

THE IMPRISONMENT OF POLITICAL PRISONERS AS POLICY:

ARBITRARY DETENTIONS, DISAPPEARANCES,
AND TORTURE OF REGIME OPPONENTS
IN DANIEL ORTEGA'S NICARAGUA



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ACHR	American Convention on Human Rights
AUN	Nicaraguan University Student Movement (<i>Alianza Universitaria Nicaragüense</i>)
CAT	Convention Against Torture
CELAC	Community of Latin American and Caribbean States
CENIDH	Nicaraguan Center for Human Rights (<i>Centro Nicaragüense de Derechos Humanos</i>)
CPDH	Permanent Human Rights Commission (<i>Comisión Permanente de Derechos Humanos</i>)
CSE	Supreme Electoral Council (<i>Consejo Supremo Electoral</i>)
DGSE	General Directorate for State Security (<i>Dirección General de la Seguridad del Estado</i>)
ECCC	Extraordinary Chambers in the Courts of Cambodia
ENIMINAS	Nicaraguan Mining Company (<i>Empresa Nicaragüense de Minas</i>)
EP	European Parliament
EPS	Sandinista Popular Army (<i>Ejército Popular Sandinista</i>)
EU	European Union
FAD	Broad Front for Democracy (<i>Frente Amplio por la Democracia</i>)
FSLN	Sandinista National Liberation Front (<i>Frente Sandinista de Liberación</i>)
HKND	HK Nicaragua Canal Development Investment
IACHR	Inter-American Commission on Human Rights
IADC	Inter-American Democratic Charter
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICCPR	International Covenant on Civil and Political Rights
IPSM	Military Social Welfare Institute (<i>Instituto de Prevención Social Militar</i>)
GIEI	Interdisciplinary Group of Independent Experts
MESENI	Special Monitoring Mechanism for Nicaragua (<i>Mecanismo Especial de Seguimiento Para Nicaragua</i>)
MRS	Sandinista Renovation Movement (<i>Movimiento Renovador Sandinista</i>)
NGO	Non-Governmental Organization

NNP	Nicaraguan National Police
OAS	Organization of American States
OHCHR	Office of the UN High Commissioner for Human Rights
OVA	Organization of April Victims
PLC	Constitutionalist Liberal Party
PRD	Democratic Restoration Party
SCSL	Special Court for Sierra Leone
STL	Special Tribunal for Lebanon
TELCOR	Institute of Telecommunications and Postal Services (<i>El Instituto Nicaragüense de Telecomunicaciones y Correos</i>)
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
UN	United Nations
US	United States of America
UNAB	Blue and White National Unity (<i>Unidad Nacional Azul y Blanco</i>)
UNAMOS	Democratic Renovation Movement (<i>Unión Democrática Renovadora</i>)
YATAMA	<i>Yapti Tasba Masraka Nanih Aslatakanka</i>

EXECUTIVE SUMMARY

Once a political prisoner himself, President Daniel Ortega and his wife and Vice President Rosario Murillo¹ have made it official policy to unjustly imprison critics and proponents of democracy and human rights in Nicaragua. In April 2018, massive non-violent anti-government protests flooded the streets of Nicaraguan cities in response to the regime announcing reforms that reduced benefits for social security and its slow response to a wildfire in a biological reserve. The Ortega regime responded with violence, killing an estimated 355 people and injuring more than 2,000. Since then, it advanced a repressive campaign against anyone perceived as a threat—whether it is a potential presidential candidate, a human rights defender, or even a member of the Catholic Church calling for dialogue, no one is safe from Ortega’s iron fist. The regime has arbitrarily detained more than 1,600 people since 2018. Many were liberated in 2019 under a controversial *Amnesty Law* that pardoned not only the prisoners, but also the police officers involved in extra-judicial killings during the protests.

In 2021, the year of the presidential elections, Ortega did all in his power to pave the way for his reelection to a fourth consecutive term as President of Nicaragua. He launched a new wave of repression, eliminating all opposition candidates and silencing prominent civil society leaders that could enrich a democratic debate. During this time, he arbitrarily detained seven presidential candidates—Cristiana Chamorro, Juan Sebastián Chamorro, Arturo Cruz, Félix Maradiaga, Medardo Mairena, Miguel Mora, and Noel Vidaurre—on fabricated charges of various kinds, including treason. Three other candidates were forced into exile. On November 7, 2021, elections took place and with no credible opposition, Ortega claimed victory with an overwhelming majority of the vote.

¹ Although the Government of Nicaragua, led by Daniel Ortega, is still recognized by the United Nations, this report refers to those holding power in Nicaragua as the Ortega regime or regime because the presidential election held on November 7, 2021, was rejected as neither free nor fair by the Organization of American States, European Union and other countries such as the United States, Canada, United Kingdom. Thus, those holding power in Nicaragua lack democratic legitimacy and are not referred to as the Government.

The elections elicited swift international condemnation. The Organization of American States (OAS), the European Union (EU), and countries such as the United States (US), Canada, and United Kingdom (UK), among others, deemed the election neither free nor fair, while many nations imposed sanctions against Ortega regime officials and international organizations publicly demanded the release of political prisoners.

Meanwhile, detainees faced harsh conditions in Nicaraguan prisons. Most of the political prisoners were held in the Jorge Navarro National Penitentiary System, more commonly known as *La Modelo* (*La Modelo*) and in the infamous Judicial Assistance Directorate, a police detention center, more commonly known as *Nuevo Chipote* or *El Chipote* (*El Chipote*). In 2019, the Ortega regime opened new facilities at *El Chipote*, where most political prisoners arrested during 2018 protests spent months in small and dark cells and endured frequent interrogations. Prison officials also denied prisoners' requests for reading and writing materials, including Bibles for spiritual solace in times of hardship. Many prisoners lost significant amounts of weight, due to insufficient food, and were denied ongoing medical treatment.

In violation of Nicaraguan law, prisoners were held *incommunicado* and often denied regular communication with or visits from their families. The regime did not disclose information about prisoners' whereabouts to families, and prisoners with families living abroad were denied phone calls with their loved ones for more than a year. For example, Félix Maradiaga and Juan Sebastián Chamorro, presidential candidates arrested on June 8, 2021, spent 84 days without talking to their families; families did not know where they were being detained or whether they were alive, making their detentions enforced disappearances; phone calls were only allowed in December 2022. The regime especially isolated female political prisoners, placing them in solitary confinement for excessive periods of time. Political and civil society activists Suyen Barahona, Violeta Granera, Tamara Dávila, and Ana Margarita Vijil were kept in solitary confinement during their detention; former Sandinista Commander Dora María Tellez was also detained in solitary for her whole detention in the male corridor of *El Chipote*.

These detentions also violated prisoners' rights to due process. Individuals were detained without arrest warrants and publicly labeled as

“terrorists,” “criminals,” and “traitors,” denying them the presumption of innocence. The regime held secret trials within detention centers, rather than in courts of law, and held prisoners in extensive pre-trial detention, after a reform to the Criminal Procedure Code purported to allow the judiciary to hold suspects for up to 90 days pending investigation of the allegations against them. Prisoners were also denied regular contact with their lawyers and were often assigned lawyers by the regime, undermining their right to select counsel of their choosing or to prepare an adequate defense. Former prisoners and family members of current prisoners also reported how the regime fabricated evidence against them, such as creating fake social media profiles and forging their signatures.

The Ortega-controlled National Assembly sought to legitimize this crackdown on dissent by passing a set of repressive laws that granted the Ortega regime broad powers to persecute, arrest, detain, convict, and sentence critics. The law most commonly used by the regime is the *Law for the Defense of the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace (Sovereignty Law 1055)*, which bars anyone that is declared as a “traitor” from holding public office. The authorities have misused this law to initiate and justify criminal proceedings against members of the opposition and civil society. *Law 1042 of 2020 on Special Cybercrimes (Special Cybercrimes Law)* introduced criminal sentences for publishing or disseminating false news and has been used arbitrarily against individuals publicly criticizing Ortega, in violation of their right to freedom of speech. *Law 977 of 2018 Against Money Laundering, Financing Terrorism, and Financing for the Proliferation of Weapons of Mass Destruction (Anti-Money Laundering, Terrorism, and WMD Law)* has been used to falsely accuse and sentence political prisoners for the crime of money laundering. And *Law 1040 of 2020 on the Regulation of Foreign Agents (Foreign Agents Regulation Law)* has been used to cancel the registrations of more than 3,000 civil society organizations, forcing them to shutter.

Nicaragua’s new legal framework and the persecution it enables is in violation of the Nicaraguan Constitution and international law and undermines fundamental freedoms of opinion and expression, association, assembly, and political participation, among others.

The international community has engaged in widening documentation of human rights violations and publicly condemned the

Ortega regime's actions. The United Nations Human Rights Council (UNHRC) created a Group of Human Rights Experts on Nicaragua (GHREN) to investigate human rights abuses. The Group concluded that widespread and systematic human rights violations amounting to crimes against humanity—motivated by political reasons—are being committed in Nicaragua since 2018. The Organization of American States (OAS) created an Interdisciplinary Group of Independent Experts (GIEI) and continues to monitor the situation through the Special Follow-Up Mechanism for Nicaragua and by granting precautionary and provisional measures in favor of political prisoners. Moreover, the United Nations (UN), OAS, the EU, and the US have adopted numerous resolutions or laws to impose consequences on Ortega's regime and to demand the release of political prisoners. For instance, the US Congress passed the Nicaragua Human Rights and Anticorruption Act of 2018 (NICA Act) and the Reinforcing Nicaragua's Adherence to Conditions for Electoral Reform Act of 2021 (RENACER Act), which allows the US to impose sanctions against Nicaragua and mandates the US to use its influence within international financial institutions to block loans that will fund the Nicaraguan regime.

In response to international pressure and persistent advocacy, on February 9, 2023, the Ortega regime announced the release and immediate deportation to the US of 222 political prisoners. Yet, while their release came as welcome news, it has not signaled an end to the Ortega regime's persecution of its critics. As the former prisoners flew to the US, the National Assembly voted to denaturalize them, stripping them of their Nicaraguan citizenship. A week later, the Managua Appeals Tribunal affirmed a judgment taken by lower courts in which 94 Nicaraguans, mostly but not all already living in exile, were also summarily declared traitors, denaturalized, and had their property and assets confiscated by the regime. The Ortega regime continues to detain 36 political prisoners, including Bishop Rolando Álvarez, who was sentenced to 26 years in prison for “undermining national integrity” and “propagation of false news,” after he refused to board the plane for the US.

While enormous challenges remain, the release of political prisoners demonstrates the Ortega regime is not immune to international and domestic pressure and that relentless advocacy can have tangible results. This report seeks to provide a comprehensive view of Ortega's imprisonment of political prisoners by analyzing the regime's tactics of

repression and documenting the experiences of those who have been released to present a strong and accurate portrayal of the situation for political prisoners in Nicaragua.

While countless officials are complicit in Ortega's persecution of political prisoners, there is a smaller group of key individuals who bear particular responsibility. This report focused on President Daniel Ortega and Vice President Rosario Murillo, as the architects of this system who also have command responsibility over it. Much more work needs to be done to identify a wide and diverse group of further perpetrators that have both command and line responsibility for the imprisonment of political prisoners in Nicaragua. And to further explain the phenomenon of repression described in this report, Perseus Strategies conducted 14 interviews; nine interviews were with former political prisoners who were released in February 2023 and spent 18-20 months in *El Chipote* or the National Penitentiary System *La Esperanza* and five interviews were with family members of current prisoners.²

Ultimately, there has been no single proven pathway to securing the release of political prisoners in Nicaragua. But there are a wide variety of actions that have been undertaken to highlight the plight of Nicaragua's political prisoners and collectively have had a major impact on securing their release. As a result, this report makes six specific recommendations

² Many of these political prisoners wanted their interview to be public and on the record. A smaller number preferred to have their names anonymized. Interview with María Oviedo, former political prisoner at El Chipote, Feb. 18, 2023 [hereinafter "Interview No. 1"]; Interview with Suyen Barahona, former political prisoner at El Chipote, Feb. 23, 2023 [hereinafter "Interview No. 2"]; Interview with family member of current political prisoner, Feb. 23, 2023 [hereinafter Interview No. 3]; Interview with Juan Lorenzo Holmann, former political prisoner at El Chipote, Feb. 23, 2023 [hereinafter Interview No. 4"]; Interview with former political prisoner at El Chipote, Feb. 23, 2023 [hereinafter Interview No. 5"]; Interview with Dora María Téllez, former political prisoner at El Chipote, Feb. 23, 2023, [hereinafter "Interview No. 6"]; Interview with family member of current political prisoner, Feb. 23, 2023 [hereinafter "Interview No. 7"]; Interview with Evelyn Pinto, former political prisoner at La Esperanza, Feb. 24, 2023, [hereinafter "Interview No. 8"]; Interview with Félix Maradiaga, former political prisoner at El Chipote, Feb. 24, 2023 [hereinafter No. 9"]; Interview with family member of current political prisoner, Feb. 24, 2023 [hereinafter "Interview No. 10"]; Interview with family member of current political prisoner, Feb. 24, 2023 ["Interview No. 11"]; Interview with family member of current political prisoner, Feb. 25, 2023 ["Interview No. 12"]; Interview with Ana Margarita Vijil, Feb. 27, 2023 [hereinafter "Interview No. 13"]; Interview with José Quintanilla, Feb. 28, 2023 [hereinafter "Interview No. 14"]].

to advance the release of the remaining political prisoners including (1) targeted financial sanctions and travel bans on perpetrators; (2) joint actions across multilateral lenders; (3) joint actions across other multilateral institutions; (4) highlighting the plight of Nicaragua's political prisoners; (5) joint civil society efforts; and (6) media engagement.

I. BACKGROUND ON NICARAGUA’S POLITICAL PRISONERS

The human rights situation in Nicaragua has sharply deteriorated since 2018, when the Ortega’s regime cracked down on nationwide protests in response to proposed reforms reducing benefits from the country’s social security system and concern over the cause of a wildfire in a biological reserve.³ When tens of thousands of Nicaraguans peacefully protested the substantial pension cuts and the slow and inadequate response to the wildfire, the Ortega’s regime met protesters with brutal force.⁴ The National Police and parapolice groups⁵ committed extrajudicial killings, torture and other cruel, inhuman, or degrading treatment⁶ that resulted in 355 people dead and more than 2,000 injured.⁷ In addition, at least 1,614 people have been deprived of liberty in connection with the crisis since April 18, 2018.⁸ According to the GHREN created by the UNHRC, there are reasonable grounds to believe that these acts are crimes against humanity.⁹

Ortega used the mass protests as an excuse to establish a *de facto* police state and fully concentrate his power across the executive, legislative, and judicial branches of the Nicaraguan government,

³ GIEI NICARAGUA REPORT ON THE VIOLENT EVENTS THAT TOOK PLACE BETWEEN APRIL 18TH AND MAY 30TH, 2018, INTERDISCIPLINARY GROUP OF INDEPENDENT EXPERTS, Dec. 20, 2018, at 58, *available at* https://gieinicaragua.org/giei-content/uploads/2019/05/GIEI_REPORT_ENGLISH_simplepage.pdf [hereinafter “GIEI Report”].

⁴ *GIEI Report*, *supra* note 3, at 60.

⁵ PERSONS DEPRIVED OF LIBERTY IN NICARAGUA IN CONNECTION WITH THE HUMAN RIGHTS CRISIS THAT BEGAN ON APRIL 18, 2018, INTER-AM. COMM’N OF HUMAN RIGHTS, Oct. 5, 2020, at ¶ 66, *available at* <http://www.oas.org/en/iachr/reports/pdfs/Nicaragua-PPL-en.pdf> [hereinafter “Inter-American Commission Report on Persons Deprived of Liberty”].

⁶ *Inter-American Commission Report on Persons Deprived of Liberty*, *supra* note 5, at ¶ 152.

⁷ ANNUAL REPORT 2021, CHAPTER IV. B. NICARAGUA, INTER-AM. COMM’N OF HUMAN RIGHTS, May 26, 2022, at ¶ 3, *available at* <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Nicaragua-en.pdf>.

⁸ *Id.*

⁹ Report of the Group of Human Rights Experts on Nicaragua, U.N.Doc. A/HRC/52/63, Mar. 2, 2023, at ¶ 109, *available at* <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session52/list-reports>. *See also* *GIEI Report*, *supra* note 3, at 226.

dismantling all institutional checks on presidential power.¹⁰ Since then, the Ortega regime systematically repressed dissent, silencing critical voices to consolidate its grip on power.¹¹ Prior to the presidential election on November 7, 2021, Ortega arbitrarily imprisoned 46 members of the political opposition, effectively barring all opposing political parties from participating.¹² Seven of the detained were presidential candidates.

The international community widely condemned election results as fraudulent.¹³ The OAS and the EU concluded the election was neither free

¹⁰ WORLD REPORT 2022: NICARAGUA, HUMAN RIGHTS WATCH, at 489, *available at* https://www.hrw.org/sites/default/files/media_2022/01/World%20Report%202022%20web%20pdf_0.pdf [“Human Rights Watch Nicaragua 2022 Report”] and NICARAGUA: CONCENTRATION OF POWER AND THE UNDERMINING OF THE RULE OF LAW, INTER-AM. COMM’N OF HUMAN RIGHTS, Oct. 25, 2021, at ¶ 37, *available at* https://www.oas.org/en/iachr/reports/pdfs/2021_nicaragua-en.pdf [hereinafter “Inter-American Commission’s Concentration of Power Report”].

