointed it at my forehead, and said "is that where you want it?" I said if it was God's will, just shoot. They did that to me twice. They had me handcuffed to a display cabinet in that office and gave me a mattress. After I had been there nine days, they sent me to El Chipote.<sup>134</sup>

Some plain clothes armed men in a pick-up truck came along in what looked like a spot check and began chasing me. They stopped after a chase in broad daylight in Matagalpa, with them shooting at me. They caught me and took me to a departmental house of the Sandinista Party in Matagalpa. That was where my *via crucis* began, with them shattering my life. They began interrogating and hitting me, accusing me of being a traitor, a coup-monger, of having destabilized the country. Even the Mayor of Matagalpa punched me in the eye. After an hour of that, they took me to the Matagalpa departmental police station.<sup>135</sup>

120. According to the information received and analyzed, most of those deprived of liberty after being detained in connection with the protests were taken to installations of the Jorge Navarro Penitentiary System known as "La Modelo," located in the municipality of Tipitapa, near Managua. It is the first large-scale prison built in Nicaragua, able to hold up to 2,400 inmates. It was founded by Anastasio Somoza in 1958 as a men-only prison. In that establishment, most of the detainees were held in cellblocks 16-1, 16-2, and 17. Nevertheless, the IACHR recorded dozens of testimonies referring to other parts of the prison, particularly the maximum security wings now as "The 300," "Infiernillo" [Little Hell], or "La Chiquita" [Little One]. In those areas, conditions of confinement were even more precarious and inhumane.
121. Prior to the events of April 18, 2018, Nicaragua's National Penitentiary System (SPN) was already deficient and in poor shape. In 2016, the report entitled "Justice in Nicaragua" pointed out that there were problems with physical infrastructure, including structural issues, in all the penitentiaries. Some, such as the one in Chinandega, the "La Esperanza" women's prison, and the prison in Bluefields, had originally been built as homes, so that their infrastructure failed to provide the requisite security conditions. The same applied, according to the SPN's diagnostic

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<sup>134</sup> Testimony received by the IACHR in January 2020 (IPPL.47).

<sup>135</sup> Testimony received by the IACHR in January 2020 (IPPL.11).



assessment, to the Tipitapa prison.<sup>136</sup> Even though it had been built as a prison, it lacked basic security facilities to match that infrastructure.<sup>137</sup>

122. For their part, women deprived of liberty, with criminal proceedings against them for acts related to the protests were transferred to the "La Esperanza" Women's Comprehensive Center, inaugurated in 1987 and initially designed to hold 120 inmates. Over time, that prison was relocated and its installations expanded to increase its capacity. It is now located near Managua at Km 26.5 on the Tipitapa - Masaya highway, next to Centrolac.

## ***B. Conditions of Detention***

123. Since April 18, 2018, the IACHR has documented the appalling conditions to which persons deprived of their liberty during the crisis have been subjected, both in National Police facilities and in units run by the National Penitentiary System. Those conditions have included: overcrowding; a shortage of beds, mattresses, and bedclothes; negligent medical care; lack of hygiene; poor ventilation, the deprivation of personal belongings, authorization to leave cells only twice a week; the thwarting of visits, and the imposition of maximum security conditions and isolation/solitary confinement for no objective reasons.
124. In 2019, the IACHR ascertained deterioration in prison conditions, including Government reprisals against persons held in the "La Modelo" prison and against women deprived of liberty in "La Esperanza."<sup>138</sup> The IACHR reported repeated operations by anti-riot police suddenly bursting into people's cells to beat up, kick detainees, and hit them with police truncheons.<sup>139</sup> On May 16, 2019, the IACHR condemned the death of Mr. Eddy Montes in connection with one of those operations in cellblocks in La Modelo.<sup>140</sup>

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<sup>136</sup> Justice System in Nicaragua. Diagnostic Assessment of the Justice System. Programa de Apoyo Institucional a Nicaragua [Institutional Support for Nicaragua Program] / PAI NIC. ALA/2003/5748. 2006. p. 69

<sup>137</sup> La Prensa: Hacinamiento en las Cárceles es desprecio por la vida de los reos en Nicaragua (Febrero 2018); La Prensa: Mujeres denuncian represalias del Sistema Penitenciario. (2017); La Prensa: Casi 15 mil presos en cárceles de Nicaragua. (2016); Univision: En una prisión de máxima seguridad de Nicaragua gracias a facebook (2015); El Nuevo Diario: Las Cárceles de Granada están saturadas (2014); CENIDH. Derechos Humanos en Nicaragua. (2014); El Nuevo Diario: La Esperanza un lugar de terror y acuartelamiento. (2010).

<sup>138</sup> Application for a thematic hearing on the situation of the rights of women deprived of liberty in connection with the human rights crisis in Nicaragua, filed by various civil society organizations within the framework of the 171st period of sessions of the IACHR. Record kept at the IACHR.

<sup>139</sup> IACHR, Press Release 51/19, IACHR Calls for Conditions that Enable the Enjoyment of Human Rights during Nicaraguan Dialogue, Washington, D.C., February 28, 2019.

<sup>140</sup> IACHR, Press Release 122/19, IACHR Condemns Acts of Violence and the Death of One Person at a Nicaraguan Prison, Washington D.C., May 21, 2019.

125. The Commission repeatedly requested the State of Nicaragua to guarantee decent prison conditions for persons deprived of liberty, as well as appropriate and predictable arrangements for visits. It also urged the authorities to take steps to ensure that detainees receive medical care in accordance with their state of health; provide sufficient and nutritious food; to reduce overcrowding; to cease using solitary confinement as a punishment; and to attend to persons deprived of liberty who are at special risk, including women deprived of liberty, taking into account their specific dietary, hygiene, and health needs. Despite the above, selective repression has continued and prison conditions continue to be appalling for persons detained in connection with the crisis in Nicaragua.<sup>141</sup>
126. On May 17, 2019, the IACHR asked the Inter-American Court to order provisional measures to protect the rights of 17 persons deprived of liberty who were in an extremely dire situation and in imminent danger of suffering irreparable harm. They included student and social leaders, campesinos, journalists, and human rights defenders, who played a leading and prominent role against measures taken by the Government of Nicaragua since April 2018. On May 21, the President of the I/A Court of H.R. decided to grant the urgent measures requested. In its Order, the Court concluded that the State had not produced sufficient evidence to refute the information provided by the Inter-American Commission regarding the conditions under which the applicants for the measures were being held. In particular, with regard to the "La Modelo" prison, it pointed out that: i) the men were subjected to a "maximum security" regime; ii) detainees were exposed to high temperatures in their cells; iii) lack of adequate access to electricity and drainage systems created unhygienic conditions, including the presence of insects; iv) detainees were forced into punishment cells for prolonged periods of time; v) the food they received was unfit to eat; and vi) they went without natural daylight for prolonged periods of time.<sup>142</sup>
127. Below, the IACHR analyzes in greater detail the conditions of detention documented via its various mechanisms and the interviews conducted.

## 1. Overcrowding and Accommodation

128. Persons deprived of liberty in Nicaragua -- either for taking part in demonstrations or roadblocks or are for being considered opponents to the Government -- were found in highly unhygienic and extremely overcrowded cells in El Chipote, La Modelo, and La Esperanza prisons. They were also exposed to unbearably high

<sup>141</sup> IACHR, 2019 Annual Report, Chapter IV.B, Report on Nicaragua, April 2020, paras. 174 ff.

<sup>142</sup> I/A Court H.R. Order of May 21, 2019. Adoption of Urgent Provisional Measures. Matter of Seventeen Persons Deprived of Liberty regarding Nicaragua, paras. 20 and 25; The Inter-American Court decided to lift the provisional measures granted through an Order dated October 14, 2019. I/A Court of H.R. Matter of Seventeen Persons Deprived of Liberty regarding Nicaragua. Provisional Measures. Order of the Inter-American Court of Human Rights of October 14, 2019.

temperatures, a shortage of beds, insect and animals, little or no daylight, and an almost suffocating lack of air. In addition, most of those held in El Chipote, especially the men, were forced to remain in their underwear.<sup>143</sup>

In the cell where I was, there were six of us, with four bunks for the six of us. Another person and I had to sleep on the floor, where there were [ticks] and it stank, because the toilet was a hole in the ground where the water from the tap also fell. There was no light of day, just a window very high up with a sort of box covering it, but a little air came in through there; there were no sheets or pillows. I had just my shorts to wear; when one detainee was released, he gave me a shirt.<sup>144</sup>

There were 10 of us women in a single cell, with just one bed and a filthy mattress. When it rained the rain fell into the cell, as did the sunlight. The shower and toilet were very dirty, there was a rickety bench, and the humidity was suffocating.<sup>145</sup>

129. Overcrowding was also found in some detention centers outside the capital. In this regard, the Commission received testimony from a person who was deprived of liberty in the departmental police station in León, along with 18 other people in a cell measuring three square meters. There were just four bunk beds without mattresses, made of wood, so people would sleep on top of each other on the floor, or sitting up, with mosquitoes and cockroaches. "Everyone urinated and excreted, washed themselves and washed their clothes in the same place."<sup>146</sup>
130. Likewise, the testimonies received by the Commission also describe how detention conditions in La Esperanza were characterized by overcrowding, exposure to changes in the weather, lack of hygiene, and lack of daylight.<sup>147</sup> Those conditions

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<sup>143</sup> "The cell was very small with two iron bedsteads. The top bunk had a wooden platform, the lower one was hollow, so that I had to use two boards as a bed, dressed only in my underwear and shoes." Testimony received by the IACHR in October 2018 (PPLO-003).

<sup>144</sup> Testimony received by the IACHR in October 2018 (PPLO-009B).

<sup>145</sup> Testimony received by the IACHR in October 2018 (PPLO-038); Testimony received by the IACHR in October 2018 (PPLO-039); Testimony received by the IACHR in October 2018 (PPLO-040).

<sup>146</sup> Testimony received by the IACHR in October 2018 (PPLO-003). Another deprivation of liberty testimony regarding a police district in Managua states that: "they took them all the Fifth District station, made them get out, he doesn't know whether from one or two pick-up trucks, there were seven or eight people who had been brought in. They took their personal data down as they were lined up against a wall. They were taken to a place and asked to take off their clothes and shoe laces. He was forced to get naked and do two squat; then they put him in underwear and shoes into the cell there were was another person." Testimony received by the IACHR in October 2018 (PPLO-003).

<sup>147</sup> "[...] she told us that the women guards go by and insult them and they answer back [...] They are in a cell in which, according to her account [...] there were nine people in a small space; the water pipe leaked all the time so there was always a pool of water. There was a toilet and a tap. It was month before they saw the light of day. The awful conditions created a tense atmosphere; [...] Testimony received by the IACHR in October 2018 (PPL 011), supplemented in November 2018.

were especially detrimental for women deprived of liberty, given the unhealthiness and lack of hygiene in the cells.<sup>148</sup> One woman who was held there told the IACHR: "At one point, we were as many as 18 women in a small 4 square meter cell; it was so small, you couldn't even walk. There was no space to sleep in; you could hardly breathe."<sup>149</sup>

131. In this regard, the IACHR issues a reminder that, pursuant to international standards, the State has a duty to ensure that detainees are kept in conditions compatible with respect for their dignity as human beings; that the manner and method used for detention do not subject detainees to more anguish or difficulty than the suffering intrinsic to being detained; and that, given the practicalities of imprisonment, adequate care is taken to safeguard their health and well-being. Likewise, the State has a duty to take steps to ensure that persons deprived of liberty are not kept in overcrowded conditions that are an affront to human dignity.<sup>150</sup>

## 2. Lack of Access to Health Care

132. The Commission noted with concern the deterioration in the health and physical integrity of persons deprived of liberty as a consequence of the conditions of their detention, even in the case of people who had been in perfect health prior to their detention. In other cases, the IACHR received information regarding the lack of appropriate and timely medical care for persons with a variety of prior -- in some cases -- critical underlying conditions or illnesses that had reportedly placed their lives at risk. That failure to provide medical care continued even after court orders to provide it had been issued to the Penitentiary System authorities.<sup>151</sup>

I spent 45 days in El Chipote and fell ill four or five times. The first time they took me to Forensic Medicine, carrying me because I was almost unconscious. They put my finger print on a document as a signature and, laughing, told me I had waived all medical treatment and refused to care for me. When I fell ill a second time, I fell completely unconscious. The other women in detention began shouting that I was dying. They took me to the Police Clinic, where

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<sup>148</sup> The Commission received similar testimony regarding conditions for women deprived of liberty in El Chipote. "It was a cell with a foul-smelling mattress for two, one small sofa, a small table, the toilet, a shower, and door that gave onto an inside patio but was kept closed. IN the roof, there was a hole with a leaky skylight, and when it rained the cell was flooded, and some women had to sleep on the cold, wet floor." Testimony received by the IACHR in October 2018 (PPLO-005).

<sup>149</sup> Testimony received by the IACHR in January 2020 (IPPL.41).

<sup>150</sup> IACHR, 2018 Annual Report, Chapter IV.B, Nicaragua, par 206.

<sup>151</sup> IACHR, 2018 Annual Report, Chapter IV.B, Nicaragua, par 203; IACHR, 210/2018, Rapporteurship on the Rights of Persons Deprived of Liberty Visits Nicaragua, Washington DC, September 26, 2018.

they did not want to treat me and sent me back to El Chipote, without treatment.<sup>152</sup>

Medical care was awful. They never wanted to help, always we had to shout for medical care. In our cell, there were some women with cancer and others with pacemakers. When they were very sick, they didn't want to provide care, so we had to shout and shout for them to come. They didn't take us out of our cells, not even to receive medical care [...]. One companion who had a pacemaker nearly died on us, right there. It was horrible.<sup>153</sup>

It was very cold inside the cells, so I developed a severe cough, fever, aches in my bones, and my eyes burned. Other detainees asked for medicine which they gave to me, because they didn't give me anything, saying I was a terrorist and destructive [...]. When they stripped me naked, they made me do squats. I never received medical care of any kind.<sup>154</sup>

133. Of all the cases and testimonies received by the Commission, that of Ruth Esther Matute Valdivia stands out, who due to the prison authorities' refusal to provide medical care, she then had to be operated on as an emergency on January 7, 2019.<sup>155</sup> On January 31, 2019, the IACHR granted precautionary measures on her behalf, in order to safeguard her rights to life, humane treatment, and health. The Commission also asked the State to ensure that Mrs. Matute Valdivia had access to proper medical care.<sup>156</sup>

134. The IACHR also documented some cases of cruelty by doctors against persons deprived of liberty.

On the Thursday they took me out again to interrogate me and that was the day I got out of control. They took me to a forensic doctor and wanted to give me pills to sleep or calm down, but I said I wasn't going to take anything that my doctor hadn't ordered and refused; the doctor just told the guard "he's quiet now; you can interrogate him again," but the guy who was going to interrogate me said he didn't want me to die on him and so he didn't do it.<sup>157</sup>

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<sup>152</sup> Testimony received by the IACHR in January 2020 (IPPL.30).

<sup>153</sup> Testimony received by the IACHR in January 2020 (IPPL.41).

<sup>154</sup> Testimony received by the IACHR in October 2018 (PPLO-009B).

<sup>155</sup> IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua. Washington, D.C., February 6, 2019; La Prensa, "Los presos políticos con enfermedades crónicas en las cárceles de Nicaragua", January 27, 2019.

<sup>156</sup> IACHR, PM 84/19 – Ruth Esther Matute Valdivia, Nicaragua, Resolution 2/19, January 31, 2019.

<sup>157</sup> Testimony received by the IACHR in October 2018 (PPLO-007B).

135. The Commission also found cases of lack of access to health care among men held in La Modelo and El Chipote. Some of them had prostate issues or severe infections; others had health problems from blows or bullet wounds during the protests, or from the torture they had been subjected to, without subsequent medical care.<sup>158</sup> The IACHR likewise heard testimony from persons deprived of liberty who had had bones broken by blows they received when they were detained and were never treated, which left parts of their bodies damaged for life.

When we got to El Chipote, we were kept there for six days and my sister, who had a leg full of shrapnel (shards or pellets fired from shotguns) and was bleeding profusely, never received medical care. I had a friend, too, with a bullet wound from when he was detained. They took him for just one night to a hospital and the next day he was back again in El Chipote with an open wound, without having received any medical treatment or procedure. In the six nights we spent there, none of us received medical assistance.<sup>159</sup>

My son has suffered 30 convulsions since they took him to the punishment cell for singing the Nicaraguan National Anthem. If anything happens to him, the Government of Daniel Ortega is responsible.<sup>160</sup>

136. At the same time, the IACHR has also documented the practice of using persons deprived of liberty in montages showing them being properly treated, receiving visits, and medical care. For instance, on January 23, 2019, when a delegation from the European Parliament was given access to detainees in La Esperanza and El Chipote, it confirmed the health concerns of the detainees and prison conditions in general.<sup>161</sup>

One morning they came and took three of us detainees out, saying we were going to the court. That day they were cleaning everything, making everything hygienic in a way we'd never seen before. They took us out and we became frightened because on the way we realized that we were not heading for the courthouse, but somewhere else, and we were afraid they would kill or "disappear" us. That day they took us to a police station and later returned us to El Chipote. Later we found out that that day the members of the European Parliament had visited, and they had taken us out to hide us.<sup>162</sup>

<sup>158</sup> La Prensa, "Los presos políticos con enfermedades crónicas en las cárceles de Nicaragua", January 27, 2019.

<sup>159</sup> Testimony received by the IACHR in January 2020 (IPPL39A).

<sup>160</sup> La Prensa, "Siguen castigos y torturas en el penal contra autoconvocados en Nicaragua", November 26, 2018.

<sup>161</sup> IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua. Washington, D.C., February 6, 2019.

<sup>162</sup> Testimony received by the IACHR in January 2020 (IPPL01).

They took us out and made us walk with the doctors, just to take photos. The same happened with daylight. They would put us in sunlight, take photos, and the put us back in the cells. They lied the whole time and violated all our rights.<sup>163</sup>

137. The IACHR points out that providing proper medical care to persons deprived of liberty is an obligation that derives directly from the State's duty to guarantee the right to personal integrity/humane treatment embodied in Articles 1.1 and 5 of the American Convention and Article I of the American Declaration. Along the same lines, the IACHR has established that, where persons deprived of liberty are concerned, the obligation of States to respect their physical integrity, not to use cruel or inhuman treatment, and to respect the inherent dignity of the human person, includes guaranteeing access to proper medical care.<sup>164</sup>
138. Likewise, Principle X of the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* establishes that "persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being, including amongst other aspects, adequate medical, psychiatric, and dental care; permanent availability of suitable and impartial medical personnel; access to free and appropriate treatment and medication; implementation of programs for health education and promotion, immunization, prevention and treatment of infectious, endemic, and other diseases; and special measures to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high risk groups, such as: the elderly, women, children, persons with disabilities, people living with HIV-AIDS, tuberculosis, and persons with terminal diseases." Moreover, the provision of health services shall, in all circumstances, respect the following principles: medical confidentiality; patient autonomy; and informed consent to medical treatment in the physician-patient relationship.<sup>165</sup>

### 3. Inadequate Nutrition and Lack of Drinking Water

139. From the start of the protests on April 18, 2018, the IACHR received information regarding the lack of adequate food and safe drinking water. According to the information received by the Commission, in detention centers outside the capital, and in El Chipote, La Modelo, and La Esperanza, it is incumbent upon family members of detainees to provide three meals a day, because the food in those centers is both deficient and unhealthy. Persons deprived of liberty told the IACHR

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<sup>163</sup> Testimony received by the IACHR in January 2020 (IPPL.30).

<sup>164</sup> IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, par. 519.

<sup>165</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. (Principle X).

that they even found remains of insects, like cockroaches, bits of glass, pieces of metal, and other objects in the food provided by the prison authorities.<sup>166</sup>

The meals given to detainees in La Modelo contain glass, metal pieces, and even ground-up insects. Family members are only allowed to bring "the minimum" of food. It was said that those who ate the food provided in detention centers suffered stomachaches and that very often the meals provided were practically rotting. The women deprived of liberty in La Esperanza do not receive a proper diet, as there are restrictions on family members delivering food.<sup>167</sup>

140. Apart from the scant and poor-quality food provided, the IACHR received testimonies to the effect that detention center authorities use access to water and food as tools for extorting and disciplining detainees. That is, they engaged in a coercive and repressive strategy whereby individuals would not receive any kind of food for days, with even that provided by their family members taken away from them.

Those people are sick and are not given medicine or taken to see a doctor. They say they are being given poisoned food because it smells and tastes bad and they have to throw it away. They make them go hungry, because they only let us bring food once a month and then just a little.<sup>168</sup>

141. In the case of El Chipote and in other police centers in other parts of the country, the information available indicates that persons deprived of liberty receive a meal called "chupeta," which consists of rice, some cheese, and occasionally some meat. That meal is not always provided three times a day and it is usually spoiled. For that reason, family members have to bring food. However, that food is not always delivered, and sometimes it is reduced.

I only received visits from my family once every three weeks. Only on those occasions, I ate the food they brought. I lost a lot of weight and fell ill numerous times. Every time they would bring me food, it was an odyssey to get them to let me receive some of it. [...] At one point, they put something into the water and the detainees began to vomit and find blood in their stools. I decided not to drink water.<sup>169</sup>

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<sup>166</sup> IACHR, Press Release 210/2018 - Rapporteur on the Rights of Persons Deprived of Liberty visits Nicaragua, Managua / Washington DC, September 26, 2018; Testimony received by the IACHR in August 2018 (PPL 021); Testimony received by the IACHR in September 2018 (PPL 042); Testimony received by the IACHR in September 2018 (PPL-025).

<sup>167</sup> I/A Court H.R. Matter of Seventeen Persons Deprived of Liberty regarding Nicaragua. Provisional Measures. Orders of May 21, 2019/

<sup>168</sup> La Prensa, "Siguen castigos y torturas en el penal contra autoconvocados en Nicaragua", November 26, 2018.

<sup>169</sup> Testimony received by the IACHR in January 2020 (IPPL45).



142. In regards to La Modelo and La Esperanza, the possibilities of persons deprived of liberty receiving food and personal hygiene items from family members are restricted to once a week or once every two weeks. Therefore, the prison authorities limit the amount of food they can receive and it has to consist of non-perishable items. This, since the detainees kept the food in their cells with no way to preserve it, unlike those deprived of their liberty for common crimes, who were able to cook every day as their cell blocks had stoves.<sup>170</sup>

They never wash the large spoons they use to stir the food, they are full of cockroaches and mice. That food gave us diarrhea. I once bled horribly, with endless vomiting. Once there were more than 28 of us political ("kidnapped") prisoners there, with vomiting and diarrhea. We also saw those awful conditions. They do it on purpose.<sup>171</sup>

143. In addition, the prison system also used access to water, as a method of punishment. The Commission received testimony that reveal this situation, which reached a peak of desperation when persons deprived of liberty in La Modelo began digging wells in the ground in search of pipes or any source of water. According to the testimonies received, access to water was limited and regulated, with access allowed once or twice a day when prison staff would let water flow through pipes for a few minutes, during which each cell collected it in plastic bottles. The water collected in that way had to be used by detainees for drinking and all their other necessities.
144. In light of the above, the IACHR reiterates the obligation of the State to adopt measures to ensure that persons deprived of liberty receive sufficient and nutritious food.<sup>172</sup> The Inter-American Court has also established the duty of the State to ensure that every detainee is kept in conditions compatible with human dignity, which include adequate, timely, and sufficient access to food and health care.<sup>173</sup> In regards to safe water, the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* establishes that anyone deprived of liberty shall at all times have access to sufficient drinking water fit for consumption. Suspending or limiting access to it, as a disciplinary measure, should be prohibited by law.<sup>174</sup> Lack of provision and treatment of safe water, like that of food in good condition, is constantly a source of illness and health complications among persons deprived of liberty.<sup>175</sup>

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<sup>170</sup> IACHR, Press Release 156/18 - The Special Monitoring Mechanism for Nicaragua (MESENI) Completes Third Week in Action, Observes Tougher Repression and Raids by Police and Parapolice Groups, July 19 2018.; La Prensa, "Saña, la dieta de los presos políticos en Nicaragua", January 14, 2019.

<sup>171</sup> Testimony received by the IACHR in January 2020 (IPPL30).

<sup>172</sup> IACHR, 2018 Annual Report, Chapter IV.B, Nicaragua, par. 206.

<sup>173</sup> I/A Court H.R., Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006, par. 146.

<sup>174</sup> IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. (Principle XI.2).

<sup>175</sup> IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, par. 484.

## 4. Isolation/Solitary Confinement

145. Since April 18, 2018, the IACHR has received information about the use of punishment cells or "maximum security" regimes against persons deprived of their liberty for having taken part in the protests. Consequently, the Rapporteurship on the Rights of Persons Deprived of Liberty warned that the use of maximum security cells was left to the discretion of the prison authorities and that there were no objective criteria known by those detained or by their families for deciding when those regimes are enforced. Several testimonies by persons deprived of liberty describe having been in extreme isolation, without light, air, in high temperatures, and deprived of food or water for several days.

In La Esperanza, during the first month, they put us in a block with women who were highly dangerous common criminals convicted of crimes such as murder, robbery, and drug trafficking, and they told us they were putting us there so that we would learn what it is like to be with criminals. That is what the female prison staff said to us. However, those female inmates showed a lot of solidarity with us, kept us company, and treated us very well, and even consoled us. When the prison personnel saw how they were treating us, they decided to move us to another cell containing only us political prisoners in a space measuring 4m x 8m, where we were kept totally and permanently locked up, behind a double iron gate, from morning to night.<sup>176</sup>

146. In La Modelo, Block 300 often known as "The 300", was established in 2014 as a maximum security wing. Since then, human rights organizations have received multiple complaints about the conditions there. Even though originally it was designed to hold inmates with connections to organized crime and drug-trafficking, the Commission has received testimony from people who were held in those installations in connection with the protests.
147. According to the information received, Block 300 has small, unlit cells that are hermetically sealed with a metal door. Persons held in those cells are kept in isolation and allowed family visits and phone calls only once a month. In addition, the contact with families is reduced to speaking through a glass window. In maximum security installations, the persons detained here are treated differently - - receiving less food and water, or receiving them less frequently -- than others held in that penitentiary. Inmates detained in connection with the protests are also

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<sup>176</sup> Testimony received by the IACHR in January 2020 (IPPL39A).

reportedly punished by having the windows of their cells shuttered, to prevent them from looking out.<sup>177</sup>

148. The testimonies further assert that inside La Modelo there are other punishment and solitary confinement areas in which conditions are even worse than in "The 300." Testimonies refer in particular to "El Infiernillo" [Little Hell] or "La Chiquita" [Little Girl], in which many of the persons identified by the Government as leaders of the protests were held.<sup>178</sup>

Two days after I arrived at La Modelo, they transferred me from Block 16 to "El Infiernillo," which is a maximum security cell inside "The 300." The Director of La Modelo, Mr. Alaniz [Venancio Alaniz] summoned just me and told me they were going to transfer me. They handcuffed me, cut off my hair by force, wounding me in the head. In the "Infiernillo" they put me in a totally closed cell and kept me there alone for 11 months. Only after I had been there three months, did I receive my first visit. I never spent time in the light of day until January, some five months after my arrest. I was totally isolated, unable to speak to anyone.<sup>179</sup>

149. The IACHR was also informed about the arbitrary application of the solitary confinement in "El Chipote". In particular, during its visit to Nicaragua in May 2018, it heard accounts from Glen Slate and Brandon Lovo, two young Afro-descendants from Bluefields, who were accused of murdering journalist Ángel Gahona on April 22, 2018. According to the information received by this Commission, Glenn and Brandon would have been detained in conditions incompatible with their personal dignity. At that occasion, the IACHR expressed its concern about the isolation regime in which they were held, characterized by practically total segregation, without adequate ventilation, and having only two exits from their cells per week. Likewise, the IACHR condemned the difficulties they faced in carrying out their proceedings and receiving visits, due to the distance between the DAJ and their place of origin<sup>180</sup>.
150. The Commission reiterates that prolonged isolation and incommunicado represent, in themselves, forms of cruel and inhuman treatment, that are harmful to the mental

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<sup>177</sup> IACHR, Press Release 210/2018 - Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua / Washington DC, September 26, 2018.

<sup>178</sup> Prensa Libre. Periodista es trasladado al Infiernillo, el peor calabozo de Nicaragua

<sup>179</sup> Testimony received by the IACHR in January 2020 (IPPL14).

<sup>180</sup> IACHR, Gross Human Rights Violations in the context of Social Protests in Nicaragua, June 21, 2018, par. 177. Although the official version of the murder of journalist Ángel Gahona was severely questioned due to the lack of exhaustion of all lines of investigation and other irregularities committed during the criminal process, the youths were sentenced to 23 years and six months, and to 12 years and six months in jail, respectively, as perpetrators of the crime. On June 10, 2019, they were released under the Amnesty Law. On different occasions, the IACHR denounced that the process was carried out without transparency or accountability, and both the Group of Independent Experts (GIEI), as well as local and international media, were prevented from accessing the hearings during the process.

and moral integrity of the individual and of the right of every detainee to the respect due to the dignity inherent in the human being and that incommunicado is an exceptional measure to ensure the results of an investigation, and that that it can only be applied if it is ordered in keeping with conditions that have been established previously by law.<sup>181</sup>

151. Accordingly, the Commission reiterates its call to the State to use isolation only as an exceptional measure, based on an individualized risk assessment, for the shortest time possible, and as a last resort. Isolation/solitary confinement orders must be authorized by the competent authorities and be subject to independent review.<sup>182</sup>

### **C. *Mistreatment***

152. The Commission observes that most of the detentions carried out in the context of the social demonstrations and protests in Nicaragua were accompanied by various forms of cruel, inhuman, or degrading treatment, some bordering on torture, during arrest and during their deprivation of liberty. According to the information at the IACHR's disposal, such mistreatment has persisted from the first detentions in connection with the social protests of April 2018 through to this day.
153. In its Country Report, the Commission vehemently condemned any form of torture or mistreatment that might have been committed against detainees and it reiterated the State's obligation to initiate an investigation in accordance with pertinent inter-American standards.<sup>183</sup> Here, the Inter-American Court has stated that, in the light of Article 5 (2) of the Convention, an act constitutes torture when the ill-treatment: (i) is intentional; (ii) causes severe physical or mental suffering, and (iii) is committed with any objective or purpose.<sup>184</sup> Likewise, the Court itself has established that the threats and real danger of submitting a person to physical injuries produces, in certain circumstances, a moral anguish of such degree that it may be considered "psychological torture."<sup>185</sup>
154. Since the start of the crisis in Nicaragua, the IACHR has received testimonies about electric shocks from tasers, brutal beatings with blunt objects, and humiliation and

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<sup>181</sup> I/A Court H.R. Case of Espinoza González v. Peru. Judgment of November 20, 2014, par. 186.

<sup>182</sup> IACHR, Press Release 210/2018 - Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua / Washington DC, September 26, 2018, Recommendation 9.

<sup>183</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, June 21, 2018, par. 193.

<sup>184</sup> I/A Court H.R., Case of Bueno-Alves v. Argentina. Merits, Reparation, and Costs Judgment of May 11, 2007. Series C No. 164, par. 79.

<sup>185</sup> I/A Court H.R., Case of Women Victims of Sexual Torture in Atenco v. Mexico. Judgment of November 28, 2018. Series C No. 371, par. 192; Cantoral Benavides Case v. Peru. Judgment of December 3, 2001, Series C No. 88, par. 102.

insults to a point bordering, in some cases, on torture.<sup>186</sup> In this regard, some of the testimonies received by the IACHR illustrate this:

They tore my partner's foot nails out, dislocated his shoulders, and left a scar on his skull from the blows they dealt him.<sup>187</sup>

In El Chipote, the only time I received medical care was when they were cutting my toes and needed alcohol to stop the wound from getting affected. They were cuts with a piece of iron on the underside of my toes and the big toe on my left foot. They scrape the iron across the skin to hurt you. It's a form of torture to make us talk.<sup>188</sup>

They placed me naked in a filthy mosquito-ridden cell, smelling of blood [...]. They threatened to take us to the Coyotepe to torture us. They also said they were going to toss us into the mouth of the Masaya volcano.<sup>189</sup>

He wanted to pull out the nails from one of my hands.<sup>190</sup>

[...] they grabbed me by the hair, and banged me against the wall and beat me, while pulling me by the hair.<sup>191</sup>

[...] They put me in a totally closed cell and kept me there alone for 11 months. Only after I had been there three months, did I receive my first visit. I never spent time in the light of day until January, some five months after my arrest. I was totally isolated, unable to speak to anyone.<sup>192</sup>

155. The Commission notes that most of the testimonies received regarding cruel, inhuman, or degrading treatment reveal that those acts were committed while during their deprivation of liberty in El Chipote and/or police stations in departments across the country, and, later on, in La Modelo and La Esperanza.

When I arrived at El Chipote, they interrogated me three times. In two of the three interrogations, they beat me ferociously; it was totally inhuman. I received blows all over my body. I was beaten with police truncheons ["tonfas"] on my legs, hands, and head. I was tasered

<sup>186</sup> Infobae. Los 15 salvajes métodos de tortura contra los presos políticos del régimen de Daniel Ortega. May, 2019

<sup>187</sup> Testimony received by the IACHR in January 2020 (IPPL45).

<sup>188</sup> Testimony received by the IACHR in January 2020 (IPPL14).

<sup>189</sup> Testimony received by the IACHR in January 2020 (IPPL14).

<sup>190</sup> Testimony received by the IACHR in May 2018 (IPPLV6).

<sup>191</sup> Testimony received by the IACHR in January 2020 (IPPL30).

<sup>192</sup> Testimony received by the IACHR in January 2020 (IPPL14).

twice; the first time on the neck, which made me lose consciousness, and the second time on my testicles, which remained inflamed for 10 days. Once they also stripped me and thrust a truncheon up my anus. That was one of the nastiest things they did to me while I was there.<sup>193</sup>

A detainee held in "La Modelo": They cut off our water and electricity. We were so desperate that we started digging to look for water. Those days were very tough. We had nothing to eat for about two or three days. Then they did something I'll never forget. The guards started grilling meat next to the cell blocks, so that we would smell it, as a kind of torture. Imagine what we felt, dying of hunger and thirst. That's a detail I will never be able to forget. How far those bastards can go. [Then] in El Chipote we were in our underwear. The treatment was inhumane and depended on the prison personnel. In my cell, there was no light. In fact, most cells were like that, with just a little light from the corridor.<sup>194</sup>

156. Similarly, the IACHR notes that such acts, including acts of sexual violence, also occurred during transfers between detention centers, especially because the detainees were not told where they were being taken, or the reasons for the transfer. They were also threatened with being killed or tortured.

After the detention, they took me to the Diriamba police station and kept me naked from 8 a.m. until 1 p.m., in the sun, with my body exposed to numerous people going by, who saw me naked and handcuffed. They hit me and told me that for having helped finance the roadblocks I was going to be sorry for having meddled with the FSLN.<sup>195</sup>

157. The IACHR received the testimony of a person detained by parastatal agents, who put him on the back ("tina") of a vehicle and told him "there's no point trying to run away as he wasn't going to see his family again." They said they had no authority to take him to El Chipote or the District Police Station. Their job was to get rid of people who "were trying to destroy the government." They asked for his name and one of them said "why ask if you're going to get rid of him?" Later on they beat that person up in the vehicle, telling him that if he provided information about the protests they could make sure he survived. When this individual refused they gave him electric shocks. Then he was taken to National Police District 6, where the head of investigations punched him on the nape of his neck and electrocuted him again on the side. Two individuals in uniforms interrogated him about the marches and the people organizing them, and told him that if he wanted "to be okay" he had to work with them as an informer. He was then taken to a room where they stripped him and

<sup>193</sup> Testimony received by the IACHR in January 2020 (IPPL11).

<sup>194</sup> Testimony received by the IACHR in January 2020 (IPPL08).

<sup>195</sup> Testimony received by the IACHR in January 2020 (IPPL45).

hit him with a truncheon and their fists. Later on, they forced him to pick up a homemade weapon and photographed him with it.<sup>196</sup>

158. Likewise, the testimonies reveal that physical and psychological violence began from the moment of detention, but intensified upon entry in prison facilities, where detainees were stripped and their belongings were taken away, forced to do squats, and then shaved and forced into handcuffs, hit and semi-suffocated, with humiliations and threats, isolated in small pre-trial detention cells, along with other severe acts of violence, including acts of sexual violence, before being subjected to interminable interrogations.

In my case, the torture was both psychological and physical, with my naked body being repeatedly shown to prison staff, and made fun of, with people touching my breasts and trying to sexually abuse me.<sup>197</sup>

[...] made me do fifty squats while I was naked. Later on, five police officers abused me sexually. I was only able to see the shoes they were wearing; there were five of them who did it to me."<sup>198</sup>

Person held in "El Chipote": "They began with what they call interviews, which in fact are beatings and psychological torture. They asked me who was financing me and names of people in the MRS [Movimiento Renovador Sandinista], whether I kept weapons in my home. They said they would grab my son. They said that I had ransacked the university in Jinotepe. [...] they grabbed me by the hair, and banged me against the wall and beat me, while pulling me by the hair. Both men and women interrogated me, some with their faces covered and others not, all of them were dressed as police."<sup>199</sup>

159. The complaints received by the IACHR describe the viciousness with which intense suffering and pain were inflicted by State agents and civilian groups on persons deprived of liberty deemed to be opponents of the Government or participants in marches or protests. The preferred tools used were death threats or threats of forced disappearance. The IACHR draws attention, in particular, to the practice of lengthy and reiterative interrogations, often in the early hours, when detainees were questioned by State agents using violence about their participation in protests, with a view to extracting a confession and information about others.

They didn't give me food because they prohibited it, when a policeman arrived and said "don't give food to that son of a bitch" and the two meals I did get arrived only because they came under another prisoner's name. [The guard] told those in the cell to beat me up and they made a noise as if they were doing it, but in fact they just

<sup>196</sup> Testimony PPL-009B, received on October 22, 2018.

<sup>197</sup> Testimony received by the IACHR in January 2020 (IPPL45).

<sup>198</sup> IACHR, *The Forced Migration of Nicaraguans to Costa Rica*, OEA/Ser.L/VII. Doc. 150, September 8, 2019, par. 310.

<sup>199</sup> Testimony received by the IACHR in January 2020 (IPPL30).

embraced me and did not hit me and one detainee said he would protect me [...] The humiliation took the form of them stripping me naked on three occasions on pretext of making sure that I was not carrying anything; for the fun of it they would take me out of the cell to take finger prints and photos for the doctor, to change my cell, and each time they took me out they would strip me naked to humiliate me, and I saw that they were doing the same to other detainees, but with a little more privacy, in a kind of room, whereas in my case they made me do squats naked with my back to other detainees, to mock me. A series of different police officers came to my cell to insult me, saying "son of a bitch, you're here to die, " "coup-monger", "damned terrorist."<sup>200</sup>

160. The Commission also received testimonies from persons who, after being subjected to degradation, threats, blows, and other mistreatment were forced to come to "arrangements" to obtain supposed benefits and even their release. They were reportedly also obliged to make videos, write letters, and make statements incriminating others who had taken part in the protests, especially social leaders.<sup>201</sup>

They began to interrogate us, threatening me with expulsion from the university if I didn't talk. They asked me who the leaders were and I didn't answer. On the third day of interrogations, they offered me a deal: if I made a video saying who the leaders of the protests were and who was financing us, they would release me. I refused. Then they made me have a photograph taken with the flag of the Frente Sandinista.<sup>202</sup>

[The authorities] told her that they were going to take her out of El Chipote only if she made a video accusing the students at UNAN. She agrees and when they are about to film her, there is a group of armed officers in the room she is entering. They are writing on a blackboard what she has to say without making a move. They had already identified the leaders. The last thing they ask her is whether she regretted what she had done. She replies that on the contrary it was well worth it [...] At that point, they cut the video and an officer began telling her that no she would not be leaving El Chipote that she was stupid, that they were going to take to her to [...] La Modelo, on charges of terrorism.<sup>203</sup>

161. The Commission also received numerous testimonies and information regarding reprisals against persons deprived of liberty by guards in different detention centers in Nicaragua, be it on account of their participation in the protests, for alleged crimes

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<sup>200</sup> Testimony received by the IACHR in November 2018 (IPP018).

<sup>201</sup> Testimony PPL-035, received on May 9, 2018.

<sup>202</sup> Testimony received by the IACHR in January 2020 (IPPL21).

<sup>203</sup> Testimony PPL-023, received on Thursday, September 27, 2018.



against some civil servant, or for demonstrating against the government inside the detention centers.

If we sang the National Anthem or chanted some patriotic slogan, they threatened to take away our visits. In my particular case, for protesting about a fellow detainee not being given food, they suspended my next visit. Our family members arrived, to no avail [...]. The restrictions became ridiculously petty, such as not being able to wear a bracelet with the colors of our flag. It was forbidden to sing the National Anthem. The guards made a fuss about national symbols... That was a cause for punishment, including being beaten; it went to ridiculous extremes [...] On May 16, the day Eddy died, some guys arrived at the prison who were not even police. They were paramilitary who, helped by prison personnel, began beating us savagely, without giving a damn if they were hitting young boys or older adults. They were incredibly cruel, hitting us with hate and threatening us with their weapons. There was nothing we could do except take the blows, kicks, and insults.<sup>204</sup>

162. As for the men deprived of liberty in La Modelo, the Commission was apprised that on the night of December 31, 2018, an anti-riot squad, armed with AK 47 rifles, pepper spray, and dogs went into the prison and attacked a group of detainees who had sung the national anthem.<sup>205</sup> Soon after, the detainees were infiltrate a message outside, denouncing these acts and indicating the following:

They burst into our block aggressively, hurling insults and death threats, with pepper gas tanks, dogs, and AK-47 rifles. Even though two of our companions had been beaten and one dragged out by force, we did not cower, but chose rather to react in a civil and peaceful manner, to make the authorities reflect [...]. We felt constantly besieged and fear for our lives because of the way they have attacked our bodily, psychological, and moral integrity.<sup>206</sup>

163. Subsequently, the IACHR was apprised of the "beating up" of Francisco Sequeira, on January 11, 2019. He was being deprived of liberty in a maximum security cell, when that act was committed by several officials as a reprisal for the possible filming of a

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<sup>204</sup> Testimony received by the IACHR in January 2020 (IPPL08).

<sup>205</sup> IACHR, Press Release 26/19 - IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua. Washington, D.C., February 6, 2019; Nicaragua Investiga, "ANPDH enviará queja a Comité de Tortura de ONU por robo de comida a presos políticos", January 25, 2019; Confidencia, "Denuncian robo de carceleros a presos políticos de la dictadura", January 25, 2019.

<sup>206</sup> Confidencial, "Presos fueron golpeados y torturados el 31 de diciembre", December 31, 2018; La Prensa, "Denuncian golpiza a los presos políticos durante fiestas de fin de año 2018", January 2, 2019; Confidencial, "Exigen sanción para autores de golpiza a presos políticos", January 3, 2019.

video in which another detainee had provided testimony from inside the prison.<sup>207</sup> In that same context, the Commission received information concerning raids by prison personnel in La Modelo, in which they destroyed the non-perishable food belonging to persons deprived of liberty and had helped themselves to the utensils and basic needs and personal hygiene items brought to the prison by family members.<sup>208</sup>

The female guards were very hateful and rude towards us. They sang government songs, one that said "My commander stays" (*Mi comandante queda*). They used to point their weapons at us from a turret. The woman director was even ruder. They didn't allow us to use any color of the flag. It was forbidden, and if they saw anything blue and white, they punished us [...]. When the female guards threatened us with their weapons, two or three times we heard actual shots.<sup>209</sup>

164. The IACHR notes that several of the complaints about reprisals against persons deprived of liberty were made public because they managed to smuggle them out through other people. As a result, according to the information received by the Commission, further acts of repression were carried out in reprisal for those acts of protest and public denunciation: "We were told that the guards pass by and insult them and they reply [...]. The penitentiary system is furious because there are at least five messages that the women deprived of liberty have managed to smuggle out [...]"<sup>210</sup>
165. In La Modelo, there was constant tension between the persons deprived of liberty and prison staff. The poor prison conditions and overcrowding, in addition to the daily humiliations to which the detainees were subjected created antagonism within the prison. In the first half of 2019, the IACHR documented a series of violent events, massive punishments, and reprisals against persons deprived of liberty in a number of prisons in Nicaragua.<sup>211</sup> The testimonies describe how after each act of resistance or demand for improved conditions, prison system personnel acted especially violently and dozens of those deprived of liberty, apart from being severely beaten, were placed into punishment or maximum security isolation cells.