¹¹ Carolina Jiménez Sandoval, Felipe Puerta Cuartas and Geoff Thale, *Ortega Government’s Authoritarian Crackdown Seeks to Repress All Dissent*, WASHINGTON OFFICE ON LATIN AMERICA, Aug. 16, 2021, *available at* <https://www.wola.org/analysis/ortega-governments-authoritarian-crackdown-seeks-repress-all-dissent/>.

¹² *Freedom in the World 2022: Nicaragua*, FREEDOM HOUSE, *available at* <https://freedomhouse.org/country/nicaragua/freedom-world/2022> (“[T]he Supreme Electoral Council annulled the legal status of parties that presented legitimate competition to Ortega’s Sandinista National Liberation Front (FSLN)—including the Democratic Restoration Party (PRD) and Citizens for Liberty (CxL)—and ended the candidacy of Ortega’s rivals, banning them from running for or ever holding public office.”) [hereinafter “Freedom House Report 2022”].

¹³ Press Release, *Nicaragua’s Undemocratic Election*, US DEPARTMENT OF STATE, Nov. 8, 2021, *available at* <https://www.state.gov/nicaraguas-undemocratic-election/>; *see also* Press Release, *Statement by Minister Joly on Nicaragua’s November 7 Electoral Process*, GLOBAL AFFAIRS CANADA, Nov. 8, 2021, *available at* <https://www.canada.ca/en/global-affairs/news/2021/11/statement-by-minister-joly-on-nicaraguas-november-7-electoral-process.html>; *see also* Press Release, *Nicaragua: UK Statement on Presidential Elections*, FOREIGN COMMONWEALTH AND DEVELOPMENT OFFICE, Nov. 8, 2021, *available at* <https://www.gov.uk/government/news/nicaragua-uk-statement-on-presidential-elections>; Duque: “Colombia Will Not Recognize the Result of These Fraudulent Elections”, BLAZETRENDS, Nov. 9, 2021, *available at* <https://blazetrends.com/duque-colombia-will-not-recognize-the-result-of-these-fraudulent-elections/>; *see also* Press Release, *Nicaragua: Declaration by the High Representative on behalf of the European Union*, COUNCIL OF THE EUROPEAN UNION, Nov. 8, 2021, *available at* <https://www.consilium.europa.eu/en/press/press-releases/2021/11/08/nicaragua-declaration-by-the-high-representative-on-behalf-of-the-european-union/>.

or fair, and was thus illegitimate.¹⁴ In addition, the US,¹⁵ Canada,¹⁶ and the UK¹⁷ all announced new targeted sanctions on Nicaraguan officials. In the most recent November 2022 sham elections, Ortega's political party, the Sandinista National Liberation Front (*Frente Sandinista de Liberación Nacional*, FSLN), won in all 153 municipalities, giving them complete control of Nicaragua's local government¹⁸ and further entrenching the regime's power.

With power consolidated at the national and local levels, the Ortega regime has easily erected a new legal framework designed to silence and criminalize dissent. Nicaragua's police and courts have applied those laws to detain, charge, and convict political prisoners without due process. As of March 31, 2023, Ortega holds 36 political prisoners in Nicaragua,¹⁹ after a mass release and deportation to the US of 222 political prisoners on February 9, 2023.²⁰ The group of former prisoners included

¹⁴ The Situation in Nicaragua, OAS G.A. Res. AG/RES. 2978 (LI-O/21), adopted Nov. 12, 2021, at Art. 2 and *Nicaragua: Declaration by the High Representative on Behalf of the European Union*, COUNCIL OF THE EUROPEAN UNION, Nov. 8, 2021, available at <https://www.consilium.europa.eu/en/press/press-releases/2021/11/08/nicaragua-declaration-by-the-high-representative-on-behalf-of-the-european-union/>.

¹⁵ Press Release, *New Sanctions Following Sham Elections in Nicaragua*, US DEPARTMENT OF STATE, Nov. 15, 2021, available at <https://www.state.gov/new-sanctions-following-sham-elections-in-nicaragua/>. The United States sanctioned nine senior Ortega regime officials, as well as Nicaragua's Public Ministry (Attorney General's Office), which played a key role in facilitating the regime's campaign of arrests.

¹⁶ *Canada Imposes Third Round of Sanctions in Response to Ongoing Human Rights Violations in Nicaragua*, GLOBAL AFFAIRS CANADA, Nov. 15, 2021, available at <https://www.canada.ca/en/global-affairs/news/2021/11/canada-imposes-third-round-of-sanctions-in-response-to-ongoing-human-rights-violations-in-nicaragua.html>.

¹⁷ Press Release, *UK Imposes Sanctions on Senior Nicaraguan Individuals Following Rigged Elections*, FOREIGN COMMONWEALTH AND DEVELOPMENT OFFICE, Nov. 15, 2021, available at <https://www.gov.uk/government/news/uk-imposes-sanctions-on-senior-nicaraguan-individuals-following-rigged-elections>.

¹⁸ *Under Daniel Ortega, Nicaragua Has Become a One-Party State*, THE ECONOMIST, Nov. 10, 2022, available at <https://www.economist.com/the-americas/2022/11/10/under-daniel-ortega-nicaragua-has-become-a-one-party-state>.

¹⁹ LISTA PERSONAS PRESAS POLÍTICAS NICARAGUA, MARZO 2023, MECANISMO PARA EL RECONOCIMIENTO DE PERSONAS PRESAS POLÍTICAS, Mar. 31, 2023, at 1, available at <https://presasypresospolicosnicaragua.org/wp-content/uploads/2023/04/8aa6cb62-5802-4827-aea8-bd872ae4464f.pdf> [in Spanish].

²⁰ Press Statement, *Release of Political Prisoners from Nicaragua*, US DEPARTMENT OF STATE, Feb. 9, 2023, available at <https://www.state.gov/release-of-political-prisoners->

presidential candidates,²¹ civil society activists, journalists, pro-democracy opposition group leaders, human rights defenders, private-sector leaders, and Catholic Church clergy, among others. They faced politically motivated persecution and were charged with serious crimes based on fabricated evidence designed to silence their criticisms of the regime.²² After releasing them, Ortega stripped the 222 former prisoners and an additional 94 individuals of their Nicaraguan nationality and began confiscating their property and assets.²³

The Catholic Church, the only major institution not under Ortega's control, has faced especially severe repression.²⁴ Nearly a dozen priests have been arbitrarily detained,²⁵ including the Bishop of Matagalpa Monsignor Rolando Álvarez, who was sentenced to 26 years in prison.²⁶

from-nicaragua/ and Mary Beth Sheridan and Karina Elwood, *Nicaragua frees more than 200 political prisoners, sends them to US*, THE WASHINGTON POST, Feb. 9, 2023, available at <https://www.washingtonpost.com/world/2023/02/09/nicaragua-frees-more-than-200-political-prisoners-held-harsh-conditions/>.

²¹ While technically these individuals were pre-presidential candidates and had not yet formally registered to be candidates, they were detained because they had announced their intention to run, and their detention was designed to prevent them from registering. They will be referred to as presidential candidates in this report because they had announced their intention to run for President and this was why they were detained.

²² NICARAGUA: TRUMPED-UP CHARGES AGAINST CRITICS, HUMAN RIGHTS WATCH, Sept. 20, 2021, available at <https://www.hrw.org/news/2021/09/20/nicaragua-trumped-charges-against-critics>.

²³ Carlos Maldonado, *Ortega despoja la nacionalidad a otros 94 nicaragüenses, entre ellos los escritores Sergio Ramírez y Gioconda Belli*, EL PAÍS, Feb. 16, 2023, available at <https://elpais.com/internacional/2023-02-15/ortega-despoja-de-su-nacionalidad-a-otros-94-nicaraguenses-entre-ellos-los-escritores-sergio-ramirez-y-gioconda-belli.html?outputType=amp> [in Spanish].

²⁴ See generally Ryan Berg, *Crackdown on Religious Freedom in Nicaragua*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, Nov. 15, 2022, available at <https://www.csis.org/analysis/crackdown-religious-freedom-nicaragua>.

²⁵ See generally Wilmer Benavides, *Estos son los nueve sacerdotes encarcelados por Daniel Ortega*, ARTICULO 66, Oct. 16, 2022, available at <https://www.articulo66.com/2022/10/15/sacerdotes-encarcelados-nicaragua-daniel-ortega/> [in Spanish].

²⁶ See Mary Beth Sheridan et. al, *Nicaragua Detains Catholic Bishop in Escalating Crackdown on Dissent*, THE WASHINGTON POST, Aug. 19, 2022, available at <https://www.washingtonpost.com/world/2022/08/19/nicaragua-bishop-rolando-alvarez-arrest-ortega/> and *Monseñor Rolando Álvarez sentenciado por Daniel Ortega a 26 años de cárcel*, EXPEDIENTE PÚBLICO, Feb. 10, 2023, available at <https://www.expedientepublico.org/monsenor-rolando-alvarez-sentenciado-por-ortega-a-26-anos-de-carcel/> [in Spanish].

Moreover, the regime has closed Catholic radio stations,²⁷ forced at least 18 nuns into exile²⁸ and expelled the *Papal Nuncio* Mons. Waldemar Stanislaw Sommertag, the Vatican's Ambassador.²⁹ The Ortega regime has also shuttered more than 3,199 national and international non-governmental organizations (NGOs) since 2018.³⁰ Nicaragua's acute human rights crisis has prompted the exodus of more than 328,443 people during 2022 and a total of more than 604,485 people between 2018-2022.³¹

A. *Repressive Laws*

The Ortega regime adopted a package of repressive laws that enabled the persecution, arrest, detention, and unjust conviction of the opposition and civil society. In July 2018, amid the regime's brutal campaign against peaceful protestors, the National Assembly issued two

²⁷ See generally *Ortega Regime in Nicaragua Violently Shuts Down Catholic Radio Stations*, CATHOLIC NEWS, Aug. 2, 2022, available at <https://www.catholicnewsagency.com/news/251939/ortega-regime-in-nicaragua-violently-shuts-down-catholic-radio-stations>.

²⁸ See generally Vanessa Buschschlüter, *Nicaragua Expels Mother Theresa's Nuns in Latest Crackdown*, BBC NEWS, Jul. 7, 2022, available at <https://www.bbc.com/news/world-latin-america-62076784>. See also *Monjitas de la Orden Dominica expulsadas de Nicaragua llegan a Costa Rica*, 100% Noticias, Apr. 12, 2023, available at <https://100noticias.com.ni/nacionales/123144-monjas-expulsadas-nicaragua-llegan-costa-rica/> [in Spanish].

²⁹ See generally Almudena Martínez-Bordiú & Diego López Marina Aciprensa, *Nicaragua Expulsa al Nuncio Apostólico: Vaticano Califica Decision de "incomprensible"*, Mar. 12, 2022, available at <https://www.aciprensa.com/noticias/nicaragua-expulsa-al-nuncio-apostolico-vaticano-califica-decision-de-incomprensible-79250> [in Spanish].

³⁰ *Oral Update on the Situation of Human Rights in Nicaragua*, OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, Dec. 15, 2022, available at <https://www.ohchr.org/en/statements-and-speeches/2022/12/oral-update-situation-human-rights-nicaragua-0> and *Gobernación cancela a la Asociación de Bancos Privados y otras 16 oenegés*, CONFIDENCIAL, Feb. 3, 2023, available at https://www.confidencial.digital/nacion/gobernacion-cancela-a-la-asociacion-de-bancos-privados-y-otras-16-oeneges/?utm_source=Bolet%C3%ADn+Informativo+%7C+Confidencial&utm_campaign=50230123bf-

[BOLETIN_DIARIO_CONFIDENCIAL&utm_medium=email&utm_term=0_222aa13b5f-50230123bf-294823210&mc_cid=50230123bf&mc_eid=2c5ec3614d](https://www.confidencial.digital/nacion/gobernacion-cancela-a-la-asociacion-de-bancos-privados-y-otras-16-oeneges/?utm_source=Bolet%C3%ADn+Informativo+%7C+Confidencial&utm_campaign=50230123bf-BOLETIN_DIARIO_CONFIDENCIAL&utm_medium=email&utm_term=0_222aa13b5f-50230123bf-294823210&mc_cid=50230123bf&mc_eid=2c5ec3614d) [in Spanish].

³¹ Cindy Regidor, *Year of Exodus: 328,000 Nicaraguans Left in 2022*, CONFIDENCIAL, available at <https://havanatimes.org/features/year-of-the-exodus-328000-nicaraguans-left-in-2022/>.

laws that together allowed the regime to charge protesters with and imprison them for terrorism:³² 1) *Financial Analysis Unit Law* (976 of 2018)³³ and 2) *Anti-Money Laundering, Terrorism, and WMD Law*.³⁴ The second law reformed articles 394 and 395 of the Nicaraguan Criminal Code, imposing a potential sentence of 15 to 20 years in prison for those convicted of terrorism and financing terrorism.³⁵ The regime frequently, and illegitimately, uses the crimes of terrorism and organized crime to punish and persecute the opposition and critics.³⁶

In June 2019, the National Assembly approved an *Amnesty Law* ostensibly designed to free some of the protesters imprisoned in April 2018.³⁷ However, human rights organizations and legal experts criticized the law for failing to provide complete amnesty. Rather, the law provides that “released prisoners under amnesty could be imprisoned again and their original accusations reinstated if they participated once again in the activities that led to their initial arrest,” meaning protestors could be jailed again for protesting and exercising their right of freedom of opinion and expression.³⁸ In addition, critics have noted “a fair trial would have freed

³² NICARAGUA: ENTRE REPRESIÓN Y RESISTENCIA CIUDADANA, COLECTIVO DE DERECHOS HUMANOS: NICARAGUA NUNCA +, at 14, *available at* <https://colectivodhnicaragua.org/wp-content/uploads/2022/10/INFORMECNN-2-situacional-IMPRESA.pdf> [in Spanish] [hereinafter “Nicaragua: Entre Represión y Resistencia Ciudadana”].

³³ Financial Analysis Unit Law, No. 976, July 20, 2018, (Nicar.), *available at* https://bcn.gob.ni/sites/default/files/marco_juridico_financiero/10_Ley_No_976_Ley_de_la_Unidad_de_Analisis_Financiero.pdf [in Spanish].

³⁴ Law Against Money Laundering Assets, the Financing of Terrorism, and the Financing of the Proliferation of Weapons of Mass Destruction, With its Reforms, No. 977, (Nicar.), *available at* <http://legislacion.asamblea.gob.ni/normaweb.nsf/3133c0d121ea3897062568a1005e0f89/bb5a26a950e18e13062582d5007698fc?OpenDocument> [in Spanish].

³⁵ *Law Against Money Laundering Assets, the Financing of Terrorism, and the Financing of the Proliferation of Weapons of Mass Destruction, With its Reforms*, No. 977, *supra* note 34, at Art. 44.

³⁶ *GIEI Report*, *supra* note 3, at 282.

³⁷ Amnesty Law, No. 996, June 10, 2019, (Nicar.), *available at* <https://ni.vlex.com/vid/ley-n-996-ley-796978749> [in Spanish].

³⁸ NICARAGUA 2019 HUMAN RIGHTS REPORT, US DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, Mar. 11, 2020, at 8, *available at* <https://www.state.gov/wp-content/uploads/2020/03/NICARAGUA-2019-HUMAN-RIGHTS-REPORT.pdf> [hereinafter “State Department Nicaragua 2019 Human Rights Report”].

the accused without the need for an amnesty.”³⁹ The law’s broad wording also provided amnesty to the police and security forces that engaged in the extrajudicial killings of unarmed civilians, effectively licensing perpetrators of mass atrocities to act with impunity.⁴⁰ International law does not permit amnesties for these crimes.⁴¹ The *Amnesty Law* says it is not applicable for crimes enshrined in international treaties to which Nicaragua is a state party. Yet in practice, Ortega’s regime bypasses this provision by concluding the police shot protesters in self-defense in a lawful use of force.⁴² As such, according to the law, the killings amount to neither crimes under Nicaraguan law nor extrajudicial killings under international law.

In 2020, leading up to the presidential elections, the National Assembly adopted three new laws intended to suppress Ortega’s potential opponents and further restrict freedoms of press and expression.⁴³ These laws are the *Regulation of Foreign Agents Law*,⁴⁴ *Special Cybercrimes Law*,⁴⁵ and the *Sovereignty Law 1055*.⁴⁶ The *Regulation of Foreign Agents*

³⁹ *Id.*

⁴⁰ The Amnesty Law grants “broad amnesty to all people who took part in the events that have taken place throughout Nicaragua from April 18, 2018, until this law enters into force.” It also says the amnesty applies to “all political crimes and ordinary crimes associated with these events” With this wording, police and security forces who killed or injured innocent civilians were automatically granted amnesty for having committed murder or attempted murder. Press Release, *IACHR Expresses Concern Over the Passing of the Amnesty Law in Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, Jun. 12, 2019, available at

https://www.oas.org/en/iachr/media_center/preleases/2019/145.asp.

⁴¹ *Barrios Altos v. Peru*, INTER-AM. C.T. H.R., Mar. 14, 2001, at ¶ 41, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_75_esp.pdf [in Spanish].

⁴² *Rosario Murillo describe como “legítima defensa” la agresión de turbas orteguistas*, LA PRENSA, Apr. 19, 2018, available at

<https://www.laprensani.com/2018/04/19/politica/2406376-rosario-murillo-describe-como-legitima-defensa-la-actuacion-de-sus-partidarios> [in Spanish].