<sup>207</sup> IACHR, Press Release 26/19 - IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua. Washington, D.C., Wednesday, February 06, 2019.

<sup>208</sup> IACHR, Press Release 26/19 - IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua. Washington, D.C., February 6, 2019; Nicaragua Investiga, "ANPDH enviará queja a Comité de Tortura de ONU por robo de comida a presos políticos", January 25, 2019; Confidencia, "Denuncian robo de carceleros a presos políticos de la dictadura", January 25, 2019.

<sup>209</sup> Testimony received by the IACHR in January 2020 (IPPL41).

<sup>210</sup> Testimony received by the IACHR in October 2018 (PPL 011), supplemented in November 2018.

<sup>211</sup> El Nuevo Diario. La CIDH pide al gobierno le informe sobre denuncias de golpizas a prisioneros (20/02/2019); El Confidencial: Presos políticos de La Modelo protestan cuatro dias consecutivos (26/03/2019); CNN: Denuncian golpiza a presos de cárcel La Modelo en Nicaragua. (21/02/2019).

166. In this scenario, on May 16, 2019, the IACHR was made aware of the death of Eddy Antonio Montes Praslín, a 57 year-old U.S. national who was in detention accused of "terrorism in conjunction with obstruction of public services, aggravated theft, the manufacturing, trafficking, possession, and use of restricted-use weapons and explosive substances or devices."<sup>212</sup> That same day, the Ministry of the Interior published two statements giving its version of what happened. One of them underscores that his death occurred when "At around 2:30 p.m, a sizable group of prisoners threw themselves at security perimeter personnel and struggled with one of the guards with the clear intention of taking away his official weapon. In that struggle, a shot went off that hit prisoner Eddy Antonio Montes Praslín, of 57 years of age, who was immediately taken to the nearest clinic."<sup>213</sup>

I was close to Don Eddy [[Eddy Antonio Montes Praslin] because we played chess together. That day there was a scuffle that ended in his death and in us being beaten up? I was and am one of the eyewitnesses closest to the scene when they shot him. There were five or six of us very close to him and the bullet could have hit me or any of the others. [...] What we heard was a burst of gunfire and we saw Eddy on the ground with a lot of blood around his groin area. They took a long time to arrive to take care of him. They knew already that someone had been wounded and we were shouting in desperation.<sup>214</sup>

167. In the second statement, the Ministry of the Interior insisted that Eddy Antonio Montes Praslin formed part of the group "of prisoners who pounced against prison personnel in the security perimeter," but also adds to the report accusing him of, among other crimes, "terrorism in conjunction with obstruction of public services, aggravated theft, the manufacturing, trafficking, possession, and use of restricted weapons and explosive substances or devices [...]"<sup>215</sup>
168. The Inter-American Commission condemned what happened and, at the same time, issued a reminder that the State has an obligation to investigate ex officio and with due diligence any death of a person in its custody. Those investigations must be geared to establishing not only the direct perpetrators of the facts but also possible instigators and those authorities who might bear responsibility due to any act or

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<sup>212</sup> According to the official account, Eddy Antonio Montes Praslín, had been placed at the disposal of the Seventh District Criminal Court of Managua for having taken part on May 15, 2018, at 9:00 a.m., in the attack on the "Leonardo Mendoza" National Police Unit, located in the city of Matagalpa, wounding with a firearm Police Inspector Jorge Fernando Lanzas, Deputy Inspector Ismael Talavera González, Deputy Inspector Oscar Danilo Otero Blandón, and officer Carlos Adán Mendoza González. Ministry of the Interior, Segunda Nota de Prensa, May 16, 2019.

<sup>213</sup> Press release of the Ministry of the Interior of Nicaragua dated May 16, 2019.

<sup>214</sup> Testimony received by the IACHR in January 2020 (IPPL08).

<sup>215</sup> Press release of the Ministry of the Interior of Nicaragua dated May 16, 2019.

omission.<sup>216</sup> Likewise, inter-American standards for cases of violent deaths occurring while a person is in the custody of State agents require the State to be guided by certain specific standards, namely: (i) an investigation *ex officio*, that is complete, impartial and independent, taking into account the level of participation of all the State agents; (ii) the investigation must be given a certain degree of public scrutiny owing to the possible public interest because of the rank of the agents presumed to be involved; (iii) prompt intervention at the scene of the incident and appropriate handling of the scene of the crime, as well as preserving this in order to protect all the evidence,...; and (iv) determination of whether the body has been touched or moved and of the sequence of events that could have led to the death, as well as a preliminary examination of the corpse to protect any evidence that could be lost in its manipulation and transport.<sup>217</sup>

169. On December 19, 2019, the State told the IACHR that "the National Police performed the corresponding investigations. Two parallel inquiries were conducted for these incidents, taking into account the legal definition of the crime, the victims, and those under investigation."<sup>218</sup> Accordingly, it stated that the Public Prosecutors' Office was apprised of what had happened so that "it proceeded to guide the investigation from a legal perspective and to that end had held four working meetings with the technical team in charge of the National Police Investigation." In addition, it had received a complaint from a family member of Mr. Eddy Montes, "which was duly processed for investigation with the National Police. Those inquiries were added to the investigation that had already begun by the National Police. However, since this case fell within the scope of application of the Amnesty Law (Law No. 996), it was shelved administratively at police headquarters."<sup>219</sup>
170. Considering that international human rights law requires States to guarantee the rights of persons in their custody, the IACHR reaffirms that one of the most important duties in that regard is to safeguard the life and integrity of persons deprived of their liberty.<sup>220</sup> Even though the right to personal integrity pertains to everyone under all circumstances, the Commission considers that the absolute ban

<sup>216</sup> IACHR, Press Release 122/19, IACHR Condemns Acts of Violence and the Death of One Person at a Nicaraguan Prison, Washington D.C., May 21, 2019.

<sup>217</sup> I/A Court H.R. Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 27, 2014. Series C No. 281, paragraphs 254.

<sup>218</sup> According to the information provided, two investigation files were opened: "1. Crime of negligent homicide [*homicidio imprudente*] of Eddy Antonio Montes Praslin; 2. Crimes of attempted homicide, aggravated injuries [*daños agravados*], obstruction of functions, violation of the terms of a criminal conviction [*quebrantamiento de condena*] and injuries. To the detriment of the State of Nicaragua and personnel of the Penitentiary System of the Ministry of the Interior, for which those deprived of liberty are being investigated." State of Nicaragua, Note MPN-OEA-0069-100LAR, Observations by the State of Nicaragua regarding the draft of "Chapter IV. B - Annual Report of the Inter-American Commission on Human Rights, December 19, 2019, pp. 30-31.

<sup>219</sup> State of Nicaragua, Note MPN-OEA-0069-100LAR, Observations by the State of Nicaragua regarding the draft of "Chapter IV. B - Annual Report of the Inter-American Commission on Human Rights, December 19, 2019, pp. 31-35.

<sup>220</sup> IACHR; Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 30.

on torture and on cruel, inhuman, and degrading treatment is particularly relevant when it comes to protecting persons deprived of their liberty, who are, moreover, totally defenseless vis-a-vis state agents.<sup>221</sup>

171. In its report on the situation of human rights in Nicaragua, the Commission noted that the arrest and deprivation of liberty of persons detained in connection with the protests was frequently accompanied by beatings, threats and insults against the detainees, that involved subjecting them to humiliating and degrading conditions, constituting ill-treatment, and as such actions that violated inter-American human rights standards. In particular, the Commission voiced its special concern regarding accounts testifying to the existence of such practices as threats of torture or death, beatings, and threats to harm family members, committed with the intention of eliciting information about others involved in the protests and movements against the current government. The IACHR observed that some of the documented acts, evaluated in the light of the circumstances in which they were perpetrated, could constitute torture.<sup>222</sup>
172. Based on the testimonies and incidents described in the present report, the IACHR points out that, subsequent to its working visit to the country, the practices and cruelty against detainees and persons deprived of liberty -- because of their participation in the demonstrations or road blocks or because they were considered opponents of the Government -- persisted and were even intensified. In fact, in the context of a strategy of a massive and selective criminalization in response to the prolongation of the human rights crisis in the country, the IACHR ascertained the continuation of acts that are indicative of a cruel venting of fury against persons deprived of liberty singled out as government opponents, such as the tearing out of finger nails, subjection to suffocation techniques, savage beatings with blunt objects, reprisals within detention centers, and acts of sexual violence. In some cases, persons were subjected to constant interrogations and reportedly obliged to make videos, write letters, and make statements incriminating others taking part in the protests, especially social leaders. As pointed out above, the IACHR draws attention to the fact that in some cases those acts could constitute torture as defined in international law.
173. The Commission resolutely condemns any form of torture or cruelty that may have been committed against detainees and it reiterates the obligation of the State to immediately initiate ex officio -- and irrespective of the presentation of complaints - - effective investigations to identify, try, and punish those responsible.<sup>223</sup> In

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<sup>221</sup> In this connection, see IACHR; Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 343. See also, United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report presented to the Commission on Human Rights (today Council), E/CN.4/2006/6, adopted on 16 December 2005, par. 40.

<sup>222</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 342; IACHR, Report on Terrorism and Human Rights, paras. 161-163.

<sup>223</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 334. I/A Court H.R., Case of *Tibi v. Ecuador*. Judgment of September 7, 2004. Series

particular, the Commission urges the State to conduct this investigation using all legal means available and to make sure that it is designed to determine the truth of what happened within a reasonable period of time.<sup>224</sup> That investigation must also be guided by the principles of independence, impartiality, competence, diligence, and meticulousness (*acuosidad*).<sup>225</sup>

## **D. Particularly Affected Groups**

### **1. Children and Adolescents**

174. The Commission notes that a group particularly affected in the context of the detentions have been adolescents, mainly students, who have been arrested for participating in or supporting the protests. In its country report, the IACHR documented the detention of at least 65 adolescents in detention centers meant only to house men over the age of 18. On May 20, 2018, during its working visit to Nicaragua, the IACHR interviewed two adolescents in El Chipote, who were subsequently released.
175. As of the date of this report, the IACHR recorded more than 200 adolescents deprived of their liberty during the first days of the protests, who were also allegedly victims of irregularities in the procedures for their release, mistreatment, and possible torture.<sup>226</sup>
176. For its part, GIEI Nicaragua registered the particular impact of police raids on people under 18 years of age in the context of these operations. According to the Group of Experts, the conduct of the police in those cases constituted a “blatant disregard for the right of special guarantee imposed on the State for the deprivation of liberty of

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C No. 114, par. 159. The Inter-American Court has adopted a very unbureaucratic stance with regard to the concept of denunciation (or "complaint") as a prerequisite for the State's obligation to conduct a prompt and impartial investigation into possible cases of torture and, in the Vélez Lóor case, even considered that it suffices that the victim or a third party notify the authorities. I/A Court H.R., Case of Vélez Lóor v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010. Series C. No. 218 par. 240.

<sup>224</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 345; I/A Court H.R., Case of García-Prieto et al. v. El Salvador. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par. 101 and I/A Court H.R., Case of Bulacio v. Argentina. Judgment of September 18, 2003. Series C No. 100, par. 114.

<sup>225</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 345; I/A Court H.R., Case of Bueno-Alves v. Argentina. Judgment of Friday, May 11, 2007. Series C. No. 164 par. 108.

<sup>226</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, June 21, 2018, paras. 173 and 174; IACHR, No. 148/2018, IACHR Denounces Worsening, Deepening and Diversifying Repression in Nicaragua and Expresses Concern over the Situation of Children and Adolescents in the Country, July 11, 2018; IACHR, Press Release 223/2018, IACHR warns of new wave of repression in Nicaragua, October 18, 2018.

adolescents, particularly as it relates to the principle of last resort for the deprivation of liberty of children and adolescents, and the international prohibition against illegal and arbitrary detention of them.”<sup>227</sup>

177. In addition, the IACHR has received testimonies of alleged cruel, inhuman, or degrading treatment on the part of State security agents against persons deprived of their liberty at adult detention centers.<sup>228</sup> In August 2018, the IACHR received the testimonies of two adolescents, aged 14 and 15, detained in Masaya. According to the testimonies received, they were allegedly transferred and detained in El Chipote for five days. At the time of their arrest and during their transfer, one of them was allegedly the victim of cigarette burns on his neck and the other suffered sprains caused by the weight of one of their captors on his body. It was done so that they would provide more information about other people involved in the blockades.<sup>229</sup>
178. Another testimony received by the IACHR was that of a 16 year-old youth arrested in Managua, who was held incommunicado and prevented from seeing his family. In addition, he was not afforded access to defense counsel. He was in the cell all day and only let out when they conducted searches. No medical examination was done when he was admitted:

They took us to Station 1 at about 10:30 pm; we slept at that station and there were a lot of people. In the morning, the police took us to Station 4, where they locked us up and brought us out again to question us. An overweight man in civilian clothes threatened me with some electrodes if I didn't tell him the names of the others who were with me. He told me he was going to put them on my nipples. There was a police commissioner, two uniformed policemen, and the overweight one in civilian clothes. Say the names of the other boys. [...] While I was at Station 4 there were three times when I wasn't given any food. On the day of the visit, they wouldn't let my mom in because we were being punished. While they were at the station I was with three other inmates [one 22-year-old and two 17-year-olds].<sup>230</sup>

179. The Commission recalls that depriving adolescents of their liberty is governed by the principle of exceptionality, whereby their detention may only be a measure of

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<sup>227</sup> GIEI-Nicaragua Report, December 2018, pp. 196-7. The excerpt cites the Convention on the Rights of the Child, 20 November 1989, Article 37. It also refers to the “special duty of guarantee imposed on the State regarding persons deprived of liberty should be understood in light of the provisions of Article 19 of the American Convention, in cases of adolescents in conflict with the law. Given the double condition of vulnerability of this group, said general duty is strengthened.”

<sup>228</sup> IACHR, Press Release 169/2018, IACHR Confirms Reports of Criminalization and Legal Persecution in Nicaragua, August 2, 2018; IACHR, 223/18, IACHR warns of new wave of repression in Nicaragua, Washington, D.C., October 18, 2018.

<sup>229</sup> IACHR, Press Release 169/18, IACHR Confirms Reports of Criminalization and Legal Persecution in Nicaragua, Washington, D.C., August 2, 2018.

<sup>230</sup> Testimony received by the IACHR in 2018. Testimonies 756, 935 and 752.



last resort and for the shortest time allowed.<sup>231</sup> In the event that they are deprived of their liberty, and in order to protect their personal integrity and in the higher interest of the child, adolescents must be kept separate from adults.<sup>232</sup>

180. The IACHR reiterates that it is the State's obligation to guarantee that adolescents are dealt with under a specialized juvenile system of children accused of violations of criminal law are to be subject to a specialized system of justice, based on the restorative justice model, with due guarantees for their rights and their best interests. The requirement that adolescents be subject to a specialized system of justice is expressly envisaged in Article 5(5) of the American Convention and in Article 40(3) of the Convention on the Rights of the Child.<sup>233</sup> Furthermore, the Commission has consistently expressed the need for adolescents deprived of their liberty to be housed in places separate from adults, as provided for in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas and Article 37(c) of the Convention on the Rights of the Child.<sup>234</sup>

## 2. Women

181. The IACHR notes with concern that women deprived of their liberty in the context of the human rights crisis have faced violations of their human rights, aggravated by reason of their gender, including acts of sexual violence, such as rape, as well as overcrowded conditions, lack of access to health care, inadequate food, punishment, and other reprisals.<sup>235</sup>
182. In that regard, the IACHR took note of the case of obstetric violence suffered by 19 year-old María Alejandra Castillo García, who on September 23, 2018, was reportedly deprived of her liberty in El Chipote. Maria Alejandra Castillo was approximately three months pregnant and suffering from bleeding and fever, despite which she did not receive the necessary proper medical treatment for her condition as a pregnant woman.<sup>236</sup> On October 21 of that year she was released after more than 20 days of bleeding without medical attention, which led to a miscarriage.

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<sup>231</sup> IACHR, *Juvenile Justice and Human Rights in the Americas*, July 13, 2011, paras. 75, 80.

<sup>232</sup> IACHR, *Juvenile Justice and Human Rights in the Americas*, July 13, 2011, par. 408; and IACHR, Report No. 41/99, Case 11.491, Admissibility and Merits, Minors in Detention, Honduras, March 10, 1999, paras. 125 and 126.

<sup>233</sup> IACHR, *Juvenile Justice and Human Rights in the Americas*, July 13, 2011, par. 81 and 82.

<sup>234</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XIX; IACHR, 2018 Annual Report, Chapter IV.B, Nicaragua, par. 226; IACHR, *Juvenile Justice and Human Rights in the Americas*, July 13, 2011, par. 408.

<sup>235</sup> IACHR, Press Release 223/18, IACHR warns of new wave of repression in Nicaragua, Washington, D.C., October 18, 2018.

<sup>236</sup> Testimony received by the IACHR in October 2018 (PPL 001)



183. The Commission also received information about severe acts of aggression on the night of October 26, 2018, against several women being held at La Esperanza prison, allegedly perpetrated by agents of the State. After shutting off the prison power supply, a group of allegedly masked guards entered the cellblock and beat a group of women who were protesting against the transfer of another prisoner. At least 16 women were reportedly injured as a result of the attack.<sup>237</sup> On November 11, 2018, the IACHR requested the adoption of precautionary measures in favor of the women who had been assaulted.<sup>238</sup>
184. On January 16, 2019, Kenia Gutiérrez, who was deprived of her liberty at La Esperanza, was allegedly the victim of reprisals by the prison authorities, according to a public complaint, for having given water to another detained woman. Kenia Gutiérrez appeared at her first trial with visible marks of blows to her arms, which she was said to have received from the prison officer in retaliation.<sup>239</sup>
185. The IACHR also received multiple testimonies and information about serious cases of sexual violence, including sexual violation that, as was pointed out, occurred at the time of arrest and during the deprivation of liberty at police facilities such as El Chipote and at La Esperanza<sup>240</sup>. Among the serious incidents registered, the IACHR learned of cases of women deprived of their liberty who were victims of inappropriate touchings, forced nudity to perform squats, threats of sexual violations, and sexual violations with penetration as a means of obtaining information. Through MESENI, the IACHR received the testimony of a 24-year-old woman who, after being detained by civilian and police elements, was sexually attacked by means of touching<sup>241</sup>. The IACHR also received the testimony of a group of women who, after being detained, were taken to a barracks in Jinotepe and later in El Chipote where they were interrogated multiple times and threatened with being violated<sup>242</sup>. In many cases, in order to stop the sexual attacks, the women were

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<sup>237</sup> IACHR, Press Release 245/18, President of the Inter-American Commission on Human Rights visits Nicaragua, November 16, 2018.

<sup>238</sup> IACHR, PM 1133/18, Amaya Eva Coppens Zamora et al. (Women deprived of liberty at La Esperanza Prison Facility), Resolution 84/18, Nicaragua, November 11, 2018.

<sup>239</sup> IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua, Washington, D.C., February 6, 2019; Nicaragua Investiga, “ANPDH enviará queja a Comité de Tortura de ONU por robo de comida a presos políticos”, January 25, 2019; Confidencia, “Denuncian robo de carceleros a presos políticos de la dictadura”, January 25, 2019.

<sup>240</sup> Within the framework of its conventional powers, the IACHR has received and systematized information on recorded acts of sexual violence against persons deprived of liberty in Nicaragua in the context of the crisis that began on April 18, 2018. In particular, through the MESENI, the IACHR directly documented 13 cases of rape. The IACHR has also made use of the information received in working meetings with civil society organizations, public and private hearings, the report of the Interdisciplinary Group of Independent Experts (GIEI), reports from civil society organizations and international organizations such as the Office of the United Nations High Commissioner for Human Rights, and others.

<sup>241</sup> Testimony received by the IACHR on September 2020 (PPL023)

<sup>242</sup> Testimony received by the IACHR on September 2020 (PPL030)

forced to film incriminating videos towards other people who opposed the government<sup>243</sup>.

They threatened to put me in a common cell, with common prisoners, so that anyone could have their way with me. [...] The guards would come and show me their private parts and say, "You like it. Look."<sup>244</sup>

While I was there, two female officers made me take off my clothes, leaving me completely naked, and later, abusing their power, they made me do squats naked; they checked my cell phone until there was nothing more to see, and when I asked them why they were doing it, they shouted at me in a loud and nasty tone to shut up and obey. Thank God my cousin and his family saw what happened and told relatives of mine who live about 1 km from the station; they showed up and were told I wasn't there. After the squats the officers told me to get dressed and said that I could leave, saying that the arrest was because I was on the streets<sup>245</sup>.

We were in a van with other people and on the road there was a checkpoint of about 10 armed paramilitaries stopping the vehicles. We didn't stop because of the fear they gave us as they started shooting at the van. They slashed our tires and managed to catch up with us and started threatening us with weapons. They beat us, tied our shoelaces and told us "why are you doing this to Commander Daniel Ortega? They kept pointing their guns at us, always threatening that they would kill us and me that they would rape and then kill me. They called the police and beat us up in the patrol car and took us directly to el Chipote<sup>246</sup>.

186. Likewise, the testimonies gathered by the IACHR indicate that, in many cases, such acts were used as a form of punishment or repression of women who had been identified as leaders of the protests or for their involvement in providing medical assistance to those injured in the protests.

They put her in a holding cell. She was in a lot of pain but they didn't give her any pills. One of the officers became upset with her when she asked why they were calling her a terrorist, that she would have

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<sup>243</sup> In its 2018 Annual Report, the IACHR reports on cases of sexual violence and even rape perpetrated by State agents during operations of clean-up and dismantling of roadblocks; as well as at facilities of the Judicial Police (*Auxilio Judicial*). According to complaints gathered by civil society, the sexual violence was allegedly used as an interrogation technique. Other complaints received by the Commission included reports of women being forced to undress and perform squats for their captors who, in some instances, groped and raped them in order to obtain information. IACHR, 2018 Annual Report, Chapter IV.B. Nicaragua, March 21, 2019, par. 216.

<sup>244</sup> Testimony received by the IACHR in January 2020 (IPPL45)

<sup>245</sup> Testimony received by the IACHR in May 2018 (PPLI5)

<sup>246</sup> Testimony received by the IACHR in January 2020 (IPPL41)

treated police officers as well. Then they took her to another room with a glass window. They made her take off her clothes and told her that she has to do 30 squats. She explained that she had a fracture and couldn't. They didn't care. They told her that she was a terrorist and to start doing squats. They hit her. When she couldn't stand it any more she fell. The female officer, with a satisfied look, called others people to come and pick her up [...] It was then that they called other male officers, who are wearing black balaclavas. They tell her to bend over, that they were going to check her, and he put his fingers into her vagina; another male officer came and covered her mouth. There were three men and the female officer.<sup>247</sup>

187. On February 14, 2019, in the context of a private hearing on the “Human Rights Situation of Women Deprived of Liberty in Nicaragua,” civil society organizations denounced that sexual violence had been used “as a method of torture” to obtain information for investigative purposes and to incriminate arbitrarily detained women rights defenders. According to the information submitted, at least four of them had been victims of rape. During the hearing, the IACHR received the testimony of a young nurse who provided medical assistance to people injured during the protests and who had been subjected to sexual violence and interrogation.<sup>248</sup>

In that dark room, the female cell boss and 5 men raped me, violated my rights, beat me, and physically abused me; I felt so dirty and my body hurt all over that day. After they did all that at the police station in [...] they moved me to a cell in El Chipote, where they handcuffed my hands tightly, until they turned purple. On the way, the policewoman in the van with me threatened to kill me. On arrival at El Chipote, the Commissioner physically assaulted me, pushing me against the wall, hitting my face, insulting me, saying this “daughter of ...” we are going to kill her here. They stripped me naked, took pictures and put me, still naked, in another room for questioning.

[...] After interrogation with a gun to my head, they put me in a damp cell with a lot of water and a rotten smell. I was taken out of my cell about eight times for the same interrogation and filmed accusations. Before I was released, a police officer told me that I had to call her to give her information about the people they wanted me to accuse.

188. At the public hearing on “Persecution, Repression, Criminalization and Judicialization of the Peasant and Forcibly Displaced Population of Nicaragua” held on September 25, 2019, the organization Acción Penal informed the Commission

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<sup>247</sup> Testimony received by the IACHR in September 2018 (PPL 023)

<sup>248</sup> IACHR, Private Hearing at the request of the petitioners on the Human Rights Situation of Women Deprived of Liberty in Nicaragua, 171st session, February 14, 2019. In IACHR archive.

about the case of a peasant woman, who was held in detention from May 6 to 13, 2019, was interrogated to obtain information about her daughter, and received death threats from police. According to the testimony provided, “although she begged them not to harm her, on the first night she was stripped naked and sexually violated by one of the agents”. Based on the information provided, the violation occurred again on two additional nights. The last two occasions reportedly occurred in the presence of other people, including amongst them, a woman.<sup>249</sup>

189. In its report “Forced Migration of Nicaraguans to Costa Rica,” the IACHR reported on the testimony of a woman who said she had acquired sexually transmitted infections, including HIV/AIDS, after being the victim of multiple rapes during periods of detention in Nicaragua<sup>250</sup>.

That day we were in the barricade in the morning and when we were leaving to rest, the police appeared, and they started to shoot at us. 11 of us were taken into custody. We were mistreated, robbed and beaten, they aimed weapons in front of us and took photos of us. Afterwards, they inspected us and the [woman] lieutenant Guadalupe made me do 50 squats naked. Next, five policemen molested me. I could only see the shoes of those who molested me, there were five individuals who did it. After that, I was taken naked to the women’s cell and later, I was taken to El Chipote in a van. In el Chipote, I was insulted and mistreated again, especially against me because I was identified as the leader of the organization [...].

On the 19th, I was in Diriamba, in a safehouse my injuries were cured and then, that same date we left in taxi to Rivas. At night, we were brought to the border and at 4 a.m. on the 20<sup>th</sup>, the 10 of us crossed in pairs through a “blind point.” Right there we asked for asylum in the Migration offices. Then, we were helped to a farm and I was given a medical examination, where I was diagnosed with sexually transmitted infections.

190. The inter-American system has established that, as the Convention of Belém do Pará indicates, violence against women constitutes not only a violation of human rights, but is also “an offense against human dignity and a manifestation of the historically unequal power relations between women and men” that “pervades every sector of society, regardless of class, race or ethnic group, income, culture, level of education,

<sup>249</sup> Report of Colectivo de Derechos Humanos Nunca Más, Acción Penal, Fundación para el Debido Proceso (DPLF), Movimiento Campesino de Nicaragua, *Situación de Derechos Humanos de la población Campesina* [Human Rights Situation of the Peasant Population], Managua and San José, September 22, 2019, p. 46. (IACHR archive); IACHR. Public Hearing “Persecution, Repression, Criminalization and Judicialization of the Peasant and Forcibly Displaced Population of Nicaragua,” 173rd Session, September 25, 2019;

<sup>250</sup> IACHR, Forced Migration of Nicaraguan Persons to Costa Rica, OEA/Ser.L/V/II. Doc. 150. September 8, 2019.

age or religion and strikes at its very foundation.”<sup>251</sup> Following the line of international jurisprudence and taking into account the Convention of Belem do Para, the Inter-American Court has held that sexual violence consists of actions with a sexual nature committed against a person without their consent, which besides the physical invasion of the human body, may include acts that do not involve penetration or even any physical contact whatsoever.<sup>252</sup>

191. In particular, and bearing in mind the testimonies gathered, the IACHR considers that forced nudity of women and groping, in addition to constituting a violation of their personal dignity, is sexual violence,<sup>253</sup> which is frequently used as an intentional and directed form of social control, tending to humiliate, dominate and disperse,<sup>254</sup> “because the consequences of sexual violence usually transcend the victim.”<sup>255</sup>
192. With respect to rape, the Inter-American Court has held that it is a form of sexual violence.<sup>256</sup> It has also stressed that the sexual rape of a female detainee by a State agent is an especially gross and reprehensible act, taking into account the victim’s vulnerability and the abuse of power displayed by the agent.<sup>257</sup> Also, rape can be considered an act of torture and/or cruel, inhuman or degrading treatment.<sup>258</sup>
193. Indeed, the Inter-American system has established that mistreatment which meets the following conditions constitutes an act of torture: (i) intentional, (ii) causes severe physical or mental suffering, and (iii) is committed with an objective or purpose. The Inter-American Court has established that an act of torture may be

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<sup>251</sup> I/A Court H.R., Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C. No. 216, par. 108.

<sup>252</sup> I/A Court H.R., Case of the Miguel Castro Castro Prison v. Peru. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of August 2, 2008 Series C No. 181, par. 306; Case of Rosendo Cantú et al. v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment of August 31, 2010, Series C. No. 216, par. 109.

<sup>253</sup> I/A Court H.R., Case of the Miguel Castro Castro Prison v. Peru. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of August 2, 2008 Series C No. 181, par. 306.

<sup>254</sup> I/A Court H.R., Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 28, 2018, Series C No. 371, par. 204.

<sup>255</sup> I/A Court H.R., Case of the Miguel Castro Castro Prison v. Peru. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of August 2, 2008 Series C No. 181, paras. 223 and 224; Case of Women Victims of Sexual Torture in Atenco v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 28, 2018, Series C No. 371, par. 200.

<sup>256</sup> I/A Court H.R., Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010, Series C. No. 215, par. 119; I/A Court H.R., Case of López Soto et al. v. Venezuela, Merits, Reparations and Costs, Judgment of September 26, 2018, Series C. No. 362, par. 187.

<sup>257</sup> I/A Court H.R., Case of Women Victims of Sexual Torture in Atenco v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 28, 2018, Series C No. 371, par. 183.

<sup>258</sup> I/A Court H.R., Case of Women Victims of Sexual Torture in Atenco v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 28, 2018, Series C No. 371, paras. 193; I/A Court H.R., Case of Rosendo Cantú et al. v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C. No. 216, par. 118.

perpetrated both through acts of physical violence and acts that cause acute mental or moral suffering to the victim.<sup>259</sup> In that regard, the Court has recognized that rape is an extremely traumatic experience that can have severe consequences and cause significant physical and psychological damage, leaving the victim “physically and emotionally humiliated,” a situation that, unlike other traumatic experiences, is difficult to overcome with the passage of time. This reveals that severe suffering of the victim is inherent to rape, even when there is no evidence of physical injuries or disease. Indeed, the after-effects of rape do not always involve physical injuries or disease. Women victims of rape also experience severe trauma and psychological and social consequences. Therefore, the Court considers that rape, like torture, pursues the objective of intimidating, degrading, humiliating, punishing or controlling the victim.<sup>260</sup>

194. The IACHR also notes the existence of common patterns in the acts of sexual violence recorded against women detained for their participation in social protests, which would suggest that they were perpetrated as an additional tool of punishment, repression, and humiliation in the context of the State's violent response to the protests that began on April 18, 2018, especially where victims were identified as leaders or as having provided assistance to people injured in the demonstrations. In this regard, the Inter-American Court has held that sexual violence targeting women in the context of protest may be designed to silence them, as a tactic or strategy of control, domination, and imposition of power, in order to prevent them from expressing political opinions and participating in public affairs.<sup>261</sup>
195. Although some cases mentioned in this section amount to torture under international law, all would seem to have remained unpunished. In this regard, the IACHR emphatically condemns the use of gender violence and, in particular, sexual violence as a form of State repression in the context of the protests, and recalls that the failure to investigate serious acts of mistreatment of people, such as systematic patterns of torture and sexual violence, constitutes a breach of the State's obligations in relation to gross human rights violations that contravene non-derogable norms and trigger obligations for States, including the duty to investigate, prosecute, punish, and provide redress for such practices.<sup>262</sup> Likewise, the Commission recalls that it is the duty of the State to investigate such acts of violence against women under the principle of enhanced due diligence<sup>263</sup>.

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<sup>259</sup> I/A Court H.R., Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C. No. 216.

<sup>260</sup> I/A Court H.R., Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C. No. 216, par. 114.

<sup>261</sup> I/A Court H.R., Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 28, 2018, Series C No. 371, paras. 193, 202-204.

<sup>262</sup> I/A Court H.R., Case of the “Las Dos Erres” Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment of 24 November 2009, par. 140.

<sup>263</sup> In this regard, the Inter-American Court has indicated that in cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are complemented and reinforced for

196. The Commission has also documented cases of gender-based violence against trans women deprived of liberty in men's facilities. As the IACHR has noted, LGBTI people are often at the bottom of the informal hierarchy in detention centers, resulting in heightened discrimination, as well as being disproportionately subjected to torture and other forms of ill-treatment. They are also at a higher risk for sexual assault and other acts of violence and discrimination at the hands of custodial staff or other persons deprived of liberty.<sup>264</sup>

At La Modelo: "They put me in what they call the 'double zero' cells with my partner; they didn't give us any water or food. We weren't provided with any food or water for three days. When the food came, it was full of dirt and cockroach legs. That food was shared by the four of us in that tiny cell. It was a very dark cell, completely disgusting. It's the most inhuman thing I've ever known."<sup>265</sup>

In El Chipote: "My rights as a trans person were not respected because I was placed in a very small cell with other men. I was not prepared for that. I was treated like a man because they said that my identity card had a man's name, so I had to be treated like a man. I was using some hormones given to me by the endocrinologist and the dermatologist, for my skin. In El Chipote, my medication was always refused admission, as were my body creams, my hair treatment, and many women's utensils."<sup>266</sup>

197. Victoria Obando, a trans activist and student at the National Autonomous University of Nicaragua in Managua, was arrested on August 25 in León and presented by government authorities to the media on August 29, 2018, as a terrorist.<sup>267</sup> The Commission has recorded information regarding the treatment that Victoria endured during her detention at La Modelo, a prison for men, including being forced to spend all day in her underwear and undergo humiliating and degrading treatment.<sup>268</sup>
198. Bearing in mind that the incarceration of women acquires its own dimensions that leads to specific violations of their rights arising from their gender, the IACHR recalls

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those State that are a party to it, with the obligations derived from the specific inter-American treaty, the Convention of Belém do Pará. IA Court H.R. Case of women victims of sexual torture in Atenco Vs Mexico. Preliminary Objection, Merits, Reparations and Costs. Sentencing from November 28, 2018, Series C No. 371, par. 270.

<sup>264</sup> IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. November 12, 2015, par. 145 and 148.

<sup>265</sup> Testimony received by the IACHR in January 2020 (IPPL45).

<sup>266</sup> Testimony received by the IACHR in January 2020 (IPPL45).

<sup>267</sup> El Nuevo Diario, Policía de Nicaragua acusa de terrorismo a estudiantes detenidos en León, August 28, 2018.

<sup>268</sup> IACHR, 2018 Annual Report, Chapter IV.B, Nicaragua, par. 206; Nicaragua Investiga, Presidenta de organización trans dice que por su género está más expuesta a abuso sexual, burlas y mal trato, August 30, 2018; Hoy, Acusan a siete jóvenes de terroristas, August 30, 2018.



that States should adopt all necessary comprehensive measures to ensure that their rights are effectively observed and guaranteed, so that they are not the object of discrimination and are protected from all forms of violence or exploitation. The IACHR also underscores the duty of states to act with the utmost diligence in adopting timely measures to prevent and eliminate all forms of violence and discrimination against women deprived of their liberty.<sup>269</sup>

199. By the same token, in addressing the situation of women deprived of liberty, the IACHR has urged States to adopt diligent measures with a gender perspective that take into consideration the historical discrimination and gender stereotypes that have had a negative effect on women, and which have severely limited the exercise of their civil, political, economic, social, and cultural rights in contexts of deprivation of liberty. A gender perspective also means taking account of the special risk of violence in all its manifestations, including physical, psychological, sexual, economic, obstetric, and spiritual, among others, as well as the fact that most such incidents end in impunity. That perspective also implies considering the specific risks to persons who have diverse or non-normative sexual orientations and gender identities and expressions, or whose bodies vary from the standard female or male body types. States should also include an intersectional and intercultural perspective that takes into consideration the possible aggravation and frequency of human rights violations due to factors such as racial-ethnic background, age, or economic position.<sup>270</sup>

## ***E. Treatment of Relatives of Persons Deprived of their Liberty***

200. In the context of the prolongation of the crisis in Nicaragua, the Commission has noted the worsening situation of the rights of relatives of detained persons, especially due to the distress and uncertainty generated by the appalling conditions of detention and the reprisals against detainees. Based on the testimonies and information received, the IACHR finds that, in addition to the need to ensure the health, food, and general well-being of their loved ones, a systematic practice of violations of the rights of family members persists in Nicaragua, in the form of harassment, threats, intimidation, and denial of justice:

The police officers did not cooperate to provide us with information about my daughter's location, they made us come and go from Chinandega to Managua without providing information. Then the

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<sup>269</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, July 3, 2017, par. 198.

<sup>270</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, July 3, 2017, par. 199.



police threatened us not to make a public complaint if we wanted to see my daughter again<sup>271</sup>.

When we go to leave food for our children, we mothers are attacked by policemen, for policemen, and hooded, they shout at us as "terrorists," all of our families have been besieged, intimidated, insulted when we go to visits in Chipote<sup>272</sup>.

201. In addition, family members have had to deal with obstacles to access an adequate and effective legal defense for their accused relatives.

When I was at the police station, they wouldn't let me talk to anyone. My family didn't know anything about me and my friends told them that I had been caught and that I was in District 1, and my mother went to ask at District 1 and the police told my poor mother that I wasn't there, that she should go ask the morgue.<sup>273</sup>

202. This situation is particularly distressing for the relatives of people deprived of their liberty who were detained in the interior of the country and subsequently transferred to Managua, removing them from their place of origin and making contact with families difficult. That has created a disproportionate and onerous burden for many families, who have had to leave their jobs and alter the dynamics of their family lives in order to visit loved ones.<sup>274</sup>

The next day he went with another daughter to Chinandega and as they couldn't find the place, they asked an officer who was there about his daughter and the officer told him to leave and that he would give them information later. [...] Hours later they were told to bring him food; they went to buy it and the man called him again and said that he had information that they had been taken to El Chipote, so they came to Managua, without knowing the city. They arrived at El Chipote in great fear and they did not give them any information either. They were told they were not there. The female officer telephoned to ask and then told them she was not there [...]. A lawyer told him that [...] she was in Chinandega but that she was beaten up, and that she would be released on the condition that she did not make a public complaint and that not photos were taken of her because she was beaten.<sup>275</sup>

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<sup>271</sup> Testimony received by the IACHR in October 2018 (PPL13).

<sup>272</sup> Testimony received by the IACHR in September 2018 (PPL-028 and PPL-025)

<sup>273</sup> Testimony received by the IACHR in January 2020 (IPPL21).

<sup>274</sup> IACHR, Press Release 187/2018, IACHR Calls On the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families, August 24, 2018; IACHR, Press Release 210/2018, Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua/Washington, D.C., September 26, 2018.

<sup>275</sup> Testimony received by the IACHR in October 2018 (O009).

203. The IACHR notes that when faced with the practice of denial of information about the location of detainees, relatives have had constantly to go to detention centers to obtain information on their whereabouts, in many cases without receiving a response. Likewise, those who were certain that their relatives were deprived of their liberty went to deliver the three meals or medicines to the detention centers, mainly at El Chipote and the district police stations.
204. In that context, during the first stages of the repression, the Commission noted threats against relatives of persons deprived of their liberty outside El Chipote, by both State agents and third parties; they were there due to the lack of information about the place of detention of their relatives.<sup>276</sup> Subsequently, from July 2018 on, pro-government groups took over the area around El Chipote with the aim of preventing the concentration of family members of detainees and legal representatives who, on a daily basis, request information on the people detained, as well as protest against their deprivation of liberty.

After July 21, El Chipote was taken over by government forces. We were going to leave food because that's where my father was supposed to be held. We receive verbal offenses [...]. They always made a barrier when we went, to insult us and call us "terrorists." Those paramilitary groups were threatening to kick us out. At one point we were chased by Hilux trucks and a motorcycle. Another time we were followed by a green car as we were leaving El Chipote.<sup>277</sup>

205. The IACHR observed that the visiting hours for persons deprived of liberty was established in an arbitrary way and repeatedly rescheduled without prior notice, even on the very day they were due to take place. When a visit did take place as planned, usually there was no privacy, prison authorities were present, and they were for short periods of time. In some cases, the only time family members were able to see their loved ones was for a few minutes before or after their court hearing. In particular, because in certain cases the Nicaraguan authorities also barred family members from public hearings.<sup>278</sup>

They took pictures of us all the time, at every turn. If our families came to visit us, they took photos, even of minor children; if they left us something, they took photos of us and then uploaded them to the government websites. They uploaded all the information about our families: names, ages, relationship. Everything with titles like "coup leaders visited," things of that nature.<sup>279</sup>

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<sup>276</sup> IACHR, Press Release 169/18, IACHR Confirms Reports of Criminalization and Legal Persecution in Nicaragua, Washington, D.C., August 2, 2018; OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April – 18 August 2018", August 2018.

<sup>277</sup> Testimony received by the IACHR in August 2018 (PPL 047).

<sup>278</sup> IACHR, Press Release 187/18, IACHR Calls on the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families, August 24, 2018.

<sup>279</sup> Testimony received by the IACHR in January 2020 (IPPL41).

206. The IACHR also also warns of the differentiated impacts on women and adolescent family members of persons deprived of liberty in Nicaragua, who, in many cases, assumed responsibility within the family nucleus of attending detention centers in order to provide their loved ones with food and basic hygiene supplies, and who, according to the testimonies received, have been victims of denigrating treatment by state authorities, including acts of sexual violence:

When I received my first visit, they stripped my daughters, checked them, my grandchildren who are underage were also stripped and checked, they were made to do squats. They humiliate families in all forms<sup>280</sup>

207. The Commission recalls that, for persons deprived of liberty, family support is essential in many areas and ranges from the emotional support to material assistance. In the majority of prisons in the region, the items that prisoners need to meet their most basic needs are not provided by the State, as they should be, but by their own families or third parties. Furthermore, at the emotional and psychological level, maintaining family contact is so important for inmates that its absence is considered an objective factor contributing to a heightened risk of their resorting to suicide.<sup>281</sup>
208. The Commission repeats its appeal to the State to establish the conditions necessary for guaranteeing that people deprived of liberty can contact their families by ensuring that visiting regimes are appropriate, regular, and predictable. In this regard, visits must be permitted at least as often as prescribed in the Prison Regulations and take place in a dignified manner and in conditions that are in no way degrading to the detainees. Likewise, the state must guarantee that medicines, food, and toiletries are allowed to reach those being held in prisons.

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<sup>280</sup> Testimony received by the IACHR in January 2020 (IPPL30).

<sup>281</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, par. 578.

CHAPTER 4  
RESPONSE OF THE JUSTICE  
SYSTEM



## RESPONSE OF THE JUSTICE SYSTEM

209. In recent years, the IACHR has expressed its concern regarding the lack of independence and autonomy of the Nicaraguan justice system as a result of various factors, such as interference by the executive branch, partisan use of all its structures, and appointment processes undermined by factors such as nepotism and manipulation by the governing party.<sup>282</sup> According to the information available to the IACHR, the Attorney General's Office had pre-established indictment forms to bring criminal charges against anyone who took part in the protests or provided support, including those who provided humanitarian assistance, such as food and medicine donations.<sup>283</sup>
210. In Chapter IV.B of its 2018 Annual Report on Nicaragua, the IACHR noted that, since 2000, the Supreme Court of Justice has been composed of 16 justices and 16 alternate judges, which made it possible to distribute the seats to the country's two principal political forces. In 2010, President Daniel Ortega approved Presidential Decree 03/2010 that made it possible for the judges of the Supreme Court of Justice to keep their seats although their terms of office had expired.<sup>284</sup> In 2013, the then United Nations Special Rapporteur on the independence of judges and lawyers, reported the huge political leverage involved in appointing the judges of the Supreme Court of Justice, since the government's political majority in the National Assembly made it possible to appoint those state officials without the endorsement of any other political representation.<sup>285</sup> By 2014, the FSLN and judges close to the President held three of the four chambers of the judicial branch of government.<sup>286</sup>

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<sup>282</sup> United States Department of State, Nicaragua 2017 Human Rights Report, April 20, 2018, p. 8

<sup>283</sup> IACHR, Press Release 187/18, IACHR Calls on the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families, Managua/Washington, D.C., August 24, 2018; IACHR, 2018 Annual Report, Chapter IV.B. Nicaragua, March 21, 2019.

<sup>284</sup> Nicaragua, Executive Decree No. 3 of 2010, January 11, 2010.