⁴³ *Nicaragua: Entre Represión Y Resistencia Ciudadana*, *supra* note 32, at 15.

⁴⁴ *Regulation of Foreign Agents*, No. 1040, Oct. 19, 2020, (Nicar.), available <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/3306286cd4e82c5f06258607005fdf6b> [in Spanish] [hereinafter “Regulation of Foreign Agents Law”].

⁴⁵ *Special Cybercrime Law*, No. 1042, Oct. 30, 2020, (Nicar.), available at <https://perma.cc/5F86-ZK4P> [in Spanish] [hereinafter *Special Cybercrime Law*].

⁴⁶ *Law for the Defense of the Rights of the People to Independence, Sovereignty and Self-Determination for Peace*, No. 1055, Dec. 22, 2020, (Nicar.), available at <http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/C4084E2665A5610F062586420>

Law mandated that organizations receiving international funding must register with the Interior Ministry and report on their activities.⁴⁷ The *Special Cybercrimes Law*, which is used in the criminal proceedings against political prisoners, made “propagating false news” a crime.⁴⁸ For its part, the *Sovereignty Law 1055* forbade anyone who “undermines independence, sovereignty and self-determination” or “demands, praises and applauds the imposition of sanctions against Nicaragua and its citizens, or damages the supreme interests of the nation” from running for elected office for being “traitors to the homeland.”⁴⁹ The UN Office of the High Commissioner for Human Rights (OHCHR) reported that “[a]s in the case with Laws 1040 and 1042, Law 1055 set restrictions incompatible with international human rights standards that may affect the exercise of the rights to political participation and freedom of expression.”⁵⁰ It concluded that the breadth of the law’s definitions gave the regime ample leeway to “prevent opposition candidates from participating in the November 2021 elections.”⁵¹ Similarly, the OAS condemned the *Sovereignty Law 1055* and called for its repeal because it disproportionately restricted rights enshrined in the American Convention of Human Rights (ACHR).⁵²

In addition to creating new legislation, the National Assembly approved a constitutional amendment in *Law 1057 of 2021*, exempting hate crimes from the 30-year sentence limit established under Article 37 of Nicaragua’s Constitution.⁵³ In a speech on September 15, 2020, Ortega explained that this legislation was intended to subject opposition leaders,

07E9C3F/\$File/Ley%20N%C2%B0%201055,%20Ley%20Defensa%20de%20los%20De
rechos%20del%20Pueblo.pdf?Open [in Spanish].

⁴⁷ *Regulation of Foreign Agents Law*, *supra* note 44, at Art. 6.

⁴⁸ *Special Cybercrime Law*, *supra* note 45, at Art. 30.

⁴⁹ *Id.*, at Art. 1.

⁵⁰ REPORT OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, *Situation of Human Rights in Nicaragua*, U.N. Doc. A/HRC/46/21, Feb.11, 2021, at ¶ 29.

⁵¹ *Id.*

⁵² Press Release, *IACHR Rejects Passing of Law Restricting Political Rights in Nicaragua*, OAS, Jun. 6, 2021, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/003.as p.

⁵³ Reform Law to Article 37 of the Political Constitution of the Republic of Nicaragua, No. 1057, Jan. 19, 2021, (Nicar.), available at <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/259e2fcbc244949106258662007a06e6?OpenDocument> [in Spanish].

whom he accused of hate crimes, to potential life terms in prison.⁵⁴ Shortly thereafter on February 5, 2021, the National Assembly amended Nicaragua’s Criminal Procedure Code, extending the previous pretrial detention period for suspects far beyond 48 hours.⁵⁵ The resulting *Law 1060 of 2021* allows the judiciary to detain criminal suspects for up to 90 days *incommunicado* to supplement information or collect more evidence to support and file the charges.⁵⁶ Nicaraguan lawyers strenuously objected that this law violated Article 33(2.2) of Nicaragua’s Constitution, which says “[a]ny arrested person has the right: ... [t]o be released or brought before a competent authority within a 48 hour period subsequent to the arrest.”⁵⁷ The OHCHR condemned this as contrary to both the Nicaraguan Constitution and international standards.⁵⁸ This amendment disregarded a presumption of innocence as well as the right to be informed without delays of the charges for which one is being held.

Most recently, after the release of the 222 prisoners, the National Assembly introduced a reform to the Constitution⁵⁹ and adopted a *Special Law Regulating the Loss of Nicaraguan Nationality (Law 1045 of 2023)*⁶⁰ (*Loss of Nationality Law*), used to strip the released prisoners and 94 other people of their Nicaraguan nationality for being so-called “traitors to the

⁵⁴ *Nicaragua: Entre Represión Y Resistencia Ciudadana*, *supra* note 32, at 14 and *Palabras del Presidente-Comandante Daniel en el Acto de Conmemoración del 199 Aniversario de la Independencia de Centroamérica*, EL 19, Sep. 16, 2020, available at <https://www.el19digital.com/articulos/ver/titulo:107385-palabras-del-presidente-comandante-daniel-en-el-acto-de-> [in Spanish].

⁵⁵ *Reform and Addition Law to Law No. 406*, Criminal Procedure Code of the Republic of Nicaragua, No. 1060, Feb. 5, 2021, available at [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/49C912ED7DDE58CE062586760053C890?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/49C912ED7DDE58CE062586760053C890?OpenDocument) [in Spanish].

⁵⁶ *Id.*, at Art. 2.

⁵⁷ CONSTITUTION OF NICARAGUA, Nov. 9, 1987, Art. 33(2.2), available at https://www.constituteproject.org/constitution/Nicaragua_2014.pdf?lang=en.

⁵⁸ Tweet by OHCHR (@OACNUDH), TWITTER, Feb. 3, 2021, 8:19 am, available at <https://twitter.com/oacnudh/status/1356955406187307008?lang=es> [in Spanish].

⁵⁹ *Iniciativa Ley de Reforma al Artículo 21 de la Constitución Política de Nicaragua*, Feb. 9, 2023, available at <https://www.confidencial.digital/wp-content/uploads/2023/02/INICIATIVA-DE-LEY-DE-REFORMA-AL-ARTI%CC%81CULO-21-DE-LA-CONSTITUCIO%CC%81N-POLI%CC%81TICA-DE-LA-REPU%CC%81BLICA-DE-NICARAGUA-9-2-2023.pdf> [in Spanish].

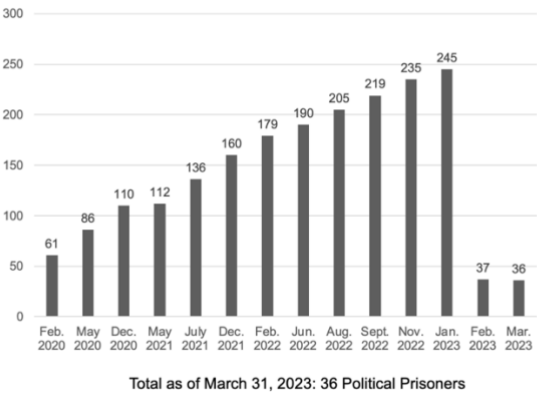
⁶⁰ *Special Law Regulating the Loss of Nicaraguan Nationality*, No. 1145, Feb. 9, 2023, available at <https://www.el19digital.com/app/webroot/tinymce/source/2023/Febrero/09Feb/ASAMBLA/Ley%201145.pdf> [in Spanish].

homeland,” and initiate the process for expropriating properties they owned in Nicaragua.

B. Increasing Persecution

Between 2020 and February 2023, the Ortega regime accelerated its detention of political prisoners (see figure below) each year. The Mechanism for the Recognition of Political Prisoners (*Mecanismo para el Reconocimiento de Personas Presas Políticas* (The Mechanism), reported on January 31, 2023, that the regime had 245 political prisoners at that moment.⁶¹ Following the recent mass release of 222 political prisoners, an estimated 36 political prisoners remain in Nicaragua.⁶² Yet, experts fear these numbers could be higher given the lack of access to public information and the climate of repression and fear in the country.⁶³ The release of the 222 political prisoners was a welcome development. Yet, their immediate expatriation could augur a new era of repression, during which, rather than imprison opponents, Ortega will threaten denaturalization or expropriation of their properties to compel them to leave the country *en masse*.

POLITICAL PRISONERS* OF THE ORTEGA REGIME IN NICARAGUA, FEBRUARY 2020-MARCH 2023



* These are only publicly reported cases.

Source: *Mecanismo para el Reconocimiento de Personas Presas Políticas*

⁶¹ LISTA PERSONAS PRESAS POLÍTICAS NICARAGUA, ENERO 2023, MECANISMO PARA EL RECONOCIMIENTO DE PERSONAS PRESAS POLÍTICAS, Jan. 31, 2023, at 4, *available at* <https://presasypresospoliticosnicaragua.org/wp-content/uploads/2023/02/b2a54ec9-be29-41e1-af81-af52aaae83ab.pdf> [in Spanish] [hereinafter “Mechanism’s Political Prisoners List January 2023”].

⁶² *Mechanism for Recognition of Political Prisoners*, *supra* note 19.

⁶³ *Mechanism’s Political Prisoners List January 2023*, *supra* note 61.

The Mechanism's data also demonstrates an increase in arbitrary detentions during electoral periods.⁶⁴ For example, 42 persons were detained during the six months leading up to the presidential election in the first week of November 2021,⁶⁵ including seven out of the ten presidential candidates. Most of those detainees are being investigated for or have been convicted of "conspiracy to undermine national integrity."⁶⁶ The Mechanism also reported 44 individuals detained in the days surrounding municipal elections on November 6, 2022.⁶⁷

Since 2022, the regime has extended persecution of government dissenters and human rights defenders to their relatives. For example, on November 25, 2022, the Ortega regime detained Rodrigo Navarrete, uncle of political prisoner Jaime Navarrete.⁶⁸ In September 2022, the regime detained dual Nicaraguan and French nationals Jeannine Horvilleur and Ana Carolina Álvarez Horvilleur, wife and daughter of Javier Álvarez Zamora, an exiled member of the opposition. Both were sentenced to eight years in prison on January 18, 2023.⁶⁹ Félix Roiz Sotomayor, Álvarez's son-in-law, was sentenced to 10 years.⁷⁰ It is unclear with the release of the 222 political prisoners if Ortega's strategy of persecuting families might change. That should be clear quite quickly because most of the released prisoners have immediate family left behind, including an estimated 150 minor children.

C. *A Controlled Judiciary*

Nicaragua has a highly centralized, authoritarian political system that lacks an independent and impartial judiciary.⁷¹ Despite constitutional

⁶⁴ LISTA PERSONAS PRESAS POLÍTICAS NICARAGUA, OCTUBRE-NOVIEMBRE 2022, MECANISMO PARA EL RECONOCIMIENTO DE PERSONAS PRESAS POLÍTICAS, Nov. 30, 2022, at 11, *available at* <https://presasypresospolicosnicaragua.org/wp-content/uploads/2022/12/lista-PP-oct-nov-2022.pdf> [in Spanish].

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Régimen condena a ocho y diez años de cárcel a familiares del opositor exiliado*, Javier Álvarez, CONFIDENCIAL, Jan. 18, 2023, *available at* <https://www.confidencial.digital/nacion/regimen-condena-a-8-y-10-anos-de-carcel-a-familiares-del-opositor-exiliado-javier-alvarez/> [in Spanish].

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Inter-American Commission's Concentration of Power Report*, *supra* note 10, at ¶ 96 and *Freedom House Report 2022*, *supra* note 12.

guarantees for an independent judiciary, the Ortega regime has sharply undermined courts' impartiality. The Supreme Court of Justice, which is dominated by judges allied to the regime, vets all new appointments, and once appointed, judges often submit to political pressure and financial enticements in exchange for rulings favorable to the regime.⁷² In addition, the Court has in the past demonstrated that it functions for Ortega when in 2009 it allowed him to run for president even though the Constitution did not permit it at the time.⁷³

This lack of independence has particularly serious implications for political prisoners, whose prosecutions are driven by the executive branch. This was evidenced after the uprisings of 2018 with hundreds of trials lacking legality and evidence resulting in the sentencing of peaceful protesters against the regime.⁷⁴ Judges' decisions are heavily influenced by Ortega given that they must pass regime loyalty tests to be promoted or keep their jobs; those who oppose this apparatus face dismissal. For example, Ernesto Rodríguez Mejía, a district judge who presided cases involving political prisoners of the 2018 protests, was promoted to the Managua Appeals Tribunal, whereas Indian Gallardo, a district judge that allowed the presence of family members of three protesters in a courtroom was dismissed.⁷⁵ Furthermore, Ortega's influence was seen when the Supreme Court definitely resolved last resort appeals (*recursos de casación*) of several former political prisoners who faced trials without any respect for due process of law. The Criminal Chamber of the Court, composed of four magistrates, including three who are openly loyal to the regime, upheld the arbitrary detentions of political prisoners.⁷⁶ For

⁷²See *Inter-American Commission's Concentration of Power Report*, *supra* note 10, at ¶ 96 and Gabriela Knaul, REPORT OF THE SPECIAL RAPporteur ON THE INDEPENDENCE OF JUDGES AND LAWYERS, U.N. Doc., A/HRC/23/43/Add.4, Apr. 2, 2013, ¶ 66, available at <https://digitallibrary.un.org/record/757846>.

⁷³ *Nicaragua: Con críticas a Daniel Ortega renunció el ministro de la Corte Suprema de Justicia Rafael Solís*, NODAL, Nov. 11, 2019, available at <https://www.nodal.am/2019/01/nicaragua-con-criticas-a-daniel-ortega-renuncio-el-ministro-de-la-corte-suprema-de-justicia-rafael-solis/> [in Spanish].

⁷⁴ *Nicaragua's Judiciary: Subordinate to the Ortega-Murillo Regime*, EXPEDIENTE PÚBLICO, Jan. 8, 2021, available at <https://www.expedientepublico.org/nicaraguas-judiciary-subordinate-to-the-ortega-murillo-regime/>.

⁷⁵ *Id.*

⁷⁶ *Estos son los magistrados de la Sala Penal de la CSJ que se prestan a confirmar sentencias contra los presos políticos*, LA PRENSA, Dec. 16, 2022, available at <https://www.laprensani.com/2022/12/16/politica/3079968-estos-son-los-magistrados-de->

example, in a summary judgment of only one page, the Criminal Chamber upheld the convictions of José Adán Aguerri, Juan Sebastián Chamorro, Arturo Cruz, Tamara Dávila, Violeta Granera, Félix Maradiaga, and José Pallais for “undermining national integrity” and “conspiracy to undermine national integrity” on November 29, 2022.⁷⁷

Also, political challenges from the executive branch directly impact the judiciary. Due to recent power dynamics, Sandinista court officials have been persecuted. In October 2022, the Court’s Spokesperson, Roberto Larios, was accused of being a “traitor to the homeland” and taken to *El Chipote* for allegedly leaking information to an independent media outlet and for communicating with Rafael Solís, a former Magistrate now in exile.⁷⁸ Under orders of the FSLN, Magistrate Ileana Pérez resigned in October 2022 after being questioned in the cells of *El Chipote* for alleged corruption. Three other judicial officials who worked directly with the President of the Court, Alba Luz Ramos, were also detained.⁷⁹

Moreover, the judiciary has endorsed the adoption of the repressive laws the National Assembly passed to persecute political prisoners, affirming that those laws “strengthen” the work of the judicial branch.⁸⁰ The Inter-American Commission on Human Rights (IACHR) further observed that the Ortega regime was able to violate human rights with impunity by “the subjugation of the judiciary and the Attorney General’s Office [...] to the government’s designs, clearly undermining the rule of law and democracy.”⁸¹ This shows there is no separation of powers in Nicaragua, as the National Assembly adopts repressive laws that are then

la-sala-penal-de-la-csj-que-se-prestan-a-confirmar-sentencias-contralos-presos-politicos [in Spanish].

⁷⁷ Judgement, Recurso de Casación, Nov. 29, 2022, at 1 (Criminal Chamber Supreme Court of Justice) (Nicar.) [on file with author].

⁷⁸ *Id.* *Estos son los magistrados de la Sala Penal de la CSJ*, *supra* note 76.

⁷⁹ *Id.*

⁸⁰ *CSJ afirma que aprobación de leyes represivas “fortalecen” el trabajo judicial en Nicaragua*, 100% NOTICIAS, Feb. 23, 2022, available at <https://100noticias.com.ni/politica/113514-csj-revision-leyes-represivas-nicaragua/> [in Spanish]. See also Press Release, *Comisiones Parlamentarias continúan las consultas y análisis de las leyes aprobadas de carácter penal*, NATIONAL ASSEMBLY NICARAGUA, Feb. 24, 2022, available at <https://noticias.asamblea.gob.ni/comisiones-parlamentarias-continuan-las-consultas-y-analisis-de-las-leyes-aprobadas-de-caracter-penal/> [in Spanish].