<sup>285</sup> United Nations, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Subregional consultation on the independence of the judiciary in Central America, 2 April 2 2013; In 2009, the Committee against Torture received allegations that "suggest that public bodies within the judicial system lack impartiality and independence, essential qualities for ensuring the effective application of the principle of legality. In particular, there have been allegations of irregularities in the appointment of judges, use of the judicial system for partisan ends and instances of corruption among judges and police officers." United Nations, Committee against Torture, 10 June 2009, párr. 14.

<sup>286</sup> El Confidencial, Instalan Corte Suprema de Ortega, April 23, 2014; See also, La Prensa, La Justicia al Estilo de Ortega, August 11, 2015.

211. In the context of the crisis in Nicaragua, the lack of independence of the justice system facilitated the use and manipulation of criminal law to criminalize and prosecute voices critical of or opposed to the government, resulting in hundreds of prosecutions on unfounded and disproportionate charges, as well as serious violations of the fair trial guarantees of detainees.<sup>287</sup>
212. Civil society organizations told the IACHR that the use of the apparatus of justice against the Nicaraguan people had increased and, far from fulfilling its obligation to protect, “it has become another piece of the pattern of human rights violations, as well as of the guarantee of impunity of the human rights violations perpetrated by officials linked to the regime.”<sup>288</sup> In the same vein, the Office of the United Nations High Commissioner for Human Rights held that irregularities committed in criminal proceedings revealed “the absence of the essential guarantees of judicial independence and impartiality.”<sup>289</sup>
213. In the section below, the IACHR analyzes the role of the Nicaraguan justice system in the judicial persecution and criminalization of protesters, peasant farmers, students, activists, human rights defenders, social leaders, and people who oppose the government, as well as violations arising from opening judicial proceedings on unfounded charges using previously prepared indictment forms; obstacles in accessing a timely, technical, and adequate legal defense; centralization of criminal proceedings and trials; widespread use of pretrial detention; and lack of effective remedies, such as habeas corpus.

## ***A. Judicial Proceedings Based on Unfounded and Disproportionate Charges***

214. Since July 2018, in the context of selective prosecutions and criminalization, the IACHR has noted the use of unfounded and disproportionate charges such as terrorism, organized crime, obstruction of public services, kidnapping, rape, arson, and the like. In that regard, the IACHR received the following testimonies from persons accused of such crimes:

[N]o one has used weapons, nor 'colluded' as a terrorist. Their only crime was to support the protests against the regime of president

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<sup>287</sup> IACHR, Press Release 187/18, IACHR Calls on the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families, August 24, 2018.

<sup>288</sup> Annex to the request for a thematic hearing on “Impunity and criminalization: The actions of the justice system in response to the crisis in Nicaragua” presented by various civil society organizations in the framework of the 174th session of the IACHR. In IACHR archive.

<sup>289</sup> Regional Office for Central America of the United Nations High Commissioner for Human Rights, Human rights violations and abuses in the context of protests in Nicaragua, 18 April – 18 August 2018, August 2018, paras. 82 to 90 and Recommendation 7.

Daniel Ortega and his vice president Rosario Murillo, but we all do that. We have the right as citizens.<sup>290</sup>

I was taken to the courthouse and shown the indictment and I was dumbstruck. The prosecutor began to read the charges, where she said that I had kidnapped some guys, that I had tortured them. Of course, I was surprised. It was only then that I found out what I was being accused of.<sup>291</sup>

Only the prosecutor who accused me of being the leader of the barricade spoke, saying I had ordered the other detainees to be kidnapped. There were other detainees, a neighbor, who I was surprised to see there. There were 22 defendants in the indictment, with me as the ringleader. I was accused of ordering the kidnapping, rape and burning of two people in my own home. Then they started changing my indictment, lessening it because nothing could be proved. The trial is still open, but I wasn't convicted.<sup>292</sup>

215. Likewise, the IACHR was repeatedly informed about the fabrication and/or manipulation of evidence to against people being prosecuted, which, in addition to being contradictory, was presented or disclosed in an identical manner in different proceedings. In other cases, the Office of the Attorney General has allegedly made accusations without any evidence at all or based predominantly on testimony from public officials and/or covert agents who appear masked during proceedings. These charges were also part of the strategy to prosecute and convict people for serious crimes.<sup>293</sup> The IACHR received the following illustrative testimonies of such situations:

He was held at Juigalpa police station for three months. After three months he was tried and incarcerated here near Juigalpa and sentenced to four years, but there was no evidence, no one came forward to say that he had robbed them; only the police and the prosecutor's office came forward. There was no complainant, only the police.<sup>294</sup>

They took us to the courthouse, we had about 10 hearings and in the penultimate one they told us that we were free. They told us they were sending us home from jail because they didn't have enough evidence. We were charged with carrying ammunition and

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<sup>290</sup> Testimony received by the IACHR in August 2018 (PPL0-023).

<sup>291</sup> Testimony received by the IACHR in January 2020 (IPPL08).

<sup>292</sup> Testimony received by the IACHR in January 2020 (IPPL39).

<sup>293</sup> El Confidencial, "Renuncian jueces y fiscales a justicia orteguista," November 18, 2018; La Prensa, Renuncian fiscales del Ministerio Público en Nicaragua, June 21, 2018.

<sup>294</sup> Testimony received by the IACHR in January 2020 (IPPL36).



developing chemical and radioactive weapons. All five of us were accused of the same thing and branded as a gang. Before our release we were each sentenced to six years at the last hearing (...) At one of the hearings a witness came forward, who was hit by us at the time of arrest and that person said that all he saw was that we were shot at and that it was unfair for us to be detained. It was a witness they brought in and it completely ridiculous. It was all ridiculous.<sup>295</sup>

I was sentenced to 41 years which was the sum of all the crimes I was charged with, 20 years for terrorism, another 20 years for financing terrorism, and another year supposedly for firing mortars. They never produced any evidence, no photos or anything. But since the political constitution provides for a maximum penalty of 30 years, I eventually got 30 years.<sup>296</sup>

They took me to two hearings. I was accused of aggravated theft from a citizen who didn't even exist, because he never showed up for the hearing. There was no evidence and they had to release me, so the hearings were suspended, cancelled. I didn't get a trial or a conviction. When I was released, I didn't sign any release papers. It was all illegal.<sup>297</sup>

Only the prosecutor who accused me of being the leader of the barricade spoke, saying I had ordered the other detainees to be kidnapped. There were other detainees, a neighbor, who I was surprised to see there. There were 22 defendants in the indictment, with me as the ringleader. I was accused of ordering the kidnapping, rape and burning of two people in my own home. Then they started changing my indictment, lessening it because nothing could be proved. The trial is ongoing, but I wasn't convicted.<sup>298</sup>

216. In July 2018, the IACHR learned of the adoption of Law No. 977 against Money Laundering, Financing of Terrorism, and Financing of the Proliferation of Weapons of Mass Destruction, which amended Article 394 on the offence of terrorism,<sup>299</sup> Article 395 on financing of terrorism,<sup>300</sup> and added Article 404 bis on the

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<sup>295</sup> Testimony received by the IACHR in January 2020 (IPPL39).

<sup>296</sup> Testimony received by the IACHR in January 2020 (IPPL33).

<sup>297</sup> Testimony received by the IACHR in January 2020 (IPPL21).

<sup>298</sup> Testimony received by the IACHR in January 2020 (IPPL30).

<sup>299</sup> Article 394. Terrorism. Anyone who, 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, where the purpose of such acts, by their nature or context, is to intimidate a population, alter the constitutional order, or compel a government or an international organization to perform or refrain from performing an act, shall be punished by 15 to 20 years' imprisonment.

<sup>300</sup> Article 395. Financing of Terrorism. Anyone who, directly or indirectly, unlawfully and deliberately, collects, captures, channels, deposits, transfers, moves, secures, manages, safeguards, brokers, lends, provides, or

proliferation and financing of the proliferation of weapons of mass destruction,<sup>301</sup> all in the Criminal Code.

217. The State of Nicaragua indicated to the IACHR that the persons accused of terrorism had been prosecuted under Law No. 641, Criminal Code of Nicaragua, and not under Law No. 977, which entered into force in July 2018, and therefore that it had not been applied retroactively. It was also noted by the State that that law was not created as a result of the crisis facing the country, but in keeping with the recommendations of the Financial Action Task Force (FATF).<sup>302</sup> However, in the same communication, the State said that its authorities have applied those regulations to bring complaints against organizations of human rights defenders.<sup>303</sup>
218. In addition, the IACHR notes that in the report of the State of Nicaragua entitled “Complete Report of the National Penitentiary System regarding All 273 Prisoners Detained, Accused, Prosecuted and/or Convicted for their Participation in Crimes Committed in the Context of the Failed Coup d’état Attempt,” of November 5,

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delivers assets, whether from a lawful or an unlawful source, with the intention that they be used or in the knowledge that they will be used, in whole or in part, to: (a) Commit or attempt to commit terrorism, attacks against internationally protected persons, offenses relating to dangerous materials, hostage taking, offenses against the safety of civil aviation, offenses against shipping and port security, and/or any other conduct prohibited by international legal instruments against terrorism signed by Nicaragua; (b) Make them available to or for use by terrorist organizations or terrorists for any purpose, regardless of whether they are intended for terrorist acts; (c) Finance travel by persons to a State other than their State of residence or nationality for the purpose of committing, planning, or preparing terrorist acts or participating in them; (d) Finance the radicalization or recruitment of persons to carry out terrorist acts or to join terrorist organizations; or (e) Provide or receive training for terrorist purposes. For an act to constitute financing of terrorism it shall not be necessary that the funds have actually been used to carry out the purposes listed in the previous paragraph, nor that the funds be linked to a specific terrorist act. The penalty shall be increased by one third in its minimum and maximum limits, when the offense is committed through the financial system or by a partner, director, manager, administrator, supervisor, external or internal auditor, representative or employee of a public entity or by a public authority, official or employee.

<sup>301</sup> Proliferation and Financing of the Proliferation of Weapons of Mass Destruction. 1. Proliferation of Weapons of Mass Destruction. Anyone who, individually, in the service of or in collaboration with gangs, organizations or groups, designs, manufactures, builds, acquires, possesses, develops, exports, transfers material, divides into parts, transports, transfers, deposits or makes use of atomic, chemical, biological and other weapons of mass destruction or chemical and toxic substances or their precursors, munitions and devices, which are expressly intended to cause death, serious injury or disruption of natural resources and public order, shall be punished by 20 to 30 years' imprisonment. 2. Financing of the Proliferation of Weapons of Mass Destruction. The crime of financing the proliferation of weapons of mass destruction is committed by anyone who, individually or in the service of or in collaboration with gangs, organizations or groups, deliberately provides or collects, attempts to provide or collect funds or other assets by any means, whether from a legal or illegal source, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in whole or in part, to reproduce, manufacture, acquire, possess, develop, export, transship, divide into parts, transport, transfer or deposit materials or weapons of mass destruction, atomic, chemical and biological substances and those chemicals, toxins or their precursors, munitions and devices, which are intended to cause death or serious injury. This offense shall be punishable by twenty to thirty years' imprisonment.

<sup>302</sup> State of Nicaragua, Comments of the State of Nicaragua on “Chapter IV. B, Annual Report of the IACHR,” February 22, 2019, p. 57.

<sup>303</sup> State of Nicaragua, Comments of the State of Nicaragua on “Chapter IV. B, Annual Report of the IACHR,” February 22, 2019, p. 52.

2018,<sup>304</sup> at least seven persons were accused of the crime of financing of terrorism.<sup>305</sup>

I was taken to the courthouse to hear the charge and I thought that I was going to be released and that my money (which had been taken from him at the time of his arrest) would be returned. But my money was the only evidence they had to charge me and start the trial. Not everything that was stolen from my house was put in the indictment. According to them that money was for financing terrorism. I thought that when the amnesty law came out they would give it back to me because it is my money, but they didn't give it back to me. It was my savings from all my work.<sup>306</sup>

219. The IACHR also denounced the arrest of the Miguel Mora, director of 100% Noticias television network and of its press chief, Lucía Pineda, on charges of terrorism and incitement to hatred that were never proven.<sup>307</sup> Although the two journalists were released on June 11 along with 55 other protesters under the Amnesty Law, the charges against them were not dropped, despite the fact that the trial had been suspended.<sup>308</sup>
220. The GIEI-Nicaragua concluded that there had been an evident misuse of the criminal offense of terrorism, as contained in Article 394 of the Criminal Code,<sup>309</sup> and that the amendment of the definition of the offense ran counter to the principle of criminal legality, especially since it did not strictly specify the criminal conduct.<sup>310</sup> The Commission, in turn, repeatedly expressed concern about the formulation of charges for this crime and called on the judiciary to exercise the utmost scrutiny of such charges.<sup>311</sup>

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<sup>304</sup> Ministry of Foreign Affairs of Nicaragua, Communication MRE/DM-DMC/00519/11/18, enclosing the “Complete Report of the National Penitentiary System regarding All 273 Prisoners Detained, Accused, Prosecuted and/or Convicted for their Participation in Crimes Committed in the Context of the Failed Coup d'état Attempt,” sent to the IACHR on November 5, 2018.

<sup>305</sup> They are María Adilia Peralta Cerrato, Kenia María Gutiérrez Gómez, Eddy Gertrudis González Padilla, Kicha (named in the report as Richard Sebastián López), Francisco Javier Dávila, Cristian Rodrigo Fajardo Caballero, and Aníbal Iván Parrales Jarquín.

<sup>306</sup> Testimony received by the IACHR in January 2020 (IPPL45).

<sup>307</sup> Univisión, December 22, 2018, “Urgente, hay paramilitares dentro del canal”: allanan una televisora en Nicaragua y acusan a su director de incitar al terrorismo; La Prensa, April 4, 2019, Miguel Mora y Lucía Pineda entre los diez casos más emblemáticos en el mundo de reporteros que están encarcelados; Voa Noticias, January 30, 2019, Periodistas nicaragüenses enviados a juicio por “terroristas”.

<sup>308</sup> El Nuevo Diario, August 8, 2019, Cosep y Amcham exigen devolución de bienes de Confidencial y 100% Noticias; Consejo Superior de la Empresa Privada (COSEP), August 23, 2019. COSEP y AmCham exigen devolución de 100% Noticias y Confidencial.

<sup>309</sup> GIEI-Nicaragua Report, December 2018, pp. 196-7.

<sup>310</sup> GIEI-Nicaragua Report, December 2018, pp. 269-271.

<sup>311</sup> IACHR, Press Release 210/2018, Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua/Washington, D.C., September 26, 2018.

After being at El Chipote for five days I was taken to the courthouse. The charges were read out to us; I was charged with 10 crimes at the time. The judge and the prosecutor did not have much basis in law and they were nervous because it was a political trial. They accused me of being the mastermind of the crimes, including setting fire to Radio Ya [...]. I was sentenced to 18 years; we were convicted of illegal arms sales, terrorism, and destruction of public services.<sup>312</sup>

221. Within the inter-American system, both the Commission and the Inter-American Court have established parameters for the regulation and application of criminal definitions of terrorism. The Inter-American Court has stated that in provisions defining such offenses, the principle of legality requires that a necessary distinction be made between such offenses and ordinary offenses, so that every individual and also the criminal judge have sufficient legal elements to know whether an action is penalized under one or the other offense. This is important with regard to terrorist offenses because they merit harsher prison sentences as well as ancillary penalties and disqualifications with major effects on the exercise of other fundamental rights.<sup>313</sup>
222. Finally, in 2019, the information available to the IACHR would suggest a shift in the patterns of criminalizing government opponents which, in addition to exposing a total absence of an impartial and independent justice system, aims to conceal that these people are prosecuted for political reasons. In particular, the people who were arbitrarily detained were charged with common crimes of robbery, threats, and illegally carrying firearms instead of using the “pre-written” indictment forms for more serious offenses such as terrorism and organized crime.<sup>314</sup>

## ***B. Lack of or Obstacles in Accessing a Timely, Technical and Adequate Legal Defense***

223. According to multiple testimonies received by the Commission, the right to a timely, technical, and adequate legal defense was systematically impaired by the refusal or obstruction of choosing or communicating with a legal representative; the arbitrary imposition of public defenders; the holding of hearings at unusual times or locations in order to prevent or obstruct the appearance of the defense; impediment or restricted access to the relatives of persons deprived of liberty and to human rights organizations; and the centralization of criminal proceedings and trials in the courts of Managua, among others.

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<sup>312</sup> Testimony received by the IACHR in January 2020 (IPPL14).

<sup>313</sup> I/A Court H.R., Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, Merits, Reparations and Costs, Judgment of May 29, 2014, Series C. No. 279, par. 163.

<sup>314</sup> IACHR, 2019 Annual Report, Chapter IV.B. Nicaragua, April 2020, par. 58.

224. In this regard, the State of Nicaragua informed the Commission in a communication received on February 13, 2019, that it “has guaranteed each accused person [...] their right of defense by ensuring the appointment of a defense counsel of his or her choice, [and] in the absence of such a counsel, a public defender has been appointed, who has exercised all the rights and powers that the law recognizes for the technical defense and to the accused, such as challenging the allegations of the prosecution, putting forward their own submissions, and presenting evidence, among others.<sup>315</sup> The State also said that “defenders and family members have had access to public hearings, as required by law.”<sup>316</sup>
225. In relation to the above, the OHCHR found that access to legal assistance of one’s own choosing appeared to have been restricted, given that some persons deprived of their liberty “were imposed public defenders in initial hearings despite attempts by human rights organizations to provide them with private lawyers.”<sup>317</sup> Lawyers defending individuals arrested in relation to the protests have also reportedly been regularly threatened by persons close to the Government.<sup>318</sup>
226. The Commission also received numerous testimonies to the effect that detainees were prevented from communicating with the legal representatives of their choosing.<sup>319</sup>

[Upon entering El Chipote: “I don’t know much about the law, but from the little I do know, I should have been brought before a court within 72 or 24 hours. I was hoping I could talk to a lawyer, or be allowed a phone call with my family. I wasn’t allowed to talk to anyone. I was in El Chipote for 57 days.”<sup>320</sup>

227. Likewise, the testimonies received by the IACHR reveal obstruction of communication with their defense counsel, especially at La Modelo and La Esperanza, since they were not granted privacy or the time necessary to do so, thus affecting the quality of the defense. Furthermore, in many cases, the only time the person deprived of liberty could communicate with his or her legal representative was minutes before his or her hearing.<sup>321</sup>

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<sup>315</sup> State of Nicaragua, Communication received on February 13, 2019, pp. 59-60 and 62.

<sup>316</sup> State of Nicaragua, Communication received on February 13, 2019, pp. 59-60 and 62.

<sup>317</sup> OHCHR, “Human rights violations and abuses in the context of protests in Nicaragua, 18 April – 18 August 2018”, August 2018, para. 85.

<sup>318</sup> OHCHR, “Human rights violations and abuses in the context of protests in Nicaragua, 18 April – 18 August 2018,” August 2018, para. 86.

<sup>319</sup> Testimony received by the IACHR in August 2018 (PPL-022).

<sup>320</sup> Testimony received by the IACHR in January 2020 (IPPL08).

<sup>321</sup> IACHR, Press Release 187/18, IACHR Calls On the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families, August 24, 2018; OHCHR, “Human rights violations and abuses in the context of protests in Nicaragua, 18 April – 18 August 2018,” August 2018, para. 87.

About 20 days after I was arrested I was taken to court. I had a lawyer but they wouldn't let me talk to her, and they wouldn't let her talk either; there in the small room where it's full of armed men.<sup>322</sup>

I was presented to the court after 72 hours, about 5 days. We were accused of robbing a police station and holding up a government van. We were accused of two deeds that occurred in different parts of the country. We were also accused of harming the state through organized crime. I was sentenced to 18 and a half years [...]. We had no right to see our lawyers or talk to them; I could only speak for a few minutes when we arrived in court for the hearing.<sup>323</sup>

Our defense were human rights lawyers from the CPDH. The only time I could see the lawyers was in court, during the trial, since we were not allowed to talk to them, we were not permitted any contact. We could not have visits from them, nor talk for more than five minutes, [and] always with the warders next door.<sup>324</sup>

We had the right to an attorney, but not to plan our defense; we were unable to talk to our lawyer. It was only at the hearing that she would approach us to tell us how things were going and the officials would approach her and tell her that she could not talk to us. She was a lawyer from the CPDH.<sup>325</sup>

228. The Commission also learned of the criminal proceeding instituted against retired Major Tomás Maldonado for the crime of terrorism, after being detained for more than twenty days without access to a lawyer. A similar situation occurred with Lenin Salablanca, who reportedly took part in the blockades in the Department of Juigalpa.<sup>326</sup>
229. The IACHR also observed the perpetuation of practices related to the holding of hearings at unusual times or places in order to prevent and hinder the appearance of private defenders counsel and restrict access to public hearings for the families of detainees.

Luis was participating in the marches; he was caught in Leon on August 25 and brought to El Chipote. They don't tell anybody about the first hearing and it's done behind closed doors. [I found out] that they were going to take him to his hearing because I was in El Chipote

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<sup>322</sup> Testimony received by the IACHR in January 2020 (IPPL30).

<sup>323</sup> Testimony received by the IACHR in January 2020 (IPPL41).

<sup>324</sup> Testimony received by the IACHR in January 2020 (IPPL14).

<sup>325</sup> Testimony received by the IACHR in January 2020 (IPPL39).

<sup>326</sup> IACHR, Press Release 223/18, IACHR warns of new wave of repression in Nicaragua, Washington, D.C., October 18, 2018.

to bring him food and I saw that a van was taking my son and other kids. On the day of the hearing I was able to talk to him for about three minutes.<sup>327</sup>

230. That restriction was also imposed on international human rights protection mechanisms. On 14 August 2018, the Supreme Court ruled that any international body wishing to participate in the hearings or trials had to channel their request through the Ministry of Foreign Affairs.<sup>328</sup>
231. The Inter-American Court has established that under Article 8 of the Convention, the right to an adequate defense is part of due process and for that right to be observed, a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants and must be fully informed of the charges against them<sup>329</sup> In particular, Article 8(2)(c) of the same instrument establishes the guarantee of “adequate time and means for the preparation of his defense,” while the Inter-American Court has determined that obstacles to free and private communication between the accused and his defense counsel constitute violations of that right.<sup>330</sup> For its part, the Commission has indicated that the right to a defense must necessarily be able to be exercised from the moment a person is identified as the possible perpetrator of or participant in a punishable act and only ends when the process, including, if applicable, the judgment enforcement stage, is completed, and before an “accusation” in the strict sense is made, and that the appointment of a public defender for the sole purpose of complying with a procedural formality would be equivalent to not having a technical defense, so it is imperative that such a defender act diligently in order to protect the procedural guarantees of the accused and thus avoid his or her rights being violated.<sup>331</sup>

### ***C. Centralization of Criminal Proceedings and Trials in the Managua Courts***

232. Another obstacle to access a timely, technical and adequate legal defense has been the centralization of criminal proceedings and trials against protesters and opponents of the Government in the Managua courts. The Commission noted that, although many of the alleged crimes of which demonstrators or opponents were

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<sup>327</sup> Testimony received by the IACHR in July 2018 (PPL-024).