⁸¹ *Inter-American Commission’s Concentration of Power Report*, *supra* note 10, at ¶ 47.

enforced by the judiciary. Several judges and prosecutors have been reported by the US government as persons engaging in actions that “undermine democratic processes or institutions” and “significant corruption” for fabricating charges or conducting sham trials to jail leaders of the opposition.⁸²

D. Abject Lack of Due Process

Since the protests in 2018, international human rights organizations have documented widespread and rampant violations of due process rights in criminal proceedings brought against government critics.⁸³ These violations included politically motivated arrests and detentions, lack of search or arrest warrants, no discussion of detainee’s rights, no public registry of detainees or their location, and prolonged periods of *incommunicado* detention.⁸⁴ Proceedings have not fulfilled international standards for a fair trial—there were rampant violations to the right of presumption of innocence, right to defense, equality of arms, publicity, and the principles of impartiality, independence and natural judge.⁸⁵ Prisoners lacked access to counsel and lacked the ability to prepare an appropriate defense.⁸⁶ Moreover, they were denied contact with their lawyers, who also faced harassment and threats.⁸⁷ All of the former prisoners who were interviewed reported the lack of arrest warrants and

⁸² REPORT TO CONGRESS ON FOREIGN PERSONS WHO HAVE KNOWINGLY ENGAGED IN ACTIONS THAT UNDERMINE DEMOCRATIC PROCESSES OR INSTITUTIONS, SIGNIFICANT CORRUPTION, OR OBSTRUCTION OF INVESTIGATIONS INTO SUCH ACTS OF CORRUPTION IN EL SALVADOR, GUATEMALA, HONDURAS, AND NICARAGUA PURSUANT TO SECTION 353(B) OF THE DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2021, US DEP’T OF STATE, accessed Dec. 21, 2022, available at <https://www.state.gov/wp-content/uploads/2022/08/Tab-2-353-Names-June-2022-Report-Correction.pdf>.

⁸³ *Freedom House Report 2022*, *supra* note 12.

⁸⁴ *Id.*

⁸⁵ REPORT OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, *Human Rights Situation in Nicaragua*, U.N. Doc. A/HRC/51/42, Sept. 2, 2022, at ¶ 46.

⁸⁶ Press Release, *IACHR and OHCHR Condemn Criminalization, Harsh Conditions of Detention, and Failure to Enforce Due Process for Individuals Who Are Perceived to Be Government Critics in Nicaragua*, OAS, Sept. 10, 2021, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/238.asp.

⁸⁷ Press Release, *IACHR Urges State of Nicaragua to Release All People Held in Arbitrary Detention*, OAS, Jan. 31, 2022, available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/023.asp.

expressed that they met their lawyers for the first time the day of the trial, having only the opportunity to speak with them for an average 2-5 minutes—and under police surveillance.⁸⁸ Suyen Barahona expressed that ensuring human rights in the Nicaraguan judicial system is a “myth.”⁸⁹

Additionally, the Public Ministry’s Office has filed bogus charges against most of the detainees, including money laundering and, most commonly, “conspiracy to undermine national integrity.”⁹⁰ Prosecutors failed to identify specific criminal acts by the defendants, and barred critics’ lawyers from participating in closed hearings, assigning public defenders instead. Lawyers did not have access to court documents for months.⁹¹ Finally, the hearings have been held inside police detention centers (such as *El Chipote*)—not in official courtrooms—and independent media and other public has been prohibited from attending, contrary to national legislation.⁹²

E. Harsh Prison Conditions, Including Disparate Treatment of Women

The Ortega regime tortures political prisoners and subjects them to other cruel, inhuman, and degrading treatment or punishment.⁹³ This not only violates international law protections, which are detailed in Section VI below, but also numerous unambiguous provisions of Nicaraguan law. For example, prisoners in Nicaragua have the right to free access to their

⁸⁸ Interviews No. 1,2,4,5,6, 8, 9, 13, 14, *supra* note 2.

⁸⁹ Interview No. 1, *supra* note 2.

⁹⁰ Human Rights Watch Nicaragua 2022 Report, *supra* note 10, at 489.

⁹¹ *Id.*, at 490.

⁹² Press Release, IACHR Condemns Manipulation of Criminal Law and Lack of Guarantees in Trials of Political Prisoners in Nicaragua, OAS, Feb. 11, 2022, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/027.asp.

⁹³ VII INFORME OBSERVATORIO NICARAGÜENSE CONTRA LA TORTURA, COLECTIVO DE DERECHOS HUMANOS NICARAGUA NUNCA MÁS, Apr.-Sept., 2022, at 54, available at <https://colectivodhnicaragua.org/wp-content/uploads/2022/10/7mo-Informe-Observatorio-contr-la-Tortura-Colectivo-NN-Final-PDF.pdf> [in Spanish] and *Observatorio Denuncia Malos Tratos a los Presos Políticos*, SWISS INFO, available at https://www.swissinfo.ch/spa/nicaragua-oposici%C3%B3n_observatorio-denuncia-malos-tratos-a-los--presos-pol%C3%ADticos--en-nicaragua/47282896 [in Spanish]. See also GIEI Report, *supra* note 3, at 231.

counsel and to communicate with him or her in private.⁹⁴ Prisoners have a right to listen to the radio, read newspapers, and magazines, as well as to keep up with relationships outside the prison center through letters, communication, and family visits.⁹⁵ In addition, detainees may request, at their expense, specialized medical services in private health care centers.⁹⁶ During family visits, six people over age 12 per detainee my visit and children under 12 can enter if accompanied by parents, tutors, or guardians.⁹⁷ Detainees are also entitled to make phone calls from once every two weeks to twice a week, depending on the circumstances of their detention, for up to 15 minutes per call.⁹⁸ Many of these rights have been repeatedly and consistently denied to Nicaragua’s political prisoners.

In the aftermath of the peaceful protests and excessive State response in 2018, the OHCHR “received numerous accounts alleging acts of torture and ill-treatment perpetrated by the police or prison authorities during arrest or in the days following the arrest.”⁹⁹ Moreover, it reported that detainees were subjected to “physical torture—including through burnings with Taser guns and/or cigarettes, use of barbed wires, beatings with fists and tubes and attempted strangulation—as well as psychological torture, including death threats.”¹⁰⁰

Among the torture prisoners face, the Ortega regime regularly holds prisoners in prolonged *incommunicado* detention.¹⁰¹ All of the

⁹⁴ Prison Law, Law 473 of 2003, at Art. 95(3).

⁹⁵ *Id.*, at Art. 95(9).

⁹⁶ Decree, Reforms to Decree No. 16-2004, Regulation of Law No. 473, Law of the Penitentiary Regime and Execution of the Sentence, No. 473 Reforms and Regulation, Apr. 8, 2005, (Nicar.), at Art. 26, *available at* <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/debb63de925e60e4062570a60067a438?OpenDocument> [in Spanish] [hereinafter “Prison Law Regulation”].

⁹⁷ *Id.*, at Art. 128.

⁹⁸ *Id.*, at Arts. 132-133.

⁹⁹ HUMAN RIGHTS VIOLATIONS AND ABUSES IN THE CONTEXT OF PROTESTS IN NICARAGUA, UN OFFICE OF THE HIGH COMM’R OF HUMAN RIGHTS, Aug. 18, 2018, at ¶ 79, *available at* https://www.ohchr.org/sites/default/files/Documents/Countries/NI/HumanRightsViolationsNicaraguaApr_Aug2018_EN.pdf.

¹⁰⁰ *Id.*, at ¶ 80.

¹⁰¹ CRITICS UNDER ATTACK, HUMAN RIGHTS WATCH, Jun. 22, 2021, *available at* <https://www.hrw.org/report/2021/06/22/critics-under-attack/harassment-and-detention->

former prisoners reported the lack of communication with their families as one of their biggest sufferings during their detention. They informed that there was no established visiting schedule for their families and there could be long periods of time without visits, sometimes amounting to three months.¹⁰² Suyen Barahona reported that in *El Chipote* “visits were absolutely irregular” and expressed that this was torture for them and their families, who did not even knew whether they were alive.¹⁰³ During the second half of 2022, prisoners in *El Chipote*, spent 84 days without any contact with their loved ones.¹⁰⁴

Visits to the detention center were sporadic and did not adhere to established visiting periods required by law, which guarantees visits every 8, 15, or 21 days, depending on conditions.¹⁰⁵ In November 2022, when visits took place, former prisoners reported that their family members were subjected to cruel and degrading treatment that violated their physical integrity and privacy—such as conducting strip searches and requiring naked squatting in front of prison officials who made degrading comments about their bodies as a form of subjugation and psychological intimidation. “The way they were searched [family members] was humiliating,” said Félix Maradiaga.¹⁰⁶ The law permits prisoners’ children to visit regularly,¹⁰⁷ yet many prisoners only saw their children three times in almost two years. This harsh treatment also extended to high-profile detainees. Presidential candidates Medardo Mairena, Juan Sebastián Chamorro, and Félix Maradiaga were all isolated at the onset of their

opponents-rights-defenders-and. In 2010, UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment Juan E. Méndez said “I am especially concerned that prolonged incommunicado detention . . . facilitates the perpetration of torture and ill treatment, and could in themselves constitute a form of such treatment.” *Statement by Juan E. Méndez, UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, UN HUMAN RIGHTS COUNCIL, Mar. 7, 2010, available at https://www.ohchr.org/sites/default/files/Documents/Issues/SRTorture/StatementHRC16SRTORTURE_March2011.pdf.

¹⁰² Interviews No. 1,2,4,5,6, 8, 9, 13, 14, *supra* note 2.

¹⁰³ Interview No. 2, *supra* note 2.

¹⁰⁴ Press release, *Statement of Family Members of Political Prisoners Detained Since May 2021 at the Jail Known As “El Chipote,”* Nov. 23, 2022, available at <https://twitter.com/SeHumanoNic/status/1595450292597841921> [in Spanish] [hereinafter “Press Release Families”].

¹⁰⁵ Prison Law Regulation, *supra* note 9696, at Art. 130.

¹⁰⁶ Interview No. 9. See *Press Release Families*, *supra* note 104.

¹⁰⁷ Prison Law Regulation, *supra* note 105, at Art. 128.

detention subjected to harsh and daily interrogations.¹⁰⁸ All of the former prisoners also reported facing daily interrogations, sometimes lasting 3-4 hours.¹⁰⁹ Dora María Téllez reported being told by interrogators that she had “no rights” during the first 90 days of her detention—no right to see her lawyer or family.¹¹⁰ Both Chamorro and Maradiaga were only allowed three phone calls with their wives and daughters abroad only 18 months after they had been detained, in flagrant violation of Nicaraguan law, which provides prisoners the right to place family phone calls at least every two weeks.¹¹¹

Detained women in *El Chipote* suffered a especially harsh treatment from the regime, which was characterized by placing them in long periods of solitary confinement. This was the case for activist women imprisoned for denouncing human rights violations, Tamara Dávila, Ana Margarita Vijil, Suyen Barahona, and Dora María Tellez.¹¹² About this specific treatment against women, Téllez recalled “the isolation regime to which 4 women, Suyen, Támara, Ana Margarita, and me were subjected to implied that we were unaccompanied in the cell. We could not speak with anyone inside or outside the cell. And we always had an officer sitting next to the cell to prevent us from talking with our cell neighbors. It was a regime of total silence.”¹¹³

Human rights organizations have reported that prisoners lacked access to medical care and received insufficient food.¹¹⁴ This was corroborated by interviews with former political prisoners in *El Chipote* who reported that the medical attention in the detention center was

¹⁰⁸ *Nicaragua: The New Chipote (El Nuevo Chipote)*, INT’L SOC’Y FOR HUMAN RIGHTS, Mar. 16, 2022, available at <https://ishr.org/nicaragua-the-new-chipote/> [hereinafter “Nicaragua: The New Chipote (El Nuevo Chipote)”].

¹⁰⁹ *Interviews No. 1, 2, 4, 5, 6, 8, 9, 13, 14, supra* note 2.

¹¹⁰ *Interview No. 6, supra* note 2.

¹¹¹ *Prison Law Regulation, supra* note 9696, at Art. 132.

¹¹² VI INFORME PARTE NARRATIVA OBSERVATORIO NICARAGÜENSE CONTRA LA TORTURA, COLECTIVO DERECHOS HUMANOS NUNCA MÁS, Dec. 2021, Mar. 2022, at 24, available at <https://colectivodhnicaragua.org/wp-content/uploads/2022/05/Sexto-Informe-Parte-Narrativa.pdf> [in Spanish].

¹¹³ *Interview No. 6, supra* note 2.

¹¹⁴ Press Release, *IACHR and Its SRESCER Call for Immediate Release of Political Prisoners Being Held in Appalling Conditions in Nicaragua*, OAS, Sept. 5, 2022, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/197.aspx.

“superficial” and despite several of them having requested specialized medical care and attention, this was not provided. Ana Margarita Vijil mentioned that she was never permitted to be seen by an internal medicine specialist, despite her requests.¹¹⁵ She also recalled that regardless of the law providing for access to private medical care if paid by the families, this was never allowed.¹¹⁶ Former prisoners also noted the health deterioration of Hugo Torres, a 73-year-old former guerrilla fighter and a critic of Ortega, who died of unspecified causes while in detention on February 12, 2022.¹¹⁷ He was reportedly “being held in inhumane conditions, incommunicado for prolonged periods, repeatedly interrogated, and not allowed to access the open air.”¹¹⁸ Former prisoners expressed that authorities in *El Chipote* were negligent towards Torres’ increasing demands for medical attention given that he was in pain and feeling ill.¹¹⁹

Prisoners have also been dangerously exposed to COVID-19 infection. During a surge of the Omicron variant in February 2022, those showing symptoms in *La Modelo* did not receive medical attention.¹²⁰ Inside *El Chipote*, face masks were scarce and so were disinfectants.¹²¹ A physician from the Nicaraguan public health system noted that overcrowding and ill-treatment in the country’s detention centers was increasing the prisoners’ exposure to the virus.¹²² Moreover, political prisoners faced “months without proper clothing or sleeping covers,

¹¹⁵ Interview No. 13, *supra* note 2.

¹¹⁶ *Id.*

¹¹⁷ Juan Pappier, *Government Critics Languish in Nicaraguan Prisons*, HUMAN RIGHTS WATCH, Mar. 10, 2022, available at <https://www.hrw.org/news/2022/03/10/government-critics-languish-nicaraguan-prisons>.

¹¹⁸ *Id.*

¹¹⁹ Interviews No. 6, 9, 13, *supra* note 2.

¹²⁰ *Covid-19 en La Modelo: Más de 200 presos políticos con síntomas asociados*, CONFIDENCIAL, Feb. 16, 2022, available at <https://www.confidencial.digital/nacion/covid-19-en-la-modelo-mas-de-20-presos-politicos-con-sintomas-asociados/> [in Spanish].

¹²¹ *Presos políticos expuestos a la Covid-19 por las condiciones de hacinamiento*, LA PRENSA, Feb. 10, 2022, available at <https://www.laprensani.com/2022/02/10/nacionales/2949068-reos-politicos-expuestos-a-la-covid-19-por-las-condiciones-de-hacinamiento> [in Spanish] and *Presos políticos están en “gravísimo peligro”, bajo riesgo de “muerte” alertan familiares*, 100% NOTICIAS, Feb. 14, 2022, available at <https://100noticias.com.ni/politica/113306-presos-politicos-nicaragua-riesgo-muerte/> [in Spanish].

¹²² *Id.*, *Presos políticos están en “gravísimo peligro.”*

enduring cold nights on top of cement beds with very thin mattresses”¹²³—living conditions that exacerbate the consequences of exposure to COVID-19 and other viruses.

A lack of proper nutrition further threatened prisoners’ health. According to the conducted interviews, during the first months of detention at *El Chipote*, prisoners were being starved. They reported being fed *Gallo Pinto*, which is a typical Central American dish consisting of beans and rice, in every meal with some little protein and plantain during lunch. Suyen Barahona reported counted having only 5 beans on her plate.¹²⁴ Also, there were no fruits or vegetables provided unless prisoners had a “diet” due to health reasons. Family members of prisoners reported that Ortega imposed a “starvation diet,” on political prisoners to wear down, incapacitate, and reduce their ability to resist.¹²⁵ As a result, many prisoners experienced extreme weight loss. After 400 days of arbitrary detention, attorney José Pallais lost nearly 41 kilograms (90 pounds), political commentator Jaime Arellano lost 36 kilograms (80 pounds), and community leader Medardo Mairena lost 33 kilograms (73 pounds).¹²⁶ Financial consultant Walter Gómez, political scientist José Antonio Peraza, and peasant leader Pedro Mena each lost about 27 kilograms (60 pounds).¹²⁷

In some cases, public advocacy has helped to improve prison conditions. Former *El Chipote* political prisoners noted that in the summer of 2022, the regime suddenly gave them more food in an attempt to make them look healthier in public photos and videos. This was a response to a public campaign led by *Se Humano*, a group of volunteer activists and friends of political prisoners, showing artists’ renditions of prisoners having lost an enormous amount of weight.¹²⁸ In this vein, the Ortega

¹²³ *Nicaragua: The New Chipote (El Nuevo Chipote)*, *supra* note 108.

¹²⁴ *Interview No. 2*, *supra* note 2.

¹²⁵ *Ortega Continues to Starve His Political Prisoners*, HAVANA TIMES, Aug. 30, 2022, available at <https://havanatimes.org/features/ortega-continues-to-starve-his-political-prisoners/>.

¹²⁶ Wilfredo Miranda, *Nicaragua’s Daniel Ortega is Starving His Political Prisoners*, EL PAÍS, Sept. 1, 2022, available at <https://english.elpais.com/international/2022-09-02/nicaraguas-daniel-ortega-is-starving-his-political-prisoners.html>.