<sup>328</sup> Poder Judicial, CSJ aclara sobre participación del GIEI en las audiencias y juicios, August 14, 2018.

<sup>329</sup> I/A Court H.R., Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03 of 17 September 2003, Series A No. 18, par. 117; IACHR, Guarantees for the Independence of Justice Operators: Towards strengthening access to justice and the rule of law in the Americas, 2008, par. 30.

<sup>330</sup> See, in this regard, I/A Court H.R., Case of Cantoral Benavides v. Peru, Reparations and Costs. Judgment of December 3, 2001, Series C. No. 88, par. 127.

<sup>331</sup> I/A Court H.R., Case of Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 26, 2010. Series C. No. 220, paras. 154 and 155.

accused had taken place in departments in the interior of the country, where the processed person maintained their habitual residence,<sup>332</sup> the trials were held in the capital, which made contact family and legal representative difficult, since it represented an onerous burden by requiring constant travel to the capital.<sup>333</sup> This practice would also appear to facilitate the appointment of government-friendly judges to review cases as part of a broadly coordinated management of cases associated with the crisis that included the police, the Office of the Attorney General, and the courts.<sup>334</sup>

233. The State informed the Commission that “[t]he criminal proceedings have been conducted in strict compliance with the requirements of territorial jurisdiction established by law,”<sup>335</sup> and that none of the accused have been removed from their competent judge, but rather have been tried in accordance with Article 34 of the Political Constitution of Nicaragua, which establishes: “Every person in a proceeding has the right, under equal conditions, to due process and effective judicial protection and, as part of thereof, to the following minimum guarantees: ... (2) To have their

<sup>332</sup> Ministry of Foreign Affairs of Nicaragua, Communication MRE/DM-DMC/00519/11/18, enclosing the “Complete Report of the National Penitentiary System regarding All 273 Prisoners Detained, Accused, Prosecuted and/or Convicted for their Participation in Crimes Committed in the Context of the Failed Coup d'état Attempt,” November 5, 2018.

<sup>333</sup> IACHR, 2018 Annual Report, Chapter IV.B. Nicaragua, par. 193; IACHR, 187/18, IACHR Calls On the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families, August 24, 2018.

<sup>334</sup> IACHR, 2018 Annual Report, Chapter IV.B. Nicaragua, March 21, 2019, par. 104.

<sup>335</sup> In that regard, the State reference Law No. 952, Law Amending Law No. 641, Criminal Code of the Republic of Nicaragua; Law No. 779, Comprehensive Law against Violence against Women, amending Law No. 641, Criminal Code and Law No. 406, Code of Criminal Procedure of the Republic of Nicaragua, adopted on June 20, 2017, and published in the Official Gazette “La Gaceta” No. 126 of July 5, 2017, Article 4 of which provides: “Add to Article 22 of Law No. 406, Code of Criminal Procedure of the Republic of Nicaragua, published in the Official Gazette “La Gaceta” No. 243 of December 21, 2001, a paragraph No. 7. Article 22 of Law No. 406, Code of Criminal Procedure, as amended, shall read as follows: Article 22. Territorial Jurisdiction. The territorial jurisdiction of the courts is determined as follows: 1. In the case of a consummated felony or misdemeanor, by the place where the felony or misdemeanor was committed; 2. In the case of an attempted felony, by the place where it was executed; the last act aimed at committing it; 3. In the case of a thwarted offense, by the place where the offense was intended to be committed; 4. In cases of continuing or permanent offense, by the place where the continuity or permanence has ceased or the last known act of the offense was committed; 5. In cases of an attempted, frustrated or consummated crime partly committed within the national territory, by the place where the act or omission was totally or partially carried or the outcome was verified; 6. In crimes of omission, the place where the omitted action was to be performed; 7. For offenses involving organized crime, unlawful association to commit a crime, crimes related to narcotics, psychotropic and other controlled substances, money laundering, trafficking in persons, trafficking in migrants, trafficking in human organs, tissues and cells, vehicle trafficking, crimes of possession, trafficking and storage of weapons, ammunition, explosives and other dangerous materials, terrorism, financing of terrorism, crimes against the banking and financial system, the judge or court of the territory in which any of the following circumstances occurs shall have jurisdiction: (a) The place where the association or organized group has its center of operations; (b) The place where the association or organized group has its assets; (c) Any of the places where the criminal act has been carried out or prolonged; (d) The place where the office of the Public Prosecutor’s Office where the police investigation is based is located. In the case of crimes of social significance and national consequence, or those in which there is a plurality of aggrieved, accused, or types of conduct, the judicial authority of the capital of the Republic has jurisdiction.” State of Nicaragua, Communication received on February 13, 2019, p. 58.



cases tried without delay by a competent court established by law. There is no compelling jurisdiction. No one may be removed from their competent judge or brought before an emergency jurisdiction...”<sup>336</sup> As to the reasons for centralizing proceedings, the State said that “in the case of crimes of social significance and national consequence, or those in which there is a plurality of aggrieved, accused, or types of conduct, the judicial authority of the capital of the Republic has jurisdiction.”<sup>337</sup>

234. The Commission notes that the broad ambiguity of the term “national consequence” made it easier for any crime allegedly committed in the context of the protests and demonstrations to be tried in the capital, despite having occurred in a different territory, causing unnecessary harm to the person deprived of liberty far from their place of residence and family members, as well as violating the right to a competent judge.
235. The Commission has specified that the transfer and transportation of inmates is another important element of the special relationship between the State and people in its custody, where both the right to humane treatment and other fundamental rights can be violated.<sup>338</sup> While in some cases the transfer of a person to a location far from their home might be justified, such a measure should be exceptional and governed by domestic law according to clear criteria that prevent its potential arbitrary, unjustified, or disproportionate use. Moreover, in any case in which the person deprived of liberty believes that they have suffered specific harm or the infringement of some of their fundamental rights as a result of being transferred, they should be able to seek remedies from the competent judicial authority.<sup>339</sup>
236. The State must take all steps conducive to ensuring that persons deprived of liberty are not confined in facilities located at extreme distances from their community, family, and legal representatives. The State should likewise examine the individual case of each prisoner and wherever possible arrange for transfer to a prison located

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<sup>336</sup> State of Nicaragua, Communication received on February 13, 2019, p. 58.

<sup>337</sup> State of Nicaragua, Communication received on February 13, 2019, p. 58.

<sup>338</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, Adopted by the Inter-American Commission on Human Rights on December 31, 2011, par. 485. As the Commission noted in that thematic report, “[t]hese standards are also recognized at the universal level in the Standard Minimum Rules for the Treatment of Prisoners, Rule 45; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 20; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 26; and the United Nations Principles on Mental Illness, Principle 7.2. Similarly, and concurring with these standards, European Prison Rules, Rules 17.1, 17.3 and 32.” See, par. 487; IACHR, Report No. 1/17, Case 12.804, Merits, Néstor Rolando López et al., Argentina, January 26, 2017, par. 115.

<sup>339</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, Adopted by the Inter-American Commission on Human Rights on December 31, 2011, par. 601; IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, Adopted by the Inter-American Commission on Human Rights on December 31, 2011, par. 594; IACHR, Report No. 1/17, Case 12.804, Merits, Néstor Rolando López et al., Argentina, January 26, 2017, par. 117.

near the family's residence.<sup>340</sup> When access to detention centers and prisons makes it extremely difficult or onerous for families, to the point of making regular contact impossible, it inevitably infringes on the right of both parties to maintain family relations. Therefore, depending on the particulars of each case, this may constitute a violation of the right to family protection, and eventually, of other rights such as the right to personal integrity or due process.<sup>341</sup>

## ***D. Use of Pre-Trial Detention in Violation of Human Rights Standards***

237. The information and testimonies received by the Commission indicate that most of those detained for acts related to the protests have been subject to the precautionary measure of pretrial detention, in contravention of inter-American standards and Nicaragua's own law. Indeed, on September 18, 2018, according to public declarations made by the Deputy Minister of the Interior, a total of "204 prisoners" were being held in the National Penitentiary System for actions linked to the protests that began on April 18. Of those, seven had reportedly been sentenced and 197 were still on or awaiting trial. As of January 2019, those figures apparently remained unchanged. According to information provided to the IACHR, only 23 people were facing political processes on provisional release, most of them adolescents.<sup>342</sup>
238. The Nicaraguan Code of Criminal Procedure provides for a wide range of personal precautionary measures in criminal proceedings, the last of which is pretrial detention.<sup>343</sup> Its purpose is "to ensure the effectiveness of the proceedings by

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<sup>340</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, Adopted by the Inter-American Commission on Human Rights on December 31, 2011, par. 602, citing UN, Subcommittee on Prevention of Torture, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras, CAT/OP/HND/1, 10 February 2010, para. 248; IACHR, Report No. 1/17, Case 12.804, Merits, Néstor Rolando López et al., Argentina, January 26, 2017, par. 118.

<sup>341</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, Adopted by the Inter-American Commission on Human Rights on December 31, 2011, par. 594; IACHR, Report No. 1/17, Case 12.804, Merits, Néstor Rolando López et al., Argentina, January 26, 2017, par. 116.

<sup>342</sup> Presos Políticos, "Informe sobre la dramática situación de presos y presas políticas en Nicaragua," received by the Commission on January 28, 2019.

<sup>343</sup> "Article 167. Types. The judge or court may adopt, by reasoned order, one or more of the following precautionary measures in relation to persons or real property: 1. The following are personal precautionary measures: (a) Home arrest or custody by another person, either unsupervised or with the supervision ordered by the court; (b) Ban on departure from the country or the deposit of a minor; (c) The obligation to submit to the care or supervision of a specific person or institution, who shall report to the court on a regular basis; (d) Periodic presentation before the court or the authority designated by it; (e) Prohibition from leaving the country, the town where he resides or the territorial area determined by the court without permission; (f) Prohibition from attending certain meetings or places; (g) Prohibition from communicating with specific persons, provided that the right of defense is not affected; (h) Immediate vacation of the home in the case of domestic or intra-family violence or sexual offenses, when the victim lives with the accused; (i) Prohibition

guaranteeing the presence of the accused and the regular gathering of sources of evidence.” In that regard, “the suitability of each of them in relation to the penalty that could be imposed, the nature of the offense, the extent of the damage caused and the danger of evasion or obstruction of justice” must be taken into account, since “under no circumstances may they be used as a means of obtaining the confession of the accused or as an early criminal punishment.”<sup>344</sup>

239. That regulation also establishes as general conditions of application that no one may be subjected to a precautionary measure except by order of the competent judge when there are reasonable indicators of guilt against them and adds that no measure may be applied if it is evident that in conjunction with the deed there is a cause for justification, for non punishability, or for extinction of the criminal action or of the penalty that it is considered could be imposed. The rule emphasizes that deprivation of liberty is only appropriate when other precautionary measures are insufficient to ensure that the purposes of the proceeding are achieved.<sup>345</sup> In that regard, “measures of personal coercion” may not be ordered where they “appear disproportionate to the seriousness of the offense, the circumstances in which it was committed, and the penalty likely to be imposed”, “may be ordered only by a substantiated court decision” and “shall be carried out in such a way as to cause the least possible harm to those concerned.”<sup>346</sup> In addition, the judicial authority must carry out a monthly review of the precautionary measure, which it may replace when it deems it prudent with others that are less onerous.<sup>347</sup>
240. The Commission recalls that the obligatory use of pretrial detention based on crime type runs counter to the American Convention and constitutes an interference on the part of the legislature in the discretionary powers vested in the judiciary. The State has the obligation to ensure that pre-trial detention is used in accordance with international standards and that if that measure does not respond solely to procedural criteria—such as the risk of flight or hindering the investigation— the application of alternative measures should be applied,<sup>348</sup> bearing in mind the right to be presumed innocent and the requirement that it be used in accordance with the principles of exceptionality, legality, necessity and proportionality.
241. In Nicaragua, the IACHR highlights that one of the factors that prevents the exceptional use of pretrial detention in accordance with its precautionary nature is

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from dismissing, transferring, or taking any other retaliatory action in the workplace against the person alleging sexual harassment; (j) Suspension from office, when the act of which they are accused has been committed in the exercise of their office; and (k) Pretrial detention. Code of Criminal Procedure of the Republic of Nicaragua, Law No. 406, adopted on November 13, 2001, and published in the Official Gazette “La Gaceta” Nos. 243 and 244 of December 21 and 24, 2001.

<sup>344</sup> Code of Criminal Procedure of Nicaragua, Article 166.

<sup>345</sup> Code of Criminal Procedure of Nicaragua, Article 168.

<sup>346</sup> Code of Criminal Procedure of Nicaragua, Article 169 and 170.

<sup>347</sup> Code of Criminal Procedure of Nicaragua, Article 172.

<sup>348</sup> IACHR, Press Release 210/2018, Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua/Washington, D.C., September 26, 2018, Recommendations 3.

the interference of the executive branch with the judicial authorities, which is even more serious when other patterns of violations of due process are taken into account, such as allegations of the use of indictments that are pre-formulated or based solely on the testimony of public officials or covert agents who appear masked during the proceedings.<sup>349</sup> Another significant factor are provisions in the rules of criminal procedure that enable pretrial detention to be used in relation to crimes against “the constitutional order” and “organized crime,”<sup>350</sup> which, according to the official narrative that labeled the social protest a “failed coup attempt,” were used to criminalize demonstrators and regime opponents.

## ***E. Lack of Effectiveness of Habeas Corpus***

242. The Commission and OHCHR received abundant information on the lack of effectiveness of the remedy of habeas corpus due to practices that reportedly prevent it from being granted, including (a) appointing legal counsels or judges to the case who were either deceased or lived abroad or in areas far from the penitentiary in question; (b) attempts on the part of judges to charge money in return for granting such petitions; and (c) refusals on the part of prison authorities to grant access to judges appointed to assess conditions of detention at the prisons in question.<sup>351</sup>
243. The GIEI-Nicaragua also confirmed the manifest ineffectiveness of habeas corpus, either because of the inertia of the authorities in charge of processing them, or else due to the blatant disobedience on the part of National Police personnel. The GIEI is unaware of any actions or decisions against those who disobey court orders and disregard the Constitution, the law and international human rights law.<sup>352</sup> Similarly, the GIEI confirmed cases where, despite writs of habeas corpus being granted, they could not be executed. For example, on June 8, 2018, the Second Criminal Chamber of the Appeals Court of Managua admitted a habeas corpus application on behalf of Reynaldo Antonio Lira Luqués, who worked as a promotor at CPDH, and appointed an enforcement judge, who informed the Court that he personally

went to the Directorate of Judicial Support and was received by the captain of the national police who was at the gate, but he refused to receive the writ and deliver it to the chief of that police district. After three hours of insisting he still refused to receive the appeal, and told

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<sup>349</sup> IACHR, 2018 Annual Report, Chapter IV.B. Nicaragua, March 21, 2019, par. 90.

<sup>350</sup> Code of Criminal Procedure of Nicaragua, Article 173.

<sup>351</sup> IACHR, Press Release 210/2018, Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua/Washington. D.C., September 26, 2018; OHCHR, “Human rights violations and abuses in the context of protests in Nicaragua, 18 April – 18 August 2018, August 2018, par. 84.

<sup>352</sup> GIEI-Nicaragua Report, December 2018, pp. 277.

him that he was not authorized to do so, and that his boss was not there and he did not know what day he would be there.<sup>353</sup>

244. In September 2018, the Office of the Rapporteur for the Rights of Persons Deprived of Liberty was informed of the failure to execute at least seven writs of habeas granted on behalf of Lenin Antonio Salablanca, who was allegedly held for more than 20 days in “El Chipote” without being brought before a court and without having any contact with his family.<sup>354</sup>
245. The importance of habeas corpus is that it is the appropriate means of guaranteeing liberty, controlling respect for the life and integrity of a person, and preventing their disappearance or the indetermination of their place of detention, as well as to protect the individual from torture or other to cruel, inhuman or degrading treatment.<sup>355</sup> At the domestic level, Article 189 of the Constitution establishes the remedy of habeas corpus for those whose freedom, physical integrity, and safety are being violated or in danger of being violated. According to Article 14 of the Constitutional Justice Law,<sup>356</sup> the purpose of the remedy of habeas corpus against acts of authority is to protect the freedom, physical integrity, safety, and other related rights that make up individual liberty whenever they are threatened or violated by acts or omissions of the authorities.
246. Article 7(6) of the Convention protects the right of anyone who is deprived of liberty to recourse to a competent court, in order that the court may decide without delay on the lawfulness of their arrest or detention and order their release if the arrest or detention is unlawful. The Inter-American Court points out that Article 7(6) protects the right of the person deprived of liberty to recourse to a judge, irrespective of the observance of their other rights and of the judicial activity in their specific case, which implies that the person detained effectively exercises this right, in the assumption that they can do so, and that the State effectively provides this recourse and rules on it.<sup>357</sup> In doing so, the Convention safeguards judicial control of the deprivation of liberty. Such remedies must not only exist formally in law, but be effective; that is, they must fulfill the purpose of obtaining, without delay, a decision on the lawfulness of the arrest or detention.<sup>358</sup>

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<sup>353</sup> GIEI-Nicaragua Report, December 2018, pp. 279.

<sup>354</sup> IACHR, Press Release 210/2018, Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua/Washington, D.C., September 26, 2018.

<sup>355</sup> I/A Court H.R., Case of La Cantuta v. Peru, Merits, Reparations and Costs, Judgment of November 29, 2006, par. 111.

<sup>356</sup> Law No. 983, adopted on December 11, 2018 and published in the Official Gazette “La Gaceta” No. 247 of December 20, 2018.

<sup>357</sup> I/A Court H.R., Case of Yvon Neptune v. Haiti, Merits, Reparations and Costs, Judgment of May 6, 2008. Series C. No. 180, par. 114.

<sup>358</sup> I/A Court H.R., Case of Pollo Rivera et al. v. Peru, Merits, Reparations and Costs, Judgment of October 21, 2016, Series C. No. 319, par. 130.

## ***F. Non-compliance of Release Orders Issued by Judicial Authorities in Favor of Persons Deprived of their Liberty***

247. In several cases documented by the Commission, persons continued to be deprived of their liberty, despite the existence of release orders issued by the competent judicial authorities that were not executed by the prison authorities.<sup>359</sup> For example, José Ramón González, one of the university students who participated in the National Dialogue, was reportedly deprived of his liberty by the National Police on November 21, 2018, for acts related to his alleged participation in a roadblock. Subsequently, on January 28, 2019, he was acquitted by the Fifth Local Criminal Court of Managua; however, he was not released until March 1, 2019.<sup>360</sup>
248. Among other documented cases are those of Guillermo Sobalvarro Oporta and Albert Bernard Monroe, who were reportedly acquitted on October 15, 2018. In addition, their defense would have filed applications for amparo and a criminal complaint for contempt, in spite of which they were not released until March 2, 2019. In addition, Alex Vanegas, who was detained and charged with public disorder, had a release order issued for him on December 5, 2018, that was ignored by the authorities at El Chipote; he was eventually released on February 27, 2019, as part of the resumption of the National Dialogue. Other cases of non-compliance with release orders include those of Ana Gabriela Nicaragua López, Luis Antonio Aguilar Siézar, and José Antonio Gutiérrez Sánchez.<sup>361</sup>
249. The Commission recalls in relation to the right to judicial protection, in the terms of Article 25 of the Convention that it is possible to identify two specific State responsibilities. The first is to establish by law and to ensure the due application of effective remedies before the competent authorities that protect all persons subject to their jurisdiction against acts that violate their fundamental rights or that lead to the determination of their rights and obligations.<sup>362</sup> The second is to guarantee effective mechanisms to execute the decisions or judgments issued by [competent]

<sup>359</sup> IACHR, Press Release 273/2018, IACHR denounces aggravation of the repression and the closure of democratic spaces in Nicaragua, Washington, D.C./Managua, December 19, 2018.

<sup>360</sup> La Prensa, “Líder universitario José González sigue preso con orden de libertad”, February 14, 2019; Confidencial, “Negociación debe ser para lograr reformas políticas”, February 24, 2019; La Prensa, “Sueltan a más presos políticos del régimen de Daniel Ortega”, March 1, 2019.

<sup>361</sup> IACHR, Press Release 273/2018, IACHR denounces aggravation of the repression and the closure of democratic spaces in Nicaragua, Washington, D.C./Managua, December 19, 2018; Milenio, “Gobierno de Nicaragua libera opositores e inician diálogo”, February 27, 2019; VosTV, “Gobierno libera a presos políticos horas antes de la reanudación del Diálogo Nacional”, February 28, 2019; El Nuevo Diario, “Algunos protestantes tienen órdenes de libertad, pero llevan meses presos”, December 30, 2018; El Nuevo Diario, “CIDH: Policía incumple órdenes de libertad”, January 4, 2019; La Prensa, “Llevaron más de un mes detenidos ilegalmente en Rivas”, January 19, 2019.

<sup>362</sup> I/A Court H.R., The “Street Children” Case (Villagrán Morales et al.) v. Guatemala, Merits. Judgment of November 19, 1999, Series C. No. 63, par. 237; and Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 20, 2013, Series C. No. 270, par. 405.

authorities, so that the declared or recognized rights are effectively protected.<sup>363</sup> This is because a final judgment (*res judicata*) provides certainty concerning the right or dispute examined in the specific case and, therefore, one of its effects is the requirement or obligatory nature of compliance.”<sup>364</sup> The contrary would imply the denial of this right.<sup>365</sup>

250. In this regard, Article 25(2)(c) of the Convention establishes the right “that the competent authorities shall enforce such remedies when granted.” The Inter-American Court has indicated that State have the obligation to ensure the means to execute such final decision.<sup>366</sup> The existence of effective mechanisms to execute the decisions or judgments is also necessary, so that the declared rights are protected effectively.<sup>367</sup> Additionally, said Court has also established that the effectiveness of judgments depends on their execution. The process should lead to the materialization of the protection of the right recognized in the judicial ruling, by the proper application of [said] ruling.<sup>368</sup>

## ***G. Retaliation against Justice Operators***

251. The IACHR received information about arbitrary transfers and unjustified removal of justice operators in retaliation for not conforming to government policies,<sup>369</sup> as well as justice system officials who were forced to resign because of pressure exerted against them.
252. Among others, the IACHR was informed about the dismissal of Judge Indiana Gallardo on July 19, 2018, after she summoned the authorities of the National Penitentiary System (SPN) because they had removed three persons on trial from a

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<sup>363</sup> I/A Court H.R., Case of Baena Ricardo et al. v. Panama, Competence, Judgment of November 28, 2003, Series C. No. 104, par. 79; and Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, *supra*, par. 405.