¹²⁷ *Id.*

¹²⁸ *Presos politicos reciben más alimentos tras campana de retratos hablados*, LA MESA REDONDA, Jul. 27, 2022, available at <https://www.lamesaredonda.net/presos-politicos-reciben-mas-alimentos-tras-campana-de-retratos-hablados/> [in Spanish].

regime made public video recordings and showed pictures of a number of the prisoners in late August 2022 as a counterreaction to the campaign which denounced the lack of food and torture the prisoners were facing.¹²⁹ Again, by November 2022, prisoners in *El Chipote* were being fed more and given greater access to sunlight. By the time they were released in February 2023, many prisoners had put back on a third to a half of the weight they had lost. It must be noted that in December 2022, the conditions drastically changed, as they were allowed to have more frequent visits, children were permitted to see their parents, phone calls were also granted, and even holiday celebrations with large feasts were held. Former prisoners underscored the practice of abruptly changing the quantity of food as perverse and as a form of emotional blackmail against them. When they were in food abundance period, the regime would take pictures of them receiving the large portions of food in an attempt to delegitimize the public accusations of food deprivation. José Alejandro Quintanilla (Alex Hernández) labeled the amount of food at certain periods of the detention as “excessive,” “vulgar,” and “ridiculous.”¹³⁰

The conducted interviews consistently showed that there was no potable water in *El Chipote* for prisoners to drink—their families had to bring bottles of water every single day for them. On occasions, the water and other refreshments or snacks that families would bring to the prisoners were not handed to them as a way of punishment.

Other punishment tactics targeted prisoners’ mental health. Prisoners had to remain in silence and had limited access to sunlight—during the first months of detention, sunlight was minimum. Suyen Barahona reported only being allowed in the sun for 30 minutes in the first month. That treatment progressively improved, but she clarified the first sixth months were “brutal” in that aspect.¹³¹ Also, all former prisoners reported having no access to reading and writing materials,¹³² including Bibles. Several prisoners requested Bibles, but the authorities denied these

¹²⁹ Francisco Villalta, *El regimen de Daniel Ortega exhibe a 19 presos politicos después de un año de arresto*, ABC INTERNACIONAL, Aug. 31, 2022, available at <https://www.abc.es/internacional/regimen-daniel-ortega-exhibe-presos-politicos-despues-20220831213311-nt.html>.

¹³⁰ Interview No. 14, *supra* note 2.

¹³¹ Interview No. 2, *supra* note 2.

¹³² Interviews No. 1,2,4,5,6, 8, 9, 13, 14, *supra* note 2.

requests.¹³³ The regime also used light and light deprivation to punish prisoners. There, some prisoners, like Félix Maradiaga, spent months in total darkness, while others, like Juan Sebastián Chamorro, endured cells with constant fluorescent light.¹³⁴ All former prisoners reported now having sequels on their sight and skin due to the constant state of darkness.¹³⁵ OAS Rapporteur on the Rights of Persons Deprived of Liberty denounced Nicaragua's treatment of its political prisoners as "white torture," defined extreme isolation and sensory deprivation, to weaken detainees' mental resistance.¹³⁶

Conditions are also hard for the remaining 36 political prisoners who are held in Nicaraguan prisons such as *La Modelo* and other national penitentiary centers in Granada, León, Matagalpa, and Juigalpa. Bishop Álvarez is being held in the maximum-security aisle of *La Modelo*, called *La 300*, also known as the "Little Hell" (*Infernillo*),¹³⁷ for its extreme conditions and where prisoners of the 2018 protests were constantly beaten up and chained. Medical attention is also deficient in *La Modelo*; Eliseo de Jesús Castro, who was physically attacked during his arrest, did not receive proper care in prison and suffered a stroke—he is now lying in a hospital bed since September 2021.¹³⁸

The Ortega regime has also sought to muffle international public criticism of this treatment by blocking international efforts to document

¹³³ NICARAGUA 2021 INTERNATIONAL RELIGIOUS FREEDOM REPORT, US DEP'T OF STATE, OFFICE OF INT'L RELIGIOUS FREEDOM, June 2, 2022, at 6, *available at* <https://www.state.gov/wp-content/uploads/2022/05/NICARAGUA-2021-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>.

¹³⁴ *Nicaraguan Political Prisoners Held in 'Horrific Condition,' Says Lawyer*, REUTERS, June 8, 2022, *available at* <https://www.reuters.com/world/americas/nicaraguan-political-prisoners-held-horrific-conditions-says-lawyer-2022-06-08/>.

¹³⁵ *Interviews No. 1,2,4,5,6, 8, 9, 13, 14, supra* note 2.

¹³⁶ María Lilly Delgado & Tifani Roberts, "Tortura Blanca," *El Método Que Los Ortega-Murillo Emplean Contra Sus Opositores*, HUELLAS DE IMPUNIDAD, *available at* <https://www.huellasdeimpunidad.org/tortura-blanca-el-metodo-que-los-ortega-murillo-emplean-contra-sus-opositores/> [in Spanish].

¹³⁷ *Monseñor Álvarez está aislado en el infierno, una celda de máxima seguridad*, ALETEIA, Feb. 15, 2022, *available at* <https://es.aleteia.org/2023/02/15/monsenor-alvarez-esta-aislado-en-el-infierno-una-celda-de-maxima-seguridad/> [in Spanish].

¹³⁸ Wilmer Benavides, *Salud del preso político Elíseo Castro se agrava tras derrame cerebral*, ARTICULO 66, Feb. 17, 2022, *available at* <https://www.articulo66.com/2022/02/17/salud-eliseo-castro-presos-politico-nicaragua/> [in Spanish].

prison conditions. In March 2022, Nicaragua expelled the Head of the Delegation of the International Committee of the Red Cross (ICRC),¹³⁹ an independent and neutral organization that, among other things, monitors prison conditions. In 2018, the regime previously expelled a delegation from OHCHR in Nicaragua,¹⁴⁰ as well as the GIEI¹⁴¹ and the Special Monitoring Mechanism for Nicaragua,¹⁴² both of the OAS.

¹³⁹ *Nicaragua Expels Red Cross Representative Without Giving Reason*, Mar. 25, 2022, accessed Dec. 15, 2022, available at <https://www.swissinfo.ch/eng/reuters/nicaragua-expels-red-cross-representative-without-giving-reason/47465434>.

¹⁴⁰ Oswaldo Rivas, *Nicaragua Orders Expulsion of U.N. Human Rights Delegation* *Reuters*, REUTERS, Aug. 31, 2018, accessed Dec. 15, 2022, available at <https://www.reuters.com/article/uk-nicaragua-protests-idUKKCN1LG2CS>.

¹⁴¹ *GIEI Report*, *supra* note 3 at 17.

¹⁴² *Special Monitoring Mechanism for Nicaragua*, OAS.ORG, accessed Dec. 15, 2022, available at <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/meseni/default.asp>.

II. PROCESS FOR IDENTIFYING POLITICAL PRISONERS

There is no universally accepted definition for the term “political prisoner.”¹ In fact, some human rights organizations avoid it due to a perceived lack of objectivity.² For the purposes of this report, in general terms, a political prisoner is an individual who has engaged in human rights defense and/or prodemocracy activism, and whose liberty has been restricted in an attempt to end or restrict such work.³ The Ortega regime’s political prisoners include presidential candidates and political opponents, civil society activists, journalists and other media workers, and religious leaders who stand up against the regime. Given the focus of this report, the generalized definition does not include individuals imprisoned based solely on their religion, ethnicity, gender, nationality, or membership of a group, who might otherwise be considered political prisoners in a more expansive definition.⁴

This report uses data provided by The Mechanism, which publishes a periodic list of political prisoners in Nicaragua, following rigorous documentation and verification.⁵ The Mechanism’s list only includes persons whose liberty has been deprived for political reasons and whose families have authorized their inclusion.

The Mechanism considers that a person is a political prisoner when at least one of the following criteria applies to a verified case:

- 1) the person is detained in violation of one of the fundamental guarantees enshrined in the Constitution or in international human rights law;

¹ *Explainer: What Defines A Political Prisoner?*, RADIO FREE EUROPE/ RADIO LIBERTY, Jan. 23, 2013, available at <https://www.rferl.org/a/explainer-political-prisoners/24881810.html> (“There is no single standard for what makes a political prisoner, however, and international bodies and state governments are not always in agreement.”).

² *Id.*

³ *About Our Political Prisoners Initiative*, FREEDOM HOUSE, available at <https://freedomhouse.org/about-political-prisoners-initiative>.

⁴ *Id.*

⁵ LISTA PERSONAS PRESAS POLÍTICAS NICARAGUA, ENERO 2023, MECANISMO PARA EL RECONOCIMIENTO DE PERSONAS PRESAS POLÍTICAS, Jan. 31, 2023, at 2, available at <https://presasypresospolicosnicaragua.org/wp-content/uploads/2023/02/b2a54ec9-be29-41e1-af81-af52aaae83ab.pdf> [in Spanish].

- 2) the detention is carried out purely for the purposes of political persecution, unrelated to any crime;
- 3) the detention is prolonged as a result of political motivation;
- 4) unequal application of the law based on political motivation;
or
- 5) manifest violation of due process based on political motivation.

As of March 31, 2023, after the mass release and deportation to the US of 222 prisoners, The Mechanism's list documented 36 political prisoners.⁶ The complete list of the remaining 36 is provided in Appendix I. As The Mechanism itself acknowledges, the total number of political prisoners in Nicaragua is likely under-reported due to lack of access to public information and high levels of repression in Nicaragua, which often also targets families of political prisoners.⁷

⁶ LISTA PERSONAS PRESAS POLÍTICAS NICARAGUA, MARZO 2023, Mecanismo para el Reconocimiento de Personas Presas Políticas, Mar. 31, 2023, at 1, *available at* <https://presasypresospoliticosnicaragua.org/wp-content/uploads/2023/04/8aa6cb62-5802-4827-aea8-bd872ae4464f.pdf> [in Spanish].

⁷ *Lista Personas Presas Políticas Nicaragua*, *supra* note 5, at 4.

III. ILLUSTRATIVE CASES OF POLITICAL PRISONERS

The Ortega regime has leveraged an array of new repressive laws¹ that criminalize the exercise of basic democratic freedoms and a willingness to fabricate charges and evidence, to arrest, detain, try, convict, and imprison anyone it perceives as a threat. This section of the report will present profiles on five of the 36 prisoners who still remain in Nicaragua after the mass release of February 9, 2023, as well as profiles of 20 former political prisoners. The profiles presented here offer examples of each of the most commonly targeted groups: presidential candidates, political opponents, civil society activists, journalists, and religious leaders.

A. Current Political Prisoners

Currently, there are 36 political prisoners in Nicaragua²—those who were not released and sent to the US in February 2023. This group of current prisoners is composed of 10 prisoners from before the 2018 social unrest, including the regime’s “first political prisoner” and 26 detained in the context post-2018. Prisoners have suffered torture and ill-treatment at maximum security cells in *La Modelo*, sentences that surpass the 30-year limit imposed by the Criminal Code, and numerous due process violations such as not being tried by their natural judges, being arrested without arrest warrants, and the use of false witnesses.³ Nine of them were persecuted in the regime’s repression campaign trying to find those responsible for the “July 19, 2014 massacre,” an attack on two Sandinista motorcades which left five regime sympathizers dead and 24 injured.⁴

¹ These laws are the *Sovereignty Law 1055*, *Foreign Agents Regulation Law*, *Special Cybercrimes Law*, *Anti-Money Laundering*, *Financing Terrorism*, and *Proliferation of Weapons of Mass Destruction Law*, and *Law 1060 of 2021*, mentioned in the Background (I) section of this report and which will be explained in detail in section V – The Constitution of Nicaragua and Key Domestic Laws Used to Persecute Political Prisoners.

² LISTA PERSONAS PRESAS POLÍTICAS NICARAGUA, MARZO 2023, Mecanismo para el Reconocimiento de Personas Presas Políticas, Mar. 31, 2023, at 1, available at <https://presasypresospoliticosnicaragua.org/wp-content/uploads/2023/04/8aa6cb62-5802-4827-aea8-bd872ae4464f.pdf> [in Spanish].

³ *Presos políticos en las bodegas humanas del regimen* OBRERA DE LA TECLA, accessed Feb. 21, 2023, available at <https://obreradelatecla.com/presos-politicos-en-las-bodegas-humanas-del-regimen/> [in Spanish].

⁴ Carlos S. Maldonado, *Massacre of Sandinistas in Nicaragua Unleashes Campaign of Repression*, EL PAÍS, Aug. 1, 2014, available at

Most of the current prisoners, detained in *La Modelo*, have been convicted of “common crimes” such as murder, drug trafficking, and possession of weapons.⁵ Their detention conditions are extremely concerning as those in maximum security cells have little ventilation, are isolated, receive less visits than the general population—and visits are through glass doors—and have no access to kitchens, and have no regular schedule of sunlight time.⁶

From this group, only Bishop Álvarez who refused to board the plane to Washington, D.C., has faced persecution under the regime’s new package of repressive laws.⁷ Below are the profiles of six of the current 36 political prisoners who were not released on February 9, 2023.

1. Bishop Rolando Álvarez



Bishop Rolando Álvarez, 56, is a Nicaraguan prelate of the Catholic Church who has served as the Bishop of Matagalpa since 2011 and as Apostolic Administrator of Estelí since 2021. Álvarez has been one of the most outspoken critics of the abuses of the Ortega regime in Nicaragua, denouncing the regime’s crackdown on civil and religious liberties. Experts and activists report that the judicial process against Álvarez has been marred by irregularities and disregard for guarantees of due process.⁸

https://english.elpais.com/elpais/2014/08/01/inenglish/1406918949_934122.html [in Spanish].

⁵ *Lista Personas Presas Políticas Nicaragua*, *supra* note 2, at 4; ¿*Quiénes son los últimos 35 presos políticos de Nicaragua?*, CONFIDENCIAL, Feb. 19, 2023, available at <https://www.confidencial.digital/nacion/quienes-son-los-35-presos-politicos-que-siguen-en-nicaragua/> [in Spanish].] and LISTA PERSONAS PRESAS POLÍTICAS NICARAGUA, FEBRERO 2023, MECANISMO PARA EL RECONOCIMIENTO DE PERSONAS PRESAS POLÍTICAS, Feb. 27, 2023, at 1, available at <https://presasypresopoliticospolicosnicaragua.org/wp-content/uploads/2023/02/03ea9894-16a8-4c62-8c3c-6ebf01258e6e.pdf> [in Spanish].

⁶ *Id.*, *Lista Personas Presas Políticas Nicaragua*, at 28.

⁷ *Id.*, ¿*Quiénes son los últimos 35 presos políticos de Nicaragua?*

⁸ See Edgar Beltrán, *Nicaraguan Bishop Álvarez to face conspiracy trial*, THE PILLAR, Dec. 14, 2022, available at <https://www.pillaratholic.com/nicaraguan-bishop-alvarez-to-face-conspiracy/>.

Judge Gloria Maria Saavedra Corrales of the Tenth Criminal District Court of Managua denied Álvarez's petition to name his own lawyer. Instead, she appointed a public defender to his case.⁹ His public defender, Jennifer Hernández, was previously imposed upon Boaco priest Leonardo Urbina, a trial also widely seen as political persecution.¹⁰ On January 10, 2023, Álvarez was brought before Judge Saavedra, who ruled that his case would be a public trial and that he will remain under house arrest.¹¹ A month later, on February 10, 2023, after Álvarez refused to be deported along with other 222 prisoners—and on a speedy trial that was supposed to occur on March 28—he was sentenced to 26 years in prison for “undermining national integrity” and the “propagation of false news.”¹² He was then allegedly taken to *La Modelo* prison to a maximum security cell.¹³ On March 4, 2023, when his sister went to deliver goods for him at prison, police authorities denied that he was at *La Modelo* and did not give out any information about his location.¹⁴ It was only until March 25, 2023, 46 days after the mass release, that he was shown to be alive and it was confirmed that he was being held in *La Modelo*.¹⁵ This was also the first time that he was allowed a family visit,¹⁶ in contravention of both Nicaraguan and international law. The night of the mass release and before the sentence, Ortega demonstrated his hate and fear of the Bishop by referring to him as a “madman,” “deranged,” and “arrogant,” “who thinks of himself as Head of the Church” and accusing

⁹ *Id.*

¹⁰ *The regime had Monsignor Urbina “on file” as “blue and white,”* CONFIDENCIAL, July 18, 2022, available at <https://www.confidencial.digital/english/the-regime-had-monsignor-urbina-on-file-as-blue-and-white/>.

¹¹ *Id.*

¹² *Monseñor Rolando Álvarez, sentenciado por Daniel Ortega a 26 años de cárcel*, EXPEDIENTE PÚBLICO, Feb. 10, 2023, available at <https://www.expedientepublico.org/monsenor-rolando-alvarez-sentenciado-por-ortega-a-26-anos-de-carcel/> [in Spanish].

¹³ *Id.*

¹⁴ *¿Dónde está el obispo Rolando Álvarez? Preocupación en Nicaragua por su paradero*, NTN24, Mar. 5, 2023, available at <https://www.ntn24.com/america-latina/nicaragua/donde-esta-el-obispo-nicaraguense-rolando-alvarez-407387> [in Spanish].

¹⁵ Walter Sánchez Silva, *Imprisoned Nicaraguan Bishop Álvarez Appears in Video Posted by Dictatorship*, CATHOLIC NEWS AGENCY, Mar. 27, 2023, available at <https://www.catholicnewsagency.com/news/253951/imprisoned-nicaraguan-bishop-alvarez-appears-in-video-posted-by-dictatorship>.