<sup>364</sup> I/A Court H.R., Case of Acevedo Jaramillo et al. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment dated February 7, 2006. Series C. No. 144, par. 167; and Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, *supra*, par. 405.

<sup>365</sup> I/A Court H.R., Case of Cantos v. Argentina, Merits, Reparations and Costs, Judgment of November 28, 2002, Series C. No. 97, par. 54, and Case of Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Series C. No. 265, par. 193.

<sup>366</sup> I/A Court H.R., Case of Baena Ricardo et al. v. Panama, Competence, *supra*, par. 79; and Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, *supra*, par. 405.

<sup>367</sup> I/A Court H.R., Case of Acevedo Jaramillo et al. Peru, *supra*, par. 220.

<sup>368</sup> I/A Court H.R., Case of Baena Ricardo et al. v. Panama, Competence, *supra*, par. 73; and Case of Liakat Ali Alibux v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment of January 30, 2014, Series C. No. 276, par. 33.

<sup>369</sup> Testimonies received by the IACHR on September 8 and 25 in Managua.



hearing chamber without her authorization;<sup>370</sup> the transfer of Judge Carlos Solís for ruling that the charges filed against Reynaldo Lira, promoter of the CPDH, were without merit; and the filing of punitive proceedings against judges who participated in the protests.<sup>371</sup>

253. In addition, a lawyer and notary public working in the judiciary whose job was to support judges in first-instance proceedings informed the Commission that when they found out that she was supporting “*los azules y blanco*” they took away half of her functions, including criminal ones, and she later had to resign.<sup>372</sup> In addition, the Commission was informed that a former appeals court advisor on criminal law, who had been in the judiciary for twelve years, was dismissed without cause after speaking out about the “violence and lack of democracy” on her social networks and participating in marches called by the Catholic Church.<sup>373</sup>
254. With regard to the Office of the Attorney General, the OHCHR noted that “[w]ith access to public employment strictly controlled by the Government, there is a general fear of speaking out in public institutions,” as illustrated by the fact that at least 15 officials with the Office of the Attorney General have resigned since the start of the crisis, “which [...] might be related to differing opinions regarding the formulation of criminal accusations by the Attorney General.”<sup>374</sup>
255. For its part, in its final report, the GIEI said that the resignations of prosecutors and the expulsion of judges further “consolidates a judicial system more and more in line with the interests of the Executive branch.”<sup>375</sup> An example of this is the testimony of a former prosecutor received by the Commission, who said that she resigned from her position when she was called to take up the case against well-known human rights defenders who were detained shortly after the protests began. She also said that another prosecutor had previously resigned for the same reasons, and subsequently six or seven prosecutors did likewise because they disagreed with the position of the judicial authorities.<sup>376</sup>

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<sup>370</sup> El Nuevo Diario, CSJ destituye a jueza Indiana Gallardo, July 19, 2018; La Prensa, Corte Suprema descalifica a la juez Indiana Gallardo, July 21, 2018. According to an official statement, the Judge Gallardo was dismissed for an irregular act. Judicial Branch, CSJ destituye a jueza Indiana Gallardo por actuar contra ley expresa, July 20, 2018.

<sup>371</sup> El Confidencial, Renuncian jueces y fiscales a justicia orteguista, November 18, 2018; La Prensa, CSJ sigue volando cabezas a jueces y magistrados opositores, October 23, 2018; La Prensa, Los siete jueces que el orteguismo usa para reprimir a los manifestantes en Nicaragua, October 1, 2018.

<sup>372</sup> Testimony PPL-006, received on October 16, 2018.

<sup>373</sup> Testimony O-048, received on February 11, 2019.

<sup>374</sup> OHCHR, “Human rights violations and abuses in the context of protests in Nicaragua, 18 April – 18 August 2018,” August 2018, para. 43; El Confidencial, “Renuncian jueces y fiscales a justicia orteguista,” November 18, 2018; La Prensa, Renuncian fiscales del Ministerio Público en Nicaragua, June 21, 2018.

<sup>375</sup> GIEI-Nicaragua Report, December 2018, p. 212.

<sup>376</sup> Testimony received by the IACHR in September 2018 (PPL0-017).



256. The principle of independence of the judiciary has been recognized as “international custom and general principle of law.”<sup>377</sup> The independence of any body, that performs jurisdictional functions is a condition *sine qua non* for the observance of the standards of due process as a human right and the lack of such independence affects exercise of the right of access to justice and creates mistrust and even fear of the courts, which discourages those who would otherwise turn to the courts for justice.<sup>378</sup> In relation to Nicaragua, the Inter-American Commission has expressed concern about the absence of an independent judicial branch because of appointment procedures tainted by factors such as nepotism or influence peddling and manipulation by the governing party.<sup>379</sup> Likewise, according to civil society organizations, although from the beginning of the crisis “the judicial system was politicized, the use of the apparatus of justice against the Nicaraguan people had increased and, far from fulfilling its obligation to protect, it has become another piece of the pattern of human rights violations, as well as of the guarantee of impunity of the human rights violations perpetrated by officials linked to the regime.”<sup>380</sup>

The Inter-American Commission insists that the independence of the judiciary and its clear separation from the other branches of government must be respected and ensured both by the executive and by the legislature, based on the recognition, in law, of the judiciary’s independence, including from interference by other branches of government. This guarantee is established in law through recognition of the principle of separation of powers.<sup>381</sup> The IACHR believes that judicial independence is a prerequisite for the exercise of the rights to due process and access to justice. The judicial branch, moreover, plays an indispensable role in monitoring the constitutionality of acts by other branches of government as well as in the administration of justice. Judicial independence is, therefore, a fundamental feature of the rule of law and democracy.<sup>382</sup>

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<sup>377</sup> United Nations, General Assembly, Human Rights Council. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, 24 March 2009, para. 14. 4

<sup>378</sup> IACHR, Guarantees for the Independence of Justice Operators: Towards strengthening access to justice and the rule of law in the Americas, 2008, par. 30.

<sup>379</sup> IACHR, 2018 Annual Report, Chapter IV.B. Nicaragua, March 21, 2019, par. 99.

<sup>380</sup> Annex to the request for a thematic hearing on “Impunity and criminalization: The actions of the justice system in response to the crisis in Nicaragua” presented by various civil society organizations in the framework of the 174th session of the IACHR. In IACHR archive.

<sup>381</sup> IACHR, Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas, 2008, par. 34.

<sup>382</sup> IACHR, Democracy and Human Rights in Venezuela, December 30, 2009, par. 183.

CHAPTER 5  
SITUATION OF RELEASED  
PRISONERS



## SITUATION OF RELEASED PRISONERS

257. The IACHR has followed up on the grave human rights situation of released prisoners, in particular the consequences of arbitrary deprivation of liberty, as well as on the allegations of lack of information on their legal situation and continued acts of harassment, threats, stalking, stigmatization, and constant surveillance. Those acts are reportedly intended to inhibit any kind of political organizing or demonstration.
258. Between February 27 and June 11, 2019, the State of Nicaragua announced the release of 493 people who had been detained in relation to the protests.<sup>383</sup> Of that number, 106 were released on the occasion of the adoption of the Amnesty Law and 387 were released following unilateral announcements by the State.<sup>384</sup> Although the IACHR welcomed the releases, it also received information about the failure to comply with the terms of the agreement signed by the Civic Alliance and the State of Nicaragua, due to massive and unilateral releases<sup>385</sup> deliberately done at times considered “critical” for the Nicaraguan government on the national and

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<sup>383</sup> The IACHR notes that 387 individuals were released following unilateral announcements and 104 persons were reportedly released when the Amnesty Law was passed. Ministry of the Interior: , February 27, 2019; , March 15, 2019; , April 5, 2019; , April 16, 2019; , May 20, 2019; , May 30, 2019; , May 30, 2019; Lista de 50 personas que se encontraban detenidas por haber cometido delitos contra la seguridad común y delitos contra la tranquilidad pública, que fueron liberadas el Lunes 10/06/2019 en cumplimiento de la Ley de Amnistía N° 996, aprobada por la Asamblea Nacional el 8 de junio del 2019, June 10, 2019; Lista de 56 personas que se encontraban detenidas por haber cometido delitos contra la seguridad común y tranquilidad pública, que fueron liberadas y entregadas el martes 11/06/2019 al Comité Internacional de la Cruz Roja, en cumplimiento de la Ley de Amnistía N° 996, June 11, 2019.

<sup>384</sup> According to reports by civil society organizations, two persons released under the Amnesty Law allegedly did not appear on the lists of “political prisoners” about whom a consensus was reached in the talks of the Negotiation Table. IACHR, 174th regular session, public hearing “Amnesty Law,” November 11, 2019.

<sup>385</sup> For example, on April 16, 636 people were released from prison. Even though these people were officially released under the category of “common prisoners,” civil society identified that 36 of them were included on the list drawn up by Civic Alliance for Justice and Democracy.

international agenda.<sup>386</sup> Subsequently, on December 30, 2019, the State announced the release of 90 people.<sup>387</sup>

259. The information available to the IACHR indicates that these releases have not included everyone who was deprived of liberty for acts related to the protests, especially since arbitrary detentions have continued in the country.
260. After the announcement of the suspension of the work of the Negotiation Table on July 19, 2019, the IACHR denounced the intensification of harassment, threats, and aggression towards people who had been released from prison, as well as permanent surveillance by police officers and civilians in vehicles who question their relatives, and neighbors, and loiter in the vicinity of their homes until the early hours of the morning.<sup>388</sup>

Since my release there have been police outside my house all the time. After the Amnesty Law was passed it stopped, but even so they're always driving by [...]. I've also had threatening text message, saying I'm going to catch a bullet. And so it is, the police are always stalking those of us who were released from prison.<sup>389</sup>

261. In addition, according to the testimonies received by the IACHR, many of the released persons continue to lack precise information about the grounds for their release and the rights associated with it, particularly in cases where the benefit of "family cohabitation" was granted generically or the precautionary measure was changed to a noncustodial measure.<sup>390</sup>

They told us we had to sign a piece of paper and that we were going to be released. We asked under what conditions and were not told, or were told to ask the prison director afterwards. The paper said that

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<sup>386</sup> According to the analysis presented by the International Crisis Group, the releases took place in the following context: The government released 100 political prisoners to mark the beginning of the dialogue on 27 February; 50 on 15 March, while the UN Human Rights Council was discussing a resolution on the country; another 50 on 5 April, a few hours before the OAS Permanent Council session on Nicaragua; 36 on 17 April, just before the anniversary of the protests, hidden in a group of another 600 common criminals; another 100 on 20 May, this time under the oversight of the International Committee of the Red Cross, after the Civic Alliance announced its withdrawal from negotiations and the day before the OAS discussed Nicaragua again; 50 on 30 May, Nicaragua's Mother's Day, which in 2018 marked one of the violent peaks in the crisis; and 50 and 56 on 10 and 11 June respectively, coinciding with U.S. Congress hearings on the situation in the country. International Crisis Group, *The Keys to Restarting Nicaragua's Stalled Talks*, Report No.74 / Latin America & Caribbean 13 June 2019, p. 11.

<sup>387</sup> Ministry of the Interior, Nicaragua, , December 30, 2019.

<sup>388</sup> IACHR, Press Release 220/19, IACHR Speaks Out Against Ongoing Repression in Nicaragua and Expresses Its Concern at Increased Harassment of Human Rights Defenders and People Who Have Been Released from Prison, Washington, D.C., September 6, 2019.

<sup>389</sup> Testimony received by the IACHR in January 2020 (IPPL39A).

<sup>390</sup> IACHR, Press Release 172/19, IACHR Concerned about Ongoing Repression in Nicaragua, Washington, D.C., July 11, 2019.

we were leaving under the Family Cohabitation Regime, but they never told us what the procedure was, or what the restrictions were. We didn't know what the limits of that Cohabitation were. Some were told that they were not allowed to leave the house, others that they could not leave the apartment, others that they were forbidden from leaving the country. We didn't know what to do. Our lawyers didn't receive an explanation either, nor were there any records in the systems. We were told that we had to go and sign in at the courthouse, sometimes twice a month, sometimes once a month.<sup>391</sup>

262. With regard to the application of the Amnesty Law, the IACHR noted that the cases of the beneficiaries were closed without a dismissal decision, potentially leaving open the possibility of criminal proceedings being reopened under the “non-repetition” clause contained in Article 3 of that law.
263. In fact, as the IACHR has pointed out, the ambiguous language of the law allows people to be subject to re-arrest for exercising their political rights, such as peacefully assembly, as well as the rights to freedom of association and freedom of expression.<sup>392</sup> In addition, the IACHR was advised of the discretionary power wielded over anyone identified as a “political prisoner” in enforcing the law, inasmuch as not everyone who was supposed to benefit from the law, as agreed at the negotiation table, actually did.<sup>393</sup> Furthermore, at no time was any order issued for the return of property confiscated from the people or for the return of their seized identification documents.<sup>394</sup>
264. Likewise, those released from prison have been victims of smear campaigns on social networks and by government-affiliated media organizations. Such campaigns are also take place in their local neighborhoods, by means of stigmatizing graffiti daubed on the walls of their houses by government supporters or by actual members of the National Police.

I've been badly harassed: twice we've had our house painted and they wrote “bullets.” Once the police and the paramilitaries wanted to arrest me in a supermarket and the people who were there started making a fuss about why they wanted to arrest me when I wasn't doing anything wrong, and they left. I'm always getting trolled on social media; there's always something that mentions me. Last time they offered a thousand dollars for me, dead or alive, and things like that. In fact, about two weeks ago I had to move out of my house,

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<sup>391</sup> Testimony received by the IACHR in January 2020 (IPPL 41)

<sup>392</sup> IACHR, Press Release 145/19, IACHR Expresses Concern Over the Passing of the Amnesty Law in Nicaragua, Washington, D.C., June 12, 2019.

<sup>393</sup> IACHR, Press Release 172/2019, IACHR Concerned about Ongoing Repression in Nicaragua, Washington D.C., July 11, 2019.

<sup>394</sup> IACHR, 174th regular session, public hearing “Amnesty Law,” November 11, 2019.

because they came to ask the neighbors about me; they wanted to know where I was.<sup>395</sup>

People who have been released like me sort of get used to the harassment, but in the long run it undermines your health and a whole series of interpersonal relationships. Today I bumped into some colleagues from work and they acted totally oblivious to me; all this has repercussions [...]. We are stigmatized in the eyes of many.<sup>396</sup>

Everything has been politicized. I cannot work in state schools and there are only state schools here, so I am always being blocked because they look at me as an opponent of the regime. I am not free to work. Many people are afraid to come to my house because of the harassment. The government people give me bad looks and poor and simple people, seeing what happened to me, are terrified, let's say.<sup>397</sup>

265. In this grave context, the IACHR has requested the adoption of protection measures for released persons who are considered social leaders or human rights defenders and who are suffering more from acts of the harassment, surveillance, stalking, and aggression. On September 14, 2019, the IACHR requested the adoption of precautionary measures for Freddy Alberto Navas Lopez, a leader of the peasant movement who was deprived of his liberty because of his leadership in actions in opposition to the current government, and who, has been the victim of surveillance and harassment since his release on June 11, 2019.<sup>398</sup>
266. On October 4, 2019, the IACHR also requested precautionary measures for Christopher Nahiroby Olivas Valdivia, a member of the April 19 Movement in León, who was detained on August 25, 2018, and released on June 11, 2019, and who continues to be the victim of constant attacks against him by people close to the government through social networks, which have increased in intensity “to the point of attacks in his home by elements of so-called parapolice forces, who move around on motorcycles and in vans, wearing plain clothes, hooded or with helmets on their heads so as not to be identified. The attacks have escalated from photographs and surveillance to graffiti and damage to the house, until today when shots were fired directly at the home of the alleged beneficiary.”<sup>399</sup>
267. On December 24, 2019, the IACHR requested the adoption of precautionary measures for Bayron José Corea, a defender of sexual diversity rights and student leader in the 2018 protests as part of the “April 19 Movement.” Bayron Korea was arrested on August 25, 2018, and released on June 11, 2019. Since the very day of

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<sup>395</sup> Testimony received by the IACHR in January 2020 (IPPL 41)

<sup>396</sup> Testimony received by the IACHR in January 2020 (IPPL46A).

<sup>397</sup> Testimony received by the IACHR in January 2020 (IPPL 04).

<sup>398</sup> IACHR, Resolution 46/19, PM 621/19, Freddy Alberto Navas López.

<sup>399</sup> IACHR, Resolution 52/19, PM 865/19, Christopher Nahiroby Olivas Valdivia and his family.

his release he has been persecuted, threatened, harassed, and beaten by State agents, actions that have also affected his family members.<sup>400</sup> Finally, on January 10, 2020, the IACHR requested the adoption of precautionary measures for Ricardo Baltodano, who was a professor of history and coordinator of the social sciences area of the School of Basic Areas of the Polytechnic University of Nicaragua (UPOLI). Since his release, he has denounced the circulation of people close to the government in vehicles in the vicinity of his house armed with shotguns, and that he is harassed and under permanent surveillance by the National Police.<sup>401</sup>

268. According to information from civil society, during 2020, a “revolving door” phenomenon has been identified, that is, a system whereby a similar number of people are detained and released in the same time period, which, in addition to causing uncertainty among those released, appears to be aimed at maintaining the pattern of arbitrary detentions as a strategy to inhibit the opposition and deny the existence of “political prisoners.”<sup>402</sup>
269. According to the IACHR, “the constant political persecution and harassment that they endured, as well as the uncertainty and legal limbo their court cases were in, has led to a kind of Civil Death for those who have been released from prison and their family members; in practice it represents the denial of all their civil rights.”<sup>403</sup> In turn, as analyzed below, this situation has led to other effects and consequences for those released from prison, including internal and international displacement, since some people have had to move continuously to safe houses or have decided to leave the country in search of protection and safety.<sup>404</sup>

I was receiving psychological support from Médecins Sans Frontières, but one day, after the session, I was attacked by paramilitaries and I did not go again after that [...]. A week after my release I could not be in a public place because the police were threatening to arrest me. I can't rebuild my life because of the harassment. I have been denied enrollment at the university, a public state university; I am not even allowed to enter the university. And as far as work goes, people are afraid to give us work, because of the same harassment from the police.<sup>405</sup>

270. In general, the Commission notes that the released persons have not been able to return to work since their release because of persecution and harassment of potential employers. Many of those who were deprived of their liberty had an economically active life and played a fundamental part in supporting their family. They were merchants, professionals, teachers, office workers, farmers, self-employed, etc. Many of them are still detained or confined to their homes and unable

<sup>400</sup> IACHR, Resolution 61/19, MC 1045-19, Bayron José Corea Estrada and his family.

<sup>401</sup> IACHR, Resolution 3/20, PM 1130/18, Ricardo Baltodano Marcenaro, Nicaragua (extension)

<sup>402</sup> Civic Alliance, Preliminary list of persons detained and political prisoners, March 26, 2010.

<sup>403</sup> Monitoreo “Azul y Blanco”. En Nicaragua nada está normal. Muerte Civil: Situación de las y los excarcelados del Régimen Ortega Murillo, agosto 2019 (in IACHR archive).

<sup>404</sup> IACHR, 174th regular session, public hearing “Amnesty Law,” November 11, 2019.

<sup>405</sup> Testimonies received by the IACHR in January 2020 (IPPL 14).



to resume their daily activities. This not only impacts families' finances, but also the economy of the entire community. The testimonies received also suggest that the chances of getting a job in companies or offices linked to the State are practically null.

Getting a job is impossible: they can't work for the state, they can't get a job on their own because people are afraid of the police coming round. Their situation is tough. Those of us who are struggling like them understand, but there are others who don't, who are afraid to give them work.<sup>406</sup>

271. According to information received, the National Police did not return the property and personal objects such as identity cards, mobile telephones, electronic equipment, work tools, money, and even vehicles that were taken from the people deprived of their liberty in the context of the protests. In that sense, some testimonies refer to the fact that the removal and non-return of that property make it difficult to find new work, as in the case of work tools or vehicles that were used to provide public transport services or to transport goods.
272. In addition, the Commission also recorded cases of people deprived of their liberty who were physically harmed during their detention, including broken bones and other injuries that will have a lifelong impact, impairing their mobility and autonomy, and which still require costly treatment.

I have a bad shin [his leg was broken during his detention]. I'm seeing doctors because I have to get injections, but I don't know how to do them myself. They are determining whether or not I need another operation. I am making appointments with specialists, because I am in a lot of pain and walking is very difficult. I can't work because I'm disabled. I'm using a cane because my body is rejecting the prosthesis they put in me. It's a horrible situation. It limits my ability to work and make a living.<sup>407</sup>

## ***A. Internal and External Displacement***

273. The Commission has been monitoring how large numbers of Nicaraguans have been forced to move to another part of a city or to another town due to the upsurge and prolongation of violence after the start of the repression of the April 2018 protests, which escalated in July, August and September of that year.
274. In its report "Forced Migration of Nicaraguans to Costa Rica", the Commission noted that, at first the Nicaraguan State's actions were characterized by violent repression of the protests, which later evolved into selective persecution, arbitrary arrests, and

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<sup>406</sup> Testimony received by the IACHR in January 2020 (IPPL 36).

<sup>407</sup> Testimony received by the IACHR in January 2020 (IPPL 04).

criminalization of dissidents and their families. This has forced thousands of people to hide and displace, even to the point of being forced to flee Nicaragua to seek international protection in other countries. According to information received by the IACHR, most people did not stay long in one place because of fear and constant persecution by people who support the government, as well as by the National Police through lists and the Citizen Power Councils (CPCs) in each neighborhood.<sup>408</sup>

275. The Commission notes that amongst those who have been forcibly displaced there is a potentially vulnerable group that is connected to the problems faced by persons who have been deprived of their liberty or those who are related to them. The factors that led people to be displaced included widespread repression and, in particular, criminalization through judicial procedures without fair trial guarantees, false indictments, and disproportionately punitive sentences by a judiciary that was used to punish involvement in demonstrations and discourage political dissent; in addition to harassment, constant threats, fear, lack of opportunities for reintegration in the job market, and stigmatization as a result of having been deprived of liberty in connection with the protests.