¹⁶ *Id.*

him of “wanting to take over the Pope,” among other hateful language clearly showing that he perceives him as a threat to his power.¹⁷

The Catholic Church and international community have actively followed and denounced Álvarez’ case. For instance, Pope Francis spoke out against the detention of his clergy members, urging “open and sincere dialogue” toward “peaceful coexistence” with the Nicaraguan state.¹⁸ The European Parliament adopted a resolution condemning the arrest¹⁹ and the IACHR condemned the repression and detention of the Nicaraguan religious leaders.²⁰ Each has called for the immediate release of Álvarez and other detainees, as well as for guarantees that their lives and personal integrity will be protected. A history of cardiac issues and photos showing significant weight loss have raised concerns about Álvarez’ health.²¹ On April 13, 2023, the IACHR granted Precautionary Measures to Álvarez requesting Nicaragua to adopt the necessary measures to protect his life, personal integrity, and health.²²

2. Wilfredo Jose Balmaceda Castrillo

¹⁷ Daniel Ortega, *Address to the Nation on the Release of more than 200 prisoners in Nicaragua*, Feb. 9, 2023, available at <https://www.youtube.com/watch?v=fNREcDBIDFQ> [in Spanish].

¹⁸ Edgar Beltrán, *Why is Pope Francis is Quiet about Nicaragua?*, THE PILLAR, Aug. 24, 2022, available at <https://www.pillarcatholic.com/why-is-pope-francis-quiet-about-nicaragua/>.

¹⁹ See *Resolution on Nicaragua, in Particular the Arrest of the Bishop Rolando Álvarez*, THE EUROPEAN PARLIAMENT, adopted Sept. 15, 2022, available at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0322_EN.html#def_1_2.

²⁰ Press Release, *IACHR Condemns Repression and Arrests of Members of Roman Catholic Church in Nicaragua*, INTER-AM. CT. H.R., Aug. 19, 2022, available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/184.asp.

²¹ Edgar Beltrán, *Nicaraguan Bishop Álvarez to face conspiracy trial*, THE PILLAR, Dec. 14, 2022, available at <https://www.pillarcatholic.com/nicaraguan-bishop-alvarez-to-face-conspiracy/>.

²² Press Release, *CIDH otorga medidas cautelares a Rolando José Álvarez Lagos*, INTER-AM. COMM’N ON HUMAN RIGHTS, Apr. 14, 2023, available at <https://www.oas.org/pt/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/064.asp> [in Spanish].



Wilfredo Jose Balmaceda Castrillo, 62, is a well-known member of the opposition movement “Unity with Dignity.” He is one of the 10 political prisoners imprisoned prior to April 2018.²³

From 2000-2004, Balmaceda served as Municipal Secretary of Ciudad Darío for the Constitutionalist Liberal Party (PLC), as well as councilor of the Mayor’s Office. In 2012, he was reelected as councilor, but declined to take office, claiming that the new Mayor had been fraudulently imposed by the FSLN.²⁴ The regime arbitrarily labeled Balmaceda as “the alleged ringleader, planner and organizer”²⁵ of the July 19, 2014, massacre and violently arrested and detained him in 2014. After an express trial rife with due process violations, illegal detention, and contradictory evidence,²⁶ Balmaceda was sentenced to 133 years in prison for his alleged role in the attack—although he would only serve 30 years due to maximum sentencing.²⁷ He is detained in *La Modelo* in a maximum-security cell.

Local human rights organizations have demanded freedom for Balmaceda and the other prisoners detained pre-2018 for political motives, noting each were long-standing opponents of the regime.²⁸ Defenders have argued that, given the upcoming election at the time, the Ortega regime detained political leaders in the context of the July 19, 2014 massacre “to sustain a political narrative of power” and gain control of communities known to be highly oppositional.²⁹ The prisoners have been held in

²³ *¿Quiénes son los últimos 35 presos políticos de Nicaragua?*, CONFIDENCIAL, Feb. 19, 2023, available at <https://www.confidencial.digital/nacion/quienes-son-los-35-presos-politicos-que-siguen-en-nicaragua/> [in Spanish].

²⁴ *Presos políticos en las bodegas humanas del regimen* [in Spanish], OBRERA DE LA TECLA, accessed Feb. 21, 2023, available at <https://obreradelatecla.com/presos-politicos-en-las-bodegas-humanas-del-regimen/>.

²⁵ *¿Quién es Wilfredo Balmaceda?* [in Spanish], NICARAGUA TODAY, July 28, 2014, available at <https://pinoleronic.blogspot.com/2014/07/quien-es-wilfredo-balmaceda.html>.

²⁶ Octavio Enríquez, *Masacre del 19, ¿cuál es la verdad?* [in Spanish], CONFIDENCIAL, July 18, 2015, available at <https://www.confidencial.digital/politica/masacre-del-19-cual-es-la-verdad/>.

²⁷ *Presos políticos en las bodegas humanas del régimen* [in Spanish], *supra* note 24.

²⁸ Ivette Munguía, *Reclaman libertad para diez presos políticos anteriores a la Rebelión de Abril* [in Spanish], CONFIDENCIAL, June 19, 2020, available at <https://www.confidencial.digital/politica/reclaman-libertad-para-diez-presos-politicos-antiores-a-la-rebelion-de-abril/>.

²⁹ *Id.*

inhuman conditions, as well as subjected to torture and cruel treatment. Similarly, they have had limited contact with family or lawyers.³⁰

3. Edder Muñoz Centeno



Edder Muñoz Centeno, 35, is a member of the Civic Alliance for Justice and Democracy and an outspoken critic of the regime. He remains incarcerated in the Granada Prison, or *La Granja*.

Since joining public protests in April 2018, Muñoz and his family have faced constant monitoring and intimidation from police. He has been detained on three separate occasions. First, he was detained from December 31, 2018, to May 20, 2019, in *La Modelo* prison where he was never brought before a judge nor had charges formally placed against him. During those five months, his family was entirely unaware of his location and presumed him to be dead. He was later detained again in September 2019. At that time, Muñoz received a direct threat from the General Commissioner of *El Chipote* that “if he went to clandestine meetings, they would arrest him because he would be [...] responsible for the situation in the country.”³¹ Throughout 2021, he and his family were under surveillance from police and parastatal agents, and he was added to a list of “Known White Targets” (*Objetivos Blancos Connotados*) with the police logo, which was widely circulated with his photo and address.

On November 23, 2021, the National Police raided Muñoz’s home and he was violently arrested for the third time. According to a family member, the officers planted a “small black box containing drugs with the alleged aim of accusing [Muñoz] and detaining him.”³² In an initial hearing, he was charged with drug trafficking and illegal possession of

³⁰ *Id.*

³¹ Resolution 47/2022, Precautionary Measures No. 608-22 and No. 625-22 about Edder Oniel Muñoz Centeno and Nidia Lorena Barbosa Castillo Regarding Nicaragua, INTER-AM. COMM’N ON HUMAN RIGHTS, *adopted* Sept. 23, 2022, at ¶ 18, *available at* https://www.oas.org/en/iachr/decisions/mc/2022/res_47-22_mc_608-22%20and%20no.%20625-22%20_ni_en.pdf.

³² *Id.*, at ¶ 19; *See also* Edder Muñoz cumple 390 privado de libertad [in Spanish], LA PRENSA, Dec. 18, 2022, *available at* <https://www.laprensani.com/2022/12/18/derecho-humano-ni/3080558-edder-munoz-cumple-390-privado-de-libertad>.

weapons.³³ After two weeks in the Masaya Police Station, Muñoz was taken to *La Granja* prison. On February 11, 2022, Ortega-allied Judge William Irving Howard López sentenced Muñoz to eight and a half years in prison, after a trial that “[lacked] judicial independence and impartiality” according to his legal defense.³⁴

Muñoz has been denied contact with family and legal defense for extended periods. During each visit, his family and lawyers have noted an acute deterioration of his health and wellbeing. Muñoz has described abhorrent detention conditions in *La Granja*, explaining he “shares a cell with 140 other persons,” in which he had to ‘buy’ a small space from the other inmates to allow him to sleep in a hammock. Before this, “he had to sleep on the overcrowded floor,” which had stagnant water and a cockroach infestation.³⁵

Despite chronic medical conditions, including hepatitis, liver conditions, issues with eyesight, and elevated blood pressure, he has received little to no medical attention nor time in the courtyard. He has experienced severe migraines, as well as insect bites and pain in his bones and knees from sleeping on the ground.³⁶ In September 2022, the IACHR granted precautionary measures in favor of Muñoz, and called on the State to improve his access to his lawyers, as well as ensure his safety, health, and wellbeing within the penitentiary facility.³⁷

Several organizations, opponents of the regime, reported that on January 4, 2023, a group of guards came into his cell to conduct a search and tortured him after he complained about having his medicines and food thrown to the floor—he was taken out of his cell to another place where other 20 guards were present and there he was handcuffed and hung from

³³ *Id.*, at ¶ 20.

³⁴ *Id.*, at ¶ 21 Noel Perez Miranda, *Edder Muñoz, con afectaciones graves de salud tras golpiza recibida en la cárcel* [in Spanish], ARTÍCULO 66, Jan. 13, 2023, available at <https://www.articulo66.com/2023/01/13/edder-munoz-afectado-salud-golpiza-carceleros-penal-granada/>.

³⁵ *Id.*, at ¶ 22.

³⁶ *Id.*, at ¶ 23.

³⁷ Press Release, *IACHR Grants Precautionary Measures in Favor of Edder Oniel Muñoz Centeno and Nidia Lorena Barbosa Castillo in Nicaragua*, OAS, Sept. 27, 2022, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/216.asp.

his wrists for more than 30 minutes. During the time he was suspended in the air, he received punches and kicks in the back, face, and stomach. He got very ill from this attack and did not receive proper medical care.³⁸

4. Martha Candelaria Rivas Hernandez



Martha Candelaria Rivas Hernandez, 57, is the only female political prisoner remaining in Nicaragua.³⁹ The regime launched an attack on her for refusing to accuse Manuel Salvador García of physical violence, the first priest to be detained in June 2022, in the regime's crackdown on the Catholic Church.

On May 30, 2022, Rivas was accidentally hit in the eye by Priest Manuel Salvador García, as she was walking close behind him, and he quickly turned around with a padlock in his hand. Alarmed, Rivas' teenage daughter ran out in the neighborhood to get help, so a group of men came closer to surround the church and started shouting and insulting the priest. The priest came outside with a machete for self-defense, but did not harm anyone.

Rivas uploaded a video recounting the incident, explaining that it was an accident, and that she did not hold the priest responsible for any aggression.⁴⁰ Despite this video explanation, investigators showed only part of the video, presenting Rivas as a victim of the priest. The Ortega-backed media similarly utilized the video to vilify the priest. Throughout the trial against Priest García Rodríguez, Rivas never accused him of committing intentional violence. She stated that “the police wanted to

³⁸ Wilmer Benavides, *Denuncian golpiza a preso politico Edder Muñoz*, Artículo 66, Jan. 6, 2023, available at <https://www.articulo66.com/2023/01/06/torturas-presos-politico-edder-munoz-nicaragua/> [in Spanish].

³⁹ *¿Quiénes son los últimos 35 presos políticos de Nicaragua?*, CONFIDENCIAL, Feb. 19, 2023, available at <https://www.confidencial.digital/nacion/quienes-son-los-35-presos-politicos-que-siguen-en-nicaragua/> [in Spanish].

⁴⁰ Gato Encerrado, *Manipulaciones y mentiras en juicio contra la mujer que se niega a acusar por violencia al sacerdote de Nandaime* [in Spanish], DESPACHO 505, June 25, 2022, available at <https://www.despacho505.com/manipulaciones-y-mentiras-en-juicio-contra-la-mujer-que-se-niega-a-acusar-por-violencia-al-sacerdote-de-nandaime/>.

force her to sign [a complaint against the priest],”⁴¹ but she denied that anything wrong had been done, saying “I do not feel attacked, it was an accident.”⁴² Even though she never changed her story nor filed a complaint against the priest, Rivas was charged with providing a “false testimony.” Two police officers and a prosecutor claimed that, in an interrogation, she claimed it was an intentional attack. Judge María Zapata Morales found Rivas guilty on July 8, 2022, and sentenced her to up to five years in prison. She is held at *La Granja* prison in Granada.⁴³

Priest Salvador García was nevertheless convicted of physical violence on July 1, 2022, and sentenced to two years and eight months by Judge María Graciela Monterrey Vélez.⁴⁴ In June 2022, Judge Jaime Aguilar already sentenced the priest to two years in prison for “threatening five people with a weapon” during the May 2022 incident.⁴⁵



5. Marvin Vargas Herrera

Marvin Vargas Herrera, 52, who is known as “the dictatorship’s first political prisoner,” was arrested in March 2011 and has been held since then—nearly 12 years in *La Modelo*.⁴⁶ His unjust

⁴¹ *Régimen acusa de "falso testimonio" a mujer que aclaró que sacerdote la golpeó por accidente* [in Spanish], 100% NOTICIAS, June 22, 2022, available at <https://100noticias.com.ni/nacionales/116237-detienen-mujer-supuesta-victima-golpe-sacerdote/>.

⁴² *Manipulaciones y mentiras en juicio*, supra note 40.

⁴³ ¿Quiénes son los últimos 35 presos políticos de Nicaragua?, supra note 39.

⁴⁴ *Declaran culpable a Martha Candelaria Rivas y Fiscalía pide 5 años de cárcel* [in Spanish], NICARAGUA INVESTIGA, July 11, 2022, available at <https://nicaraguainvestiga.com/politica/88116-culpable-martha-candelaria-rivas/>; see also David Agren, *Parishioners protest arrest of second priest in two months in Nicaragua*, CRUX, July 18, 2022, available at <https://cruxnow.com/cns/2022/07/parishioners-protest-arrest-of-second-priest-in-two-months-in-nicaragua>.

⁴⁵ *Nicaraguan Priest Sentenced to Two Years in Prison*, CONFIDENCIAL, June 26, 2022, available at <https://www.confidencial.digital/english/nicaraguan-priest-sentenced-to-two-years-in-prison/>.

⁴⁶ Mónica Baltodano, *Ortega’s First Political Prisoner Marks 10 Years in Jail*, CONFIDENCIAL, Sept. 27, 2021, available at <https://www.confidencial.digital/english/ortegas-first-political-prisoner-marks-10-years-in-jail/>. See also Fabian Medina Sanchez, *Marvin Vargas, el calvario del preso político que lleva ocho años en las mazmorras de Daniel Ortega*, INFOBAE, June 15, 2019, available at <https://www.infobae.com/america/america-latina/2019/06/15/mervin-vargas-el-calvario-del-pres-politico-que-lleva-ocho-anos-en-las-mazmorras-de-daniel-ortega/>.

imprisonment marked a new era of repression by the Ortega regime, characterized by the criminalization of political opponents.⁴⁷

Vargas was President of the *Asociacion Cachorros de Sandino* (Sandino's Cubs Association), a group of young ex-Sandinista fighters from the Somoza rebellion. In January 2011, Vargas led thousands of *Cachorros* in a protest in front of the National Assembly, demanding funds to support veterans. After inaction by the government, protests resumed in March 2011, but days later, Vargas was arrested. Without a legal warrant, police raided his home and confiscated all his organization's files. For months, authorities refused to disclose information regarding his conditions to his family, nor was he formally charged with a crime. It was not until October 2011, after Vargas engaged in a hunger strike, that the prosecution produced a new accusation of aggravated fraud against supposed victims that Vargas never met. He was later sentenced to five and a half years in prison on these charges.

Throughout his case, his constitutional guarantees have been repeatedly violated. On four occasions a judge has ordered his release, but these orders were never obeyed by *La Modelo*. For example, in 2015, a judge found Vargas had met requirements for conditional release, but the court order was ignored. Again, in November 2016, when Vargas completed his first full sentence and a release order was given by a judge, the prison ignored it. Six months after his legal release date, he was suddenly accused of internal drug trafficking and sentenced to an additional 12 years in prison in June 2017. In an express trial, he had no access to an attorney and all witnesses were prison guards. After this second sentencing, family visits with Vargas were suspended for two years, and he remained in complete isolation and deprived of sunlight for long periods—up to a year at a time.⁴⁸ He has been victim of physical and psychological torture and he suffers serious illness, potentially prostate cancer, but has received minimal medical care.⁴⁹

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Lorenzo Vega Sánchez, “*El Cachorro*” *no es reconocido como el primer preso político por el Gobierno de Nicaragua* [in Spanish], EL CANAL DEL ORGULLO NICARAGÜENSE, June 22, 2019, available at <https://www.vostv.com.ni/nacionales/10667-el-cachorro-no-es-reconocido-como-el-primer-preso/>.

B. Former Political Prisoners

Below are examples of commonly targeted groups by the Ortega regime with specific case studies of former political prisoners. They were investigated, tried, convicted, and sentenced under Ortega's set of repressive laws including the *Sovereignty Law 1055*, *Special Cybercrimes Law*, *Foreign Agents Regulation Law* and the crimes of undermining and conspiracy to undermine national integrity or money laundering contained in the Criminal Code. The regime also used a reform to the Criminal Procedure Code to hold a so-called "Special Hearing for the Protection of Constitutional Rights," to extend prisoner's detention to up to 90 days.

All these prisoners were unilaterally released and deported to the US by Ortega on February 9, 2023. Also, they have all been arbitrarily deprived of their Nicaraguan nationality.

1. Presidential Candidates

In the period leading up to the November 2021 presidential elections, Daniel Ortega launched a relentless campaign against ten declared opposition candidates, targeting anyone that posed a potential threat to his power.⁵⁰ Ortega forced three candidates—George Henriquez, Luis Fley, and María Asunción Moreno—into exile and arbitrarily detained the other seven, paving the way for his reelection: Cristiana Chamorro, Juan Sebastián Chamorro, Arturo Cruz, Medardo Mairena, Félix Maradiaga, Miguel Mora,⁵¹ and Noel Vidaurre.⁵² Five of these former prisoners' stories are shared below.

⁵⁰ ANNUAL REPORT 2021, CHAPTER IV. B. NICARAGUA, INTER-AM. COMM'N OF HUMAN RIGHTS, May 26, 2022, at ¶ 5, *available at* <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Nicaragua-en.pdf>.

⁵¹ While Miguel Mora was one of the detained presidential candidates, he is included under the "Journalists" subsection of this report given that journalism his long-time profession and also a significant part of the regime's persecution against him.

⁵² *All Seven Opposition Candidates Sentenced to Prison*, CONFIDENCIAL, Mar. 23, 2022, *available at* <https://www.confidencial.digital/english/all-seven-opposition-candidates-sentenced-to-prison/>.

a. Cristiana Chamorro



Cristiana Chamorro, 68, is the founder and executive director of the Violeta Barrios de Chamorro Foundation, a non-profit organization that promotes free speech and civic initiatives for social and political change in Nicaragua. In February 2021, the organization was forcefully closed under the *Foreign Agents Regulation Law*.⁵³ Chamorro is also the daughter of Violeta Barrios de Chamorro, former President of Nicaragua (1990-1997), and served from 1987 to 1992 as the editor of *La Prensa*, the country's largest newspaper.

In January 2021, she became a presidential hopeful, with an approval rating of 43 percent⁵⁴—higher than Ortega's. After declaring her interest in running for president, the already frequent attacks against her escalated.⁵⁵ To block her participation in the elections, the regime fabricated charges related to her work at the non-profit. In May 2021, the Ministry of the Interior questioned Chamorro about alleged inconsistencies in the Foundation's financial statements.⁵⁶ Then, on June 1, 2021, an Assistant Prosecutor of Nicaragua's Public Ministry, Jorge Luis Arias Arquín, accused her of abusive management (Article 278 Criminal Code), falsifying documents (Articles 285, 289 Criminal Code), and money laundering (Article 282 Criminal Code).⁵⁷ On June 2, 2021, she was detained only hours after visiting the opposition group Citizens for Liberty Alliance and having submitted a letter declaring her intent to run for president.⁵⁸ Police entered by force and raided her home.⁵⁹

⁵³ *Nicaragua Foundation Announces Suspension in Face of New Law*, AP NEWS, Feb. 5, 2021, available at <https://apnews.com/article/violeta-chamorro-philanthropy-nicaragua-latin-america-laws-f9bcca83a428801f4f565acbefbc213a>.

⁵⁴ *Cristiana María Chamorro Barrios and Others v. Nicaragua*, Opinion No. 58/2022, U.N. Doc. A/HRC/WGAD/2022/58, U.N. WORKING GROUP ON ARBITRARY DETENTION, Sept. 1, 2022, at ¶ 5 [hereinafter "Cristiana Chamorro WGAD Opinion"].

⁵⁵ *Id.*

⁵⁶ *Id.*, at ¶ 6.

⁵⁷ Public Ministry Accusation, *Judicial File Num. 1091-SEDE-21JD*, Jun. 1, 2021, at 1 (Managua Criminal District Court) (Nicar.) (on file with author) [in Spanish].

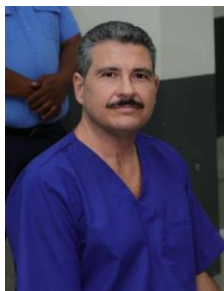
⁵⁸ *Cristiana Chamorro WGAD Opinion*, *supra* note 54, at ¶ 11.

⁵⁹ *Id.*, at ¶ 12.

There have been numerous due process violations in Chamorro's case. A day after her arrest, a judge conducted a preliminary hearing without permitting Chamorro's lawyer to be present. Instead, a public defender against Chamorro's will was assigned to the case. Chamorro was also denied access to her case file.⁶⁰ In March 2022, Judge Luden Martínez Quiroz, of the Ninth District Criminal Court of Managua, convicted and sentenced her to eight years in prison for money laundering and misappropriation.⁶¹

The UN Working Group on Arbitrary Detention declared her detention in violation of international law, calling for her immediate and unconditional release.⁶² Since she was detained, Chamorro was kept under house arrest in very difficult conditions, including permanent police custody outside her house, no phone or social media usage, no use of her backyard, and a limit of visits from two family members for one hour each day.⁶³

b. Juan Sebastián Chamorro



Juan Sebastián Chamorro, 51, is a Nicaraguan economist, political figure, member of the Civil Alliance for Justice and Democracy, and critic of Daniel Ortega. He earned a Bachelor of Arts degree in Economics from the University of San Francisco, an Master of Arts in Applied Economics with a focus on social policies from Georgetown University, and his doctoral degree in Economics from the University of Wisconsin-Madison. From 2022 to 2006, Chamorro served as the Technical Secretary of the Presidency of the Republic—the Ministry in charge of strategic national planning—and as Vice Minister of Finance.⁶⁴

⁶⁰ *Id.*, at ¶ 20.

⁶¹ *Opponent Cristiana Chamorro Sentenced to Eight Years in Prison in Nicaragua*, INFOBAE, Mar. 22, 2022, available at <https://www.infobae.com/en/2022/03/22/opponent-cristiana-chamorro-sentenced-to-eight-years-in-prison-in-nicaragua-2/>.

⁶² *Cristiana Chamorro WGAD Opinion*, *supra* note 54.

⁶³ *Id.*, at ¶ 35.

⁶⁴ Jared Genser and Michael Russo, *White Paper on the Cases of Juan Sebastián Chamorro and Félix Maradiaga Citizens of the Republic of Nicaragua And the More than 170 Political Prisoners of the Ortega Regime v. Government of the Republic of Nicaragua*, PERSEUS STRATEGIES, Jan. 10, 2022, at 3, available at <https://www.perseus->

He is the nephew of Violeta Barrios de Chamorro, former President of Nicaragua and first cousin of Cristiana Chamorro, another presidential hopeful and political prisoner (her case described above).

On February 27, 2021, in a press conference, Chamorro officially announced his presidential campaign, running on a platform of economic reform, improved social infrastructure, and enhanced justice mechanisms for victims of human rights violations.⁶⁵ Four months later, on June 8, 2021, while at his home in Managua, he received a summons to appear at the Public Ministry on the morning of June 9, 2021, for an interview. Shortly thereafter, 40 armed police officers arrived at the Chamorro residence, where they jumped the fence and forced open the gate. Chamorro immediately put his hands up and was taken away by two police officers.⁶⁶ Over four hours, the Police searched his residence and confiscated items, including notebooks, papers, and numerous electronics. The police did not present an arrest and/or search warrant.⁶⁷

For the first 84 days of Chamorro's detention, he was subjected to an enforced disappearance. During this period, his family, lawyers, and doctors were not told of his whereabouts, wellbeing, or whether he was still alive.⁶⁸ It is now known that Chamorro was in *El Chipote* along with many other political prisoners, where conditions are difficult. These conditions included spending months in cells with fluorescent lights on 24/7, prolonged periods of *incomunicado* detention, harsh and frequent interrogations (more than 400 in total), a lack of access to medical care,

strategies.com/wp-content/uploads/2022/01/White-Paper-Juan-Sebastia%CC%81n-Chamorro-Fe%CC%81lix-Maradiaga-et-al.pdf [hereinafter "Perseus White Paper Nicaragua"].

⁶⁵ *Id.*, *Perseus White Paper Nicaragua*. See also *La prioridad es la unidad y la candidatura única*, JUANSEBASTIAN.CH, accessed Feb. 7, 2023, available at <https://juansebastian.ch/la-prioridad-es-la-unidad-y-la-candidatura-unica/> [in Spanish].

⁶⁶ *Id.*, *Perseus White Paper Nicaragua*, at 20. See also Press Release, *Nota de Prensa No. 140-2021*, NICARAGUA NATIONAL POLICE, Jun. 8, 2021, available at <https://www.policia.gob.ni/?p=69792> [in Spanish] and *Policía Orteguista detiene al precandidato presidencial Juan Sebastián Chamorro*, LA PRENSA, Jun. 8, 2021, available at <https://www.laprensani.com/2021/06/08/politica/2835261-fiscalia-cita-a-juan-sebastian-chamorro-para-este-miercoles-9-de-junio> [in Spanish].

⁶⁷ *Id.*, *Perseus White Paper Nicaragua*.

⁶⁸ *Id.*, at 22.

and no reading or writing materials.⁶⁹ During the time of his imprisonment, Chamorro was only able to have three ten-minute calls with his wife and daughter who live in exile.

On March 3, 2022, after a short trial in *El Chipote*, a police detention center and not a court of law, Judge Félix Ernesto Salmerón Moreno of the Fifth District Criminal Court of Managua sentenced Chamorro to 13 years in prison for “undermining national integrity to the detriment of the State of Nicaragua and Nicaraguan Society”⁷⁰ (Article 410 Criminal Code). The prosecutor was Heydi Estela Ramírez Olivas, an Assistant Prosecutor of Nicaragua’s Public Ministry. He was convicted alongside other political prisoners such as Félix Maradiaga and José Adán Aguerrí, among others. On June 24, 2021, the Inter-American Court of Human Rights (Inter-American Court) issued Provisional Measures for Chamorro and other prisoners and ordered Nicaragua to immediately release him and to adopt the necessary measures to protect his life, integrity, and personal freedom.⁷¹ The regime did not comply expeditiously with this decision, which led the Inter-American Court to declare Nicaragua in contempt of court in November 2022.⁷²

Regarding his experience, Chamorro explained:

⁶⁹ See V INFORME OBSERVATORIO NICARAGÜENSE CONTRA LA TORTURA, COLECTIVO DE DERECHOS HUMANOS NICARAGUA NUNCA MÁS, Apr -Nov. 21, 2021, at 41, 53, 53, 83, available at <https://colectivodhnicaragua.org/wp-content/uploads/2021/12/101221-5to-reporte-del-Observatorio-de-la-tortura.pdf> [in Spanish] and VI INFORME OBSERVATORIO NICARAGÜENSE CONTRA LA TORTURA, COLECTIVO DE DERECHOS HUMANOS NICARAGUA NUNCA MÁS, Dec. 2021-Mar. 2022, at 20, 37, available at <https://colectivodhnicaragua.org/wp-content/uploads/2022/05/Sexto-Informe-Parte-Narrativa.pdf> [in Spanish].

⁷⁰ Judgement, *Sentencia No. 08-2022*, Mar. 3, 2022, at 57 (Fifth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish] [hereinafter “March 3, 2022, Ruling”].

⁷¹ *Resolución sobre el asunto Juan Sebastián Chamorro y otros*, INTER-AM. CT. H.R., adopted Jun. 24, 2021, at 17, available at https://www.corteidh.or.cr/docs/medidas/chamorro_se_01.pdf [in Spanish].

⁷² *Resolución sobre el asunto Juan Sebastián Chamorro y otros y 45 personas privadas de su libertad en 8 centros de detención respecto de Nicaragua*, INTER-AM. CT. H.R., adopted Nov. 22, 2022, at 16, available at https://www.corteidh.or.cr/docs/medidas/45personas_se_02.pdf [in Spanish] [hereinafter “Nov. 22, 2022, Provisional Measures”].

In my case, not very different from the rest, it was a continuous violation of rights. Eight months before I was arrested, the regime violated my right to mobilize as I was unable to travel outside Managua. I was under house arrest for some time. I was basically kidnapped, without a warrant order and at night, violating the law. I was denied the right to make a call and I could not speak with my lawyer until 9 months after my arrest, and it was just for two minutes in front of an officer. The regime violated all the norms for due process during my trial, which was basically a farce. I was not allowed to speak in jail, not even to my cellmates and I was denied reading and writing material. We were under interrogations very day, even after being sentenced to 13 years in prison, February 23rd, my birthday. When I analyze everything that happened in the last five years, I come to the conclusion that Ortega's is one of the most brutal and repressive regimes in the world.⁷³

c. Arturo Cruz



Arturo Cruz, 68, is an academic and former diplomat who previously served as Ortega's Ambassador to the US from 2007-2009. He holds a Ph.D. in History from Oxford University and taught at INCAE Business School for 25 years, leaving this position to announce his candidacy in the November 2021 presidential elections.⁷⁴

On June 5, 2021, when he was returning from a trip to the US, the National Police arrested him at the Managua International Airport. In violation of the Nicaraguan Constitution, more than 48 hours passed after his arrest before he was brought before a judge.⁷⁵ During that time, he

⁷³ Private message from Juan Sebastián Chamorro, former political prisoner to author, Apr. 11, 2023 [on file with author].

⁷⁴ *Arturo Cruz, exdiplomático que aspiró a la Presidencia de Nicaragua, cumple un año privado de libertad*, ARTÍCULO 66, Jun. 5, 2022, available at <https://www.articulo66.com/2022/06/05/preso-politico-arturo-cruz-ano-de-carcel/> [in Spanish].

⁷⁵ Reform and Addition Law to Law No. 406, Criminal Procedure Code of the Republic of Nicaragua, No. 1060, Feb. 5, 2021, at Art. 1, available at [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/49C912ED7DDE58CE062586760053C890?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/49C912ED7DDE58CE062586760053C890?OpenDocument) [in Spanish].

was prevented from contacting his lawyers or family members.⁷⁶ For eight months, Cruz was arbitrarily detained in *El Chipote* and subjected to torture and inhuman conditions—reports suggest he lost weight, became ill, and did not receive adequate medical care, despite showing symptoms of Parkinson’s disease.⁷⁷

Assistant Prosecutor Heydi Estela Ramírez Olivas accused Cruz of actions that “affect the sovereign and independent State of Nicaragua,” relying on a recording on his phone in which he reportedly said he traveled to the US to advocate for Nicaragua’s suspension from the OAS and the Central American Free Trade Agreement and for the expedited approval of the RENACER Act, a bill later adopted by the US Congress to authorize further sanctions on Nicaragua.⁷⁸ Moreover, the Public Ministry referenced a public statement he made on March 25, 2021, in which he declared electoral reform in Nicaragua could not wait any longer.⁷⁹ These actions and statements, however, should have been fully protected speech both under the Constitution of Nicaragua and its obligations under the International Covenant on Civil and Political Rights. On March 3, 2022, Judge Félix Ernesto Salmerón Moreno of the Fifth District Criminal Court of Managua convicted him of “conspiracy to undermine national integrity,” sentenced him to nine years in prison, and barred him from holding public office for that same amount of time.⁸⁰

On February 18, 2022, the Public Ministry transferred Cruz, along with Francisco Aguirre (77 years old) and José Pallais (68 years old), to house arrest, citing health reasons.⁸¹ While Cruz was sent home, the regime maintained strict house arrest protocols amounting to near-total isolation. Cruz and other prisoners under house arrest did not have access

⁷⁶ Press Release, *Comunicado*, PRESS TEAM ARTURO CRUZ, Jun. 7, 2021, available at https://twitter.com/arturo_cruzs/status/1401948902924996610/photo/1 [in Spanish].

⁷⁷ *Arturo Cruz, exdiplomático que aspiró a la Presidencia*, *supra* note 74.

⁷⁸ Public Ministry Accusation, *Judicial File Num. 011964-ORM4-2021PN*, Aug. 24, 2021, at 7 (Fifth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish] [hereinafter “Aug. 24, 2021 Accusation”].

⁷⁹ *Id.*, at 8. See also Public Statement, *Sobre Proyecto de ley RENACER en Estados Unidos*, ARTURO CRUZ, Mar. 25, 2021, available at <https://arturocruzsequeira.com/sobre-proyecto-de-ley-renacer-en-estados-unidos/> [in Spanish].

⁸⁰ *March 3, 2022, Ruling*, *supra* note 70, at 57.

⁸¹ Public Statement, *Comunicado 003-2022*, PUBLIC MINISTRY NICARAGUA, Feb. 18, 2022, available at <https://ministeriopublico.gob.ni/comunicado-003-2022/> [in Spanish].

to phones, computers, Internet, their lawyers, or even fresh air in their backyards.⁸²

d. Medardo Mairena



Medardo Mairena, 44, is a rural community leader, former coordinator of grassroots movements in Nicaragua, and former member of the South Caribbean (Bluefields) Regional Council. Mairena became a national leader in the Anti-Canal Grassroots Movement since 2013 to protest a law granting the HK Nicaragua Canal Development Investment (HKND) Group, a Hong Kong-based infrastructure firm led by businessman Wang Jing, a concession to construct an Interoceanic Canal.⁸³ Prior to his arrest, Mairena also belonged to the Civic Alliance for Justice and Democracy. He has been imprisoned twice by the Ortega regime since April 2018. The first time, he was arrested on July 13, 2018 while boarding a plane to the US and sentenced to 216 years in prison for “terrorism” and “breaking the constitutional order.”⁸⁴

During his 2018 arrest, the Police physically assaulted Mairena; he later recalled that “[w]hen they took me to *El Chipote*, my face was covered with a ski mask and handcuffed, they left me in a room for hours and all the officers who passed by hit me on the head with their fists.”⁸⁵ Mairena was seized from his cell up to three times during the night for intense interrogations.⁸⁶ In response to these physical attacks and Mairena’s living conditions—no natural light or air circulation—the President of the Inter-American Court issued urgent precautionary measures in his favor and demanded his immediate release on May 21,

⁸² *What House Arrest Means for Ortega’s Political Prisoners*, CONFIDENCIAL, Mar. 1, 2022, available at <https://www.confidencial.digital/english/what-house-arrest-means-for-ortegas-political-prisoners/>.