They gave me “Family Cohabitation,” but I am not at home because I’m afraid will come looking for me. When I’m in the street I wearing caps, jackets, in case I’m followed. That’s the fear that those of us who were in prison have: that we’ll get caught again.<sup>409</sup>

Cops would come, they’d stand at the corner of my house; motorcycles would come. After my son was released, he went to Managua. They’re watching my house. In the morning I see motorcycles over here, over there, at the corner, and so on. I go out and ask them what they need. How I can help them. They’re motorcycles, with paramilitaries. They say nothing and leave. They came for 3 or 4 days and yesterday I happened to meet them again on motorcycles by my house.<sup>410</sup>

276. The organs of the inter-American human rights system have determined that internal displacement not only violates the right to move freely within the territory of the State and the right to choose one’s place of residence, but also entails multiple violations of human rights, such as the right to an adequate standard of living, the right to humane treatment, the right to private and family life, the rights of the child, the right to work, the right to health, the right to an education, the right to property, the right to identity, and the right to participate in government, among others.<sup>411</sup> It

<sup>408</sup> IACHR, “Forced Migration of Nicaraguans to Costa Rica,” September 8, 2019.

<sup>409</sup> Testimony received by the IACHR in January 2020 (IPPL 21).

<sup>410</sup> Testimony received by the IACHR in January 2020 (IPPL 36).

<sup>411</sup> IACHR, Forced Migration of Nicaraguans to Costa Rica, OEA/Ser.L/V/II. Doc. 150, September 8, 2019, par. 57. I/A Court H.R., Case of Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 26, 2010. Series C. No. 213; and I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia, Merits, Reparations and Costs. Judgment of November 27, 2008, Series C. No. 192; I/A Court H.R.,

has also been understood as a continuing violation that persists until the persons are able to return safely to their places of origin in a voluntary and dignified way or are voluntary resettled in another part of the country.<sup>412</sup>

277. The Inter-American Court of Human Rights, in the case of *VRP and VPS and others v. Nicaragua*, indicated that the right of freedom of movement and residence may be violated when an individual is a victim of threats or harassment, and the State fails to provide the necessary guarantees so that he or she is prevented from moving about and residing freely in the territory in question, even when the threats and harassment originate from nonstate actors. Likewise, the lack of an effective investigation into acts of violence, as well as the situation of impunity, can undermine the trust of the victims in the justice system, and contribute to conditions of insecurity. In addition, such a situation of impunity can lead to or perpetuate exile or forced displacement.<sup>413</sup>
278. The situation of State repression and human rights violations in Nicaragua has not only forced Nicaraguans to displace internally, but has also led to their arbitrary displacement outside Nicaraguan territory via unsafe and clandestine routes. In March 2020, the Office of the United Nations High Commissioner for Refugees (UNHCR) indicated that more than 100,000 Nicaraguans had been forced to flee since the beginning of the crisis.<sup>414</sup> Many of these persons are former detainees who have had to emigrate with their families in the face of constant harassment and lack of possibilities for their reintegration.

While I was in custody, the paramilitaries and the police broke into my house. They took papers, my son's work equipment, countless things. My daughters had gone to Managua and my brother, my son, their wives and my nephews had to leave the country, they left for Honduras [...]. The paramilitaries have threatened to kill my son and my grandchildren.<sup>415</sup>

279. In view of the mass migration of Nicaraguans fleeing to other countries, particularly to Costa Rica because of its geographical proximity and the historical migration of Nicaraguans to that country, the IACHR has emphasized the importance of addressing the situation regionally and internationally. Accordingly, the IACHR reiterated its call to the States of the region and the international community to implement a regional and international response based on shared responsibility and respect for and guarantee of human rights.

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Case of *V.R.P., V.P.C., et al. v. Nicaragua*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of March 8, 2018

<sup>412</sup> United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement, 11 February 1998, E/CN.4/1998/53/Add. 2, Principle 28.

<sup>413</sup> I/A Court H.R., Case of *V.R.P., V.P.C., et al. v. Nicaragua*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of March 8, 2018, par. 309.

<sup>414</sup> UNHCR, Nicaragua: After two years of crisis, more than 100,000 have fled the country, 10 March 2020.

<sup>415</sup> Testimony received by the IACHR in January 2020 (IPPL 30).

280. At the same time, the Commission reiterates its call on the State of Nicaragua to end the repression, to deactivate the atmosphere of intimidation that pervades the country and, in particular, to guarantee as a matter of priority conditions for the safe return of all persons displaced in the context of the crisis, including formerly detained persons.



CHAPTER 6  
RIGHTS OF PERSONS DEPRIVED  
OF LIBERTY IN THE FACE OF THE  
EFFECTS OF THE COVID-19  
PANDEMIC



## RIGHTS OF PERSONS DEPRIVED OF LIBERTY IN THE FACE OF THE EFFECTS OF THE COVID-19 PANDEMIC

281. In the context of the COVID-19 pandemic, the IACHR has expressed its concern about the situation of persons deprived of liberty in Nicaragua due to the risk of contagion they face, as well as the lack of information on containment and prevention protocols and measures adopted by the State in detention facilities.
282. As of the date of this report, the State of Nicaragua had not taken any measures to contain the pandemic in the country in line with recommendations from specialized international organizations, including in the National Penitentiary System.<sup>416</sup> Despite the fact that on April 8 and May 13, 2020, the Ministry of the Interior announced the release of 1,700<sup>417</sup> and 2,815 persons at the national level,<sup>418</sup> respectively, the available information suggests that those measures were not taken in response to the COVID-19 pandemic, nor benefited persons arbitrarily deprived of their liberty for acts related to social protests or for being identified as government opponents. In addition, family members of those detained have reported restrictions on the entry of parcels such as more than the permitted amount of water, facemasks, or alcohol gel. In addition to aggravating the conditions of detention, the above could increase the risk to the health of detainees and their families<sup>419</sup>.
283. In view of the COVID-19 pandemic, the IACHR has called on the states of the region to adopt urgent measures to guarantee the health and integrity of persons deprived of liberty and their families, as well as to ensure decent and adequate detention conditions in centers of deprivation of liberty, consistent with inter-American human rights standards.<sup>420</sup> With respect to Nicaragua, the IACHR has urged the State

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<sup>416</sup> IACHR, Press Release 72/20, IACHR and OSRESCER Express Serious Concern About the Human Rights Situation During the Response to the COVID-19 Pandemic in Nicaragua, Washington, D.C., April 8, 2020.

<sup>417</sup> El 19 Digital, Gobierno de Nicaragua concede beneficio de convivencia familiar a 1 mil 700 presos y presas, April 8, 2020.

<sup>418</sup> El 19 Digital, Sistema Penitenciario Nacional entrega a 2,815 personas a sus Familias, May 13, 2020.

<sup>419</sup> Unidad de Registro y Defensa Jurídica de Nicaragua, “Encuesta sobre la situación y el manejo del COVID19 en centros de detención y reclusión de personas presas políticas,” April 2020. In IACHR archive; IACHR, 72/20, IACHR and OSRESCER Express Serious Concern About the Human Rights Situation During the Response to the COVID-19 Pandemic in Nicaragua, Washington, D.C., April 8, 2020.

<sup>420</sup> IACHR, Press Release 66/20, The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic, Washington, D.C., March 31, 2020.



to ensure the immediate release of all persons who are still being arbitrarily detained for acts related to the social protests that began on April 18, 2018.<sup>421</sup>

284. In accordance with its *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, the IACHR reminds States that all persons subject to their jurisdiction who have been deprived of liberty shall be treated humanely, with unconditional respect for their inherent dignity, fundamental rights—especially their rights to life and humane treatment—and guarantees, including access to fair trial guarantees indispensable for protecting rights and freedoms. The special position of States as guarantors regarding persons deprived of liberty requires that they respect the lives and personal integrity of those persons and ensure that they are afforded minimum conditions compatible with their dignity. Thus, States are obliged to take concrete and immediate action to ensure the rights to life, humane treatment, and health of persons deprived of their liberty in the context of the pandemic.<sup>422</sup>
285. In relation to containment and prevention measures, the IACHR reminds States of the need to define and provide clear information about the reasons for imposing any restrictive measures, as well as their estimated duration and the time frame for their review. Furthermore, it is essential to apply measures transparently and without discrimination, ensuring that all detainees have equal access to protection and mitigation measures, with special attention to the needs of people in vulnerable situations. The implementation of protection measures must be carried out diligently and adequately to prevent people in isolation from suffering ill-treatment or any type of stigmatization, marginalization or violence.<sup>423</sup>
286. The Commission has also recommended that States in the region: (1) Adopt measures to address the overcrowding of detention centers, including the reevaluation of cases of preventive detention in order to identify those that can be replaced by alternative measures to deprivation of liberty, giving priority to populations with increased health risk against a possible contagion of COVID-19; (2) Evaluate as a priority the possibility of granting alternative measures such as probation, house arrest, or early release for people considered to be in the risk group such as the elderly, people with chronic diseases, pregnant women or with children in their care and for those who are close to serve sentences; (3) Adapt the conditions of detention, particularly with regard to food, health, sanitation and quarantine measures, to prevent the spread of COVID-19 within the facilities. In particular, guarantee that all centers have medical attention and provide special attention to populations in a particularly vulnerable situation, including the elderly;

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<sup>421</sup> IACHR, Press Release 72/20, IACHR and OSRESCER Express Serious Concern About the Human Rights Situation During the Response to the COVID-19 Pandemic in Nicaragua, Washington, D.C., April 8, 2020.

<sup>422</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle I.

<sup>423</sup> IACHR, Press Release 66/20, The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic, Washington, D.C., March 31, 2020.

(4) Establish protocols for the guarantee of security and order in detention centers, in particular to prevent acts of violence related to the pandemic and respecting inter-American standards on the matter.<sup>424</sup>

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<sup>424</sup> IACHR, Press Release 66/20, The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic, Washington, D.C., March 31, 2020.



CHAPTER 7  
CONCLUSIONS AND  
RECOMMENDATIONS



## CONCLUSIONS AND RECOMMENDATIONS

287. In the context of the serious human rights crisis in Nicaragua that began in April 2018, the IACHR took note of hundreds of arbitrary arrests of persons carried out under different modalities, according to the intensity of the different stages of the State's repression. In most cases, the main intention of the deprivation of liberty was to suppress a position of opposition to the current Nicaraguan regime and to inhibit any expression of social protest.
288. To date, the absence of official records makes it impossible to determine the exact number of persons detained and criminalized. However, the IACHR has been able to establish that, since April 18, 2018, at least 1,614 people have been deprived of their liberty for taking part in or supporting demonstrations.
289. The number of people detained and criminalized could be significantly higher, due to numerous factors, such as detentions that have not been reported by the State; lack of reporting by victims for fear of reprisals; detentions made by groups of armed civilians, in which people were not transferred to official facilities; and the fact that many people, such as grassroots leaders, students and peasants, were detained more than once.
290. According to the information analyzed, National Police officers and/or parapolice groups made a multiplicity of selective, mass arrests with abusive and disproportionate use of force that included cruel, inhuman, or degrading treatment, some of which could be classified as torture. Detentions also included acts of stigmatization, media exposure, persecution, and criminalization. These acts are serious violations of the rights to liberty and humane treatment enshrined in the American Convention.
291. The IACHR also noted, from the beginning of the protests, the non observance of the guarantees of due process, access to justice, and personal liberty evident in systematic patterns, which consisted of failure to notify the detainee of the reasons for their detention and their rights in that regard; failure to show a judicial order; incommunicado detention of detainees; and failure to bring them before a competent judicial authority within the statutory period for that purpose. Based on the testimonies received, some detainees were moved to illegal or clandestine detention centers such as municipal or government party facilities, before being transferred to police facilities.
292. Most of the people arrested and criminalized since 18 April 2018 were held in conditions contrary to human dignity, both in National Police facilities and in the National Prison System. These conditions have included isolation regimes, characterized by almost total segregation; inadequate ventilation; removal of

belongings; overcrowding; insufficient beds, mattresses and blankets; permission to leave their cells only twice a week; unsanitary conditions; negligent medical care; obstruction of visits; and application of maximum security regimes without objective criteria and for prolonged periods. People deprived of their liberty were also victims of reprisals for their opposition to the government and for participating in social protests. The complaints and testimonies received by the IACHR regarding the conditions of detention allege the imposition of cruel, inhuman, or degrading treatment or punishment by state officials, with a particularly aggravated impact on women detainees, in light of the complaints of sexual violence.

293. The lack of independence of the Nicaraguan justice system has facilitated the continued judicial persecution and criminalization of protesters, peasants, students, activists, human rights defenders, grassroot leaders, and those opposed to the government. In particular, the opening judicial proceedings on unfounded charges using previously prepared indictment forms; fabrication and/or manipulation of evidence; abridgment of the right to mount a timely, technical, and adequate legal defense; centralization of criminal proceedings and trials; widespread use of pretrial detention; and disproportionate prison sentences.
294. The people who were deprived of their liberty in the context of the social protests in Nicaragua have suffered emotional, psychological, physical and economic harm that continues to afflict different aspects of their lives. Such harm transcends the entire social fabric but mainly involves their families and close acquaintances. In addition to the repercussions of deprivation of liberty, those released are victims of constant threats, harassment, aggression and smear campaigns by government supporters and even the National Police.
295. As of the date of this report, the Commission has no information to suggest that the State has investigated the serious human rights violations committed since the protests began against persons deprived of liberty in the course of their arrest, during their confinement, and after their release. Likewise, the Commission has received no information about the prosecution and punishment of officials responsible for such serious violations or about proposals to provide redress to the victims of those actions. Nor has it been advised of any criminal or disciplinary inquiries into serious violations against persons deprived of their liberty by State agents in charge of the various bodies of the justice system to which they were subject, be it the police, prisons, prosecutors, or the courts.
296. In the context of the COVID-19 pandemic, the IACHR is particularly concerned that people continue to be detained in the context of the human rights crisis, as well as by the lack of information on containment and prevention protocols and measures adopted by the State in detention facilities in Nicaragua. Also, in some cases, family members of those detained have reported restrictions on the entry of parcels such as more than the permitted amount of water, facemasks, or alcohol gel. In addition to aggravating the conditions of detention, the above could increase the risk to the health of detainees and their families.
297. Based on the above analysis of the situation of persons deprived of their liberty in Nicaragua, the Commission reiterates the recommendations contained in the

preliminary observations on its working visit to Nicaragua,<sup>425</sup> published on May 21, 2018,<sup>426</sup> as well as the additional recommendations of the report “Gross Human Rights Violations in the Context of Social Protests in Nicaragua” of June 21, 2018,<sup>427</sup> and those made in Chapter IV of its 2018 Annual Report.<sup>428</sup>

1. Release all those illegally or arbitrarily detained at or during acts of protest or political dissent and who are in detention as of the date of notification to the State of this report.
2. Immediately cease arbitrarily and illegally detaining those who participate in the protests or who demonstrate against the government. If persons are deprived of liberty in the context of such protests, the State of Nicaragua should immediately inform the competent judicial authority for it to rule on the situation of the person detained. In the event that the detention does not correspond to the grounds expressly set out in the law or has been carried out in a manner contrary to the procedures objectively provided for in the legislation, the judicial authority should immediately release the person.
3. Ensure that security operations in respect of protests and demonstrations are carried out in line with protocols for action that are in keeping with international standards on the use of force by law enforcement officials.
4. Draw up and release a public register containing the following information: (a) number of persons who have been detained since the start of the protests on April 18; (b) causes of detention; (c) length of deprivation of liberty; (d) place of detention; (e) number of persons who are currently being detained in connection with the protests that started on April 18; and (f) number of persons released. The information should include data on the persons’ gender, age, and occupation.
5. Initiate ex officio and immediately an effective investigation to identify, prosecute, and punish those responsible for ill-treatment and torture. That investigation should be carried out using all available legal means, aimed at uncovering the truth, and conducted within a reasonable time. Likewise, the investigation should be governed by the principles of independence, impartiality, competence, diligence, and thoroughness.
6. Ensure the dignified treatment of persons in the custody of State authorities. In particular, ensure the right to legal defense from the moment of arrest, and immediately inform relatives of the place where they are held, as well as of the reasons for the arrest; ensure that they receive medical care in accordance

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<sup>425</sup> IACHR, Press Release 113/18, Preliminary observations on the IACHR working visit to Nicaragua, Washington, D.C., May 2, 2018.

<sup>426</sup> IACHR, Press Release 113/18, Preliminary observations on the IACHR working visit to Nicaragua, Washington, D.C., May 2, 2018.

<sup>427</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, June 21, 2018.

<sup>428</sup> IACHR, 2018 Annual Report, Chapter IV. Nicaragua, March 2018.



with their particular health conditions, receive sufficient food of high nutritional value, and are held in sanitary conditions.

7. Provide immediate medical assistance to all detainees with health conditions that require it.
8. Establish the conditions necessary for guaranteeing that people deprived of liberty can contact their families by ensuring that visiting regimes are appropriate, regular, and predictable. Visits should take place at least as often as set out in the Penitentiary Regulations, and take place in a dignified manner and in conditions that are in no way degrading to the people deprived of their liberty. Likewise, the state must guarantee that medicines, food, and toiletries are allowed to reach those being held in prisons.
9. In maximum security regimes, solitary confinement should be an exceptional measure that is based on an individual risk analysis, limited to the shortest possible time, and used only as a last resort, in buildings and hygiene conditions appropriate to the dignity of the people. Any solitary confinement orders must be approved by a competent authority and be subject to independent review.
10. Abolish the practice of arbitrarily arresting people without a written warrant issued by a public official who is expressly authorized by law or unless they are in the act of committing an offense in violation of Article 33(1) of the Constitution of Nicaragua.
11. Bring all people who are arrested before legal authorities within 48 hours of their arrest so as to clarify and establish their legal status, as established by Article 33 of the Constitution of Nicaragua and Article 95 of the Criminal Code.
12. Verify immediately that all instances of pretrial detention comply with the corresponding international standards, namely exceptionality, legality, proportionality, and reasonableness. When this measure is not based solely on procedural criteria—such as the risk of escape or hindering the investigation—alternative measures should be applied.
13. Reconsider charges of terrorism, bearing in mind the aim of Law 977.
14. Guarantee due process for all people arrested in the connection with the protests that have been taking place in Nicaragua since April 2018. Immediately inform the person under arrest and their family and representatives of the motives and reasons for which they are being held. Furthermore, detainees must be guaranteed appropriate legal counsel, with whom they must have regular contact and who must be able to play a part in preparing for their hearings. They must also have unrestricted access to these legal representatives. All those accused of crimes have the right not to be compelled to testify against themselves or plead guilty.

15. In the case of the judiciary, exercise full independence when trying defendants, in compliance with the highest international and Inter-American standards of human rights, taking into account the conditions of detention in which defendants are being held and the crimes that they are being charged with and allowing them to exercise their right to defense.<sup>429</sup>

With regard to women:

16. Adopt necessary measures to guarantee that all cases of violence against women and, in particular, cases of sexual violence, are investigated with due diligence, on a timely basis, thoroughly, impartially and without gender stereotypes taking into account factors such as their cultural identity, ethno-racial origin, sex, gender, age and others, and that the persons responsible are properly punished and that the victims receive comprehensive reparation.
17. Strengthen the institutional capacity of judicial bodies, such as the Public Prosecutor's Office, the police, the courts and tribunals, and forensic medicine services, in terms of financial, human and training resources, in order to combat the pattern of impunity in cases of violence against women.
18. Adopt all necessary and comprehensive measures so that the rights of women detainees are effectively respected and guaranteed, so they do not suffer discrimination and are protected against all forms of violence that may derive from their gender status, also considering an intersectional perspective.

With regard to lesbian, gay, bisexual, trans and intersex (LGBTI) people:

19. Adopt the necessary measures to ensure that the decision about where to house transgender persons (who are in detention facilities, including prisons and police stations) is made on a case-by-case basis, taking into account the risk to which they may be exposed, with proper respect for their personal dignity and, whenever possible, after consulting with the transgender person involved
20. Implement measures to prevent violence against LGBTI persons deprived of liberty, including but not limited to: effective and independent reporting procedures to denounce acts of sexual violence and other abuses; design individualized risk assessment upon their intake; carefully gather data and statistics on LGBTI persons deprived of liberty and the types of violence inflicted upon them, respecting the principles of confidentiality and privacy.
21. Adopt effective measures to ensure due diligence when investigating, prosecuting, and punishing acts of torture and other cruel, inhuman or degrading treatment of LGBTI persons deprived of liberty.

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<sup>429</sup> IACHR, Press Release 210/18, Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua, Managua/Washington, D.C., September 26, 2018.

22. Provide training to police officers and prison security at prisons, police stations, immigration detention facilities, and other places of detention, to ensure that these agents adequately protect the lives and physical integrity of LGBTI persons—adolescents and adults—who are deprived of liberty.

With regard to children and adolescents:

23. With regard to children and adolescents, ensure that all adolescent who have been charged with breaking the law are immediately subject to a specialized juvenile justice system, separated from the adult criminal system.

In the context of the COVID-19 global pandemic:

24. Adopt measures to address the overcrowding of detention centers, including the reevaluation of cases of preventive detention in order to identify those that can be replaced by alternative measures to deprivation of liberty, giving priority to populations with increased health risk against a possible contagion of COVID-19.
25. Evaluate as a priority the possibility of granting alternative measures such as probation, house arrest, or early release for people considered to be in the risk group such as the elderly, people with chronic diseases, pregnant women or with children in their care and for those who are close to serve sentences.
26. Adapt the conditions of detention, particularly with regard to food, health, sanitation and quarantine measures, to prevent the spread of COVID-19 within the facilities. In particular, guarantee that all centers have medical attention and provide special attention to populations in a particularly vulnerable situation, including the elderly.
27. Establish protocols for the guarantee of security and order in detention centers, in particular to prevent acts of violence related to the pandemic and respecting inter-American standards on the matter.<sup>430</sup>

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<sup>430</sup> IACHR, Press Release 66/20, The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic, Washington, D.C., March 31, 2020.