⁸³ *Nicaraguan Rural Leader Medardo Mairena Speaks After Prison*, CONFIDENCIAL, Jun. 16, 2019, available at <https://www.confidencial.digital/english/nicaraguan-rural-leader-medardo-mairena-speaks-after-prison/>.

⁸⁴ Press Release, *Nota de Prensa No. 83-2018*, NATIONAL POLICE NICARAGUA, Jul. 13, 2018, available at <https://www.policia.gob.ni/?p=19929> [in Spanish] and *All Seven Opposition Candidates Sentenced*, *supra* note 52.

⁸⁵ *Mairena Speaks After Prison*, *supra* note 83.

⁸⁶ *Id.*

2019.⁸⁷ Mairena was subsequently released on June 11, 2019, under the *Amnesty Law* adopted by the National Assembly.⁸⁸

On July 5, 2021, Mairena was arrested for a second time,⁸⁹ after launching a presidential campaign in April 2021.⁹⁰ The members of the National Police who conducted the arrest presented neither an arrest warrant nor a search warrant to enter his home. Mairena was held for 66 days before having any contact with his family. Later, the regime allowed visits once only every 45 days.⁹¹ IACHR reported Mairena's cell, which he shared with another prisoner, measured only 2 by 3 meters (6.5 by 10 feet). He lived under 24/7 fluorescent lighting, negatively impacting his sleep. For 14 months he was kept in a punishment cell. Mairena's health suffered; he endured stomach issues due to drinking non-potable water⁹² and lost 36.7 kilograms (81 pounds).

On February 9, 2022, Judge Félix Ernesto Salmerón Moreno of the Ninth District Criminal Court of Managua convicted and sentenced

⁸⁷ *Ampliación de medidas provisionales, Asunto Juan Sebastián Chamorro y otros respecto de Nicaragua*, INTER-AM. CT. H.R., adopted May 25, 2022, at ¶ 14, available at https://www.corteidh.or.cr/docs/medidas/chamorro_se_06.pdf [in Spanish] [hereinafter "May 25, 2022, Extension of Provisional Measures"]. The IACHR also issued precautionary measures in his favor on October 15, 2018, see *Resolution 80/2018 Medardo Mairena Sequeira y Mario Lener Fonseca Díaz respecto de Nicaragua*, INTER-AM. COMM'N ON HUMAN RIGHTS, adopted Oct. 15, 2018, at 36, available at <http://www.oas.org/es/cidh/decisiones/pdf/2018/80-18MC1172-18-NI.pdf>.

⁸⁸ *All Seven Opposition Candidates Sentenced to Prison*, CONFIDENCIAL, Mar. 23, 2022, available at <https://www.confidencial.digital/english/all-seven-opposition-candidates-sentenced-to-prison/>.

⁸⁹ Ángela Gómez, *El líder campesino Medardo Mairena, el sexto aspirante presidencial detenido en Nicaragua*, FRANCE 24, Jul. 6, 2021, available at <https://www.france24.com/es/am%C3%A9rica-latina/20210706-nicaragua-opositor-meraldo-mairena-detenido> [in Spanish] and Press Release, *Nota de Prensa No. 181-2021*, NATIONAL POLICE NICARAGUA, Jul. 5, 2021, available at https://twitter.com/vppolicial/status/1412315003999375366?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1412432662938140675%7Ctwgr%5Ecd8e39889f36c35ae2dea4fd2d18d3a2ed054f7c%7Ctwcon%5Es3_&ref_url=https%3A%2F%2Fwww.france24.com%2Fes%2Fam%C3%A9rica-latina%2F20210706-nicaragua-opositor-meraldo-mairena-detenido [in Spanish].

⁹⁰ Carlos Larios, *Medardo Mairena oficializa su precandidatura a la Presidencia por el Movimiento Campesino*, LA PRENSA, Apr. 7, 2021, available at <https://www.laprensani.com/2021/04/07/politica/2805582-medardo-mairena-oficializa-su-precandidatura-a-la-presidencia-por-el-movimiento-campesino> [in Spanish].

⁹¹ *May 25, 2022, Extension of Provisional Measures*, *supra* note 87, at ¶ 15-16.

⁹² *Id.*, at 16.

Mairena to 13 years in prison and disqualified him from public office for “conspiracy to undermine national integrity” (Articles 410, 412 Criminal Code). His trial did not respect minimum due process rights.⁹³ For example, he was not permitted to communicate with his lawyers before the trial, violating his right to have the time and means to prepare an adequate defense.⁹⁴ The prosecutors in his case were Manuel de Jesús Rugama Peña, Yubelka del Carmen Pérez Alvarado, and Jean Dylan Rivas Falcon.

Despite the hardships suffered, Mairena says: “It is worth resisting and fighting for justice, democracy, and freedom in my country.”⁹⁵

e. Félix Maradiaga



Félix Maradiaga, 46, is a Nicaraguan activist, political figure, academic, and outspoken critic of the Ortega regime. He was forced to flee to the US as a young boy in the late 1980s to escape the violence of the ongoing *Contra* war. He studied Political Science and International Relations at a branch of Keiser University in San Marcos,

Carazo, Nicaragua and holds a Master’s in Public Administration from Harvard University. Additionally, Maradiaga was part of the 2009 Yale World Fellows program and was named a Young Global Leader by the World Economic Forum.

Maradiaga dedicated his professional life to public service and civil society work to promote human rights, nonviolence, and disarmament. He served as Director of the Office for Reintegration of Ex-Combatants and as the Secretary General of the Nicaraguan Ministry of Defense—the youngest person to ever hold that position. He also served as a Disarmament Fellow at the UN Headquarters in New York. In 2007, he founded the Civil Society Leadership Institute, a civic education initiative aimed at cultivating leadership skills among grassroots activists and educate activists them about the fundamentals of nonviolent social change. In 2017, he was appointed Executive Director of the Institute of Strategic Studies and Public Policy, a Managua-based think tank. Due to

⁹³ *Id.*, at 17.

⁹⁴ *Id.*

⁹⁵ Private message from Medardo Mairena, former political prisoner, to author, Mar. 3, 2023 [on file with author] [in Spanish].

Maradiaga's outspoken criticism of the violence and anti-democratic practices perpetrated by the regime, Ortega has long sought to discredit, intimidate, and silence him. Maradiaga's family has also repeatedly faced threatened and real violence.⁹⁶

On June 5, 2021, the Public Ministry summoned Maradiaga to appear before its central offices in Managua on June 8, at 8:30 am for a so-called interview about which no further information was provided.⁹⁷ When he arrived at the Public Ministry, Maradiaga provided a statement and was later subject to more than four hours of extensive questioning about his international activities. This included his work with the OAS and UN Security Council, his travel over the last 10 years, and the funding sources of his civil society work.⁹⁸ Only 20 minutes after Maradiaga exited the Public Ministry, the police arrested him without a court order authorizing the arrest.⁹⁹ Police forcibly pulled Maradiaga from his car and, though Maradiaga did not resist arrest, struck him in the face.¹⁰⁰

For the first 84 days of his detention, Maradiaga was held in undisclosed locations without access to family, lawyers, or doctors.¹⁰¹ Later, it was revealed that Maradiaga was held at *El Chipote*. While in prison, he faced frequent, harsh interrogations, insufficient food, periods of solitary confinement, *incommunicado* detention, and psychological torture. This torture included months in a cell in total darkness and no access to reading materials, not even a Bible.¹⁰² Maradiaga recalls "there was not access to any type of reading; when we were given refreshments we used to read the labels and they noticed, so before they gave us bottles of water to drink or juice, milk, or Gatorade, they would take labels off so we could not even read those – this explains how ridiculous and extreme they were."¹⁰³ He described the regime's tactics in treating the prisoners as "emotionally exhausting."¹⁰⁴

⁹⁶ *Perseus White Paper Nicaragua*, *supra* note 64, at 7.

⁹⁷ *Id.*, at 20

⁹⁸ *Id.*, at 21.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Nicaraguan Political Prisoners Held in 'Horrific Conditions,' says Lawyer*, REUTERS, Jun. 8, 2022, available at <https://www.reuters.com/world/americas/nicaraguan-political-prisoners-held-horrific-conditions-says-lawyer-2022-06-08/>.

¹⁰³ *Interview No. 9*, *supra* note 2.

¹⁰⁴ *Id.*

Due to these conditions, he lost 27 kilograms (60 pounds) of weight. On March 3, 2022, Judge Félix Ernesto Salmerón Moreno of the Managua Fifth District Criminal Court summarily tried and convicted Maradiaga of the crime of “undermining national integrity to the detriment of the State of Nicaragua and Nicaraguan Society” (Article 410 Criminal Code), sentencing him to 13 years in prison.¹⁰⁵ The prosecutor in his case was Assistant Prosecutor Heydi Estela Ramírez Olivas. After 19 months in arbitrary detention, Maradiaga was finally allowed to call his wife and daughter who are in exile; he was allowed only three calls to his family in 20 months of detention. His wife, Berta Valle, has faced threats, persecution, and was accusations of being a “traitor to the homeland.”¹⁰⁶ She is also one of the 94 individuals that the regime denaturalized and confiscated their property and assets from in February 2023.

2. Political Opponents

The Ortega regime’s crackdown on political opposition extended far beyond political candidates to encompass other real or perceived political opponents. Beginning in mid-2021, the National Police arrested dozens of political opponents under a package of repressive laws. Among those, the *Sovereignty Law 1055* granted the regime the power to designate a traitor “anyone who expressed opposition to the ruling party.”¹⁰⁷ The regime has inflicted violent arrests, repressive detention conditions, and closed-door trials upon political opponents detained after exercising their constitutional right to freedom of expression.¹⁰⁸ The following five individuals are some of the opposition party leaders who have been convicted and sentenced for “conspiracy to undermine national integrity” under Nicaragua’s *Sovereignty Law 1055* and Articles 410 and 412 of the Criminal Code.

¹⁰⁵ March 3, 2022, *Ruling*, *supra* note 80, at 57.

¹⁰⁶ Berta Valle: “Tiene que haber un espacio de encuentro donde puedan haber diferentes actores que hablen con el régimen,” LA PRENSA, Aug. 31, 2022, available at <https://www.laprensani.com/2022/08/31/politica/3037349-bertha-valle-tiene-que-haber-un-espacio-de-encuentro-donde-puedan-haber-actores-que-hablen-con-el-regimen> [in Spanish].

¹⁰⁷ NICARAGUA 2020 HUMAN RIGHTS REPORT, US DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, Mar. 30, 2021, at 26, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/nicaragua/>.

¹⁰⁸ *See id.*

a. Jaime Arellano Arana



Jaime José Arellano Arana, 62, is a political scientist, political commentator, and host of the political talk show “Jaime Arellano in the Nation” (*Jaime Arellano en la Nación*), as well as a member of the Conservative Party. He studied at Andrew College in Georgia and Georgia State University.

Arellano was kept under house arrest for more than ten years for criticizing the regime on his show.¹⁰⁹ During the 2018 protests challenging the Ortega regime, Arellano became a target of regime supporters.¹¹⁰ Sandinista radio programs circulated Arellano’s phone number to their listeners and incited Ortega supporters to threaten him. As a result, Arellano received hundreds of insults and death threats. Undeterred, Arellano continued to fight for liberty, democracy, and justice in Nicaragua, although the heightened threats forced his temporary exile to the US. He remained in exile for nine months but returned to Nicaragua in August 2019.¹¹¹

Beginning in February 2020, the National Police posted patrol units to watch Arellano’s home and search anyone entering or leaving the premises. On February 20, the police surrounded Arellano’s home, preventing him or his family from leaving. The police had no warrant or other judicial order to hold him at that time. The siege on his home continued into the next month. Police and paramilitary men interrogated his neighbors, followed Arellano, arbitrarily detained him on several occasions, searched his vehicle without a warrant, and entered his office without a warrant to take photos.¹¹²

¹⁰⁹ May 25, 2022, *Extension of Provisional Measures*, *supra* note 87, at ¶ 19 and *Resolución 82/21 sobre Jaime José Arellano Arana respecto de Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, *adopted* Oct. 12, 2021, at ¶ 10, *available at* https://www.oas.org/es/cidh/decisiones/mc/2021/res_82-21_mc_206-20_ni_es.pdf [in Spanish] [hereinafter “Jaime Arellano Precautionary Measures”].

¹¹⁰ *Jaime Arellano es víctima de amenazas de muerte por campaña de radios sandinistas*, 100% NOTICIAS, Oct 28, 2016, *available at* <https://100noticias.com.ni/nacionales/94060-jaime-arellano-amenazas-muerte-nicaragua/> [in Spanish].

¹¹¹ *Jaime Arellano Precautionary Measures*, *supra* note 109.

¹¹² *Id.*, at ¶¶ 11-13.

On July 24, 2021, Arellano, along with his lawyer and presidential candidate Noel José Vidaurre, complied with an order to appear at the Public Ministry, where they were interrogated for making critical statements about the Ortega regime. On the same day, the police raided Arellano's home without a judicial order, placing him under house arrest. The Police published a press release that day, indicating their intent to initiate an investigation against Arellano and Vidaurre for, among other allegations, undermining national integrity and violating the *Sovereignty Law 1055*.¹¹³

On October 12, 2021, the IACHR granted precautionary measures in favor of Arellano, having found that he faced a “serious, urgent risk of suffering irreparable harm to [his] rights in Nicaragua.”¹¹⁴ IACHR called on Nicaragua to adopt necessary measures to protect his rights to life and personal integrity, and to: 1) allow him contact with family and lawyers; 2) allow him to continue his work as a journalist without intimidation; 3) reach an agreement with Arellano and his representatives; and 4) report on actions taken to comply with the order.¹¹⁵

Nevertheless, when Arellano's trial began in February 2022, the judge denied his right to consult a lawyer.¹¹⁶ At no point was he permitted to meet with his attorney outside of police presence or for more than five minutes.¹¹⁷ On March 7, 2022, Judge Ulisa Yaoska Tapia Silva of the Thirteenth Criminal District Court of Managua summarily convicted Arellano and sentenced him to 13 years of imprisonment. Additionally, Tapia prohibited him from serving in public office.¹¹⁸ Arellano remained under house arrest ever since, possibly due to his congenital health issues

¹¹³ Press Release, *Nota de Prensa 204-2021*, NATIONAL POLICE OF NICARAGUA, June 24, 2021, available at <https://www.policia.gob.ni/?p=71832> [in Spanish] and May 25, 2022, *Extension of Provisional Measures*, *supra* note 87, at ¶ 19.

¹¹⁴ Press Release, *IACHR Grants Precautionary Measures in Favor of Mauricio José Díaz Dávila, Max Isaac Jerez Meza, and Jaime José Arellano Arana in Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, Oct. 15, 2021, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/276.asp.

¹¹⁵ *Id.*, and *Jaime Arellano Precautionary Measures*, *supra* note 109, at ¶ 33.

¹¹⁶ May 25, 2022, *Extension of Provisional Measures*, *supra* note 87, at ¶ 19.

¹¹⁷ *Id.*

¹¹⁸ *Id.*, and *The Political Prisoners Under House Arrest that Ortega Hides*, CONFIDENCIAL, Sept. 11, 2022, available at <https://www.confidencial.digital/english/the-political-prisoners-house-arrest-that-ortega-hides/> [hereinafter “*Political Prisoners*”].

and high blood pressure which require an oxygen concentrator.¹¹⁹ Details about his condition were largely unknown due to his strict isolation and police surveillance.

On May 25, 2022, the Inter-American Court ordered the immediate release of Arellano along with eight other political prisoners in Nicaragua.¹²⁰ In November 2022, IACHR issued another round of provisional measures, finding Nicaragua in contempt and denouncing its noncompliance with the Inter-American Court's order of release.¹²¹

b. Suyen Barahona Cuán



Suyen Barahona Cuán, 44, is the current president of the Democratic Renovation Movement (Unión Democrática Renovadora, UNAMOS), a political opposition party—previously known as the Sandinista Renovation Movement (*Movimiento Renovador Sandinista*, MRS). The Ortega regime revoked the party's legal standing and renamed it UNAMOS amid the 2018 crisis. Barahona is one of the prominent figures of the opposition movement in Nicaragua.¹²² She is also part of the Blue and White National Unity (*Unidad Nacional Azul y Blanco*, UNAB), another opposition group created in the wake of the 2018 political protests.¹²³ She has publicly advocated to hold the regime accountable for its human rights abuses exercising her human right to freedom of opinion and expression.¹²⁴ She has a bachelor's degree in International Relations and master's degree in Environmental Policy and has been a prominent feminist activist and human rights defender in Nicaragua.¹²⁵

¹¹⁹ May 25, 2022, *Extension of Provisional Measures*, *supra* note 87, at ¶ 19.

¹²⁰ May 25, 2022, *Extension of Provisional Measures*, *supra* note 87, at 17.

¹²¹ Nov. 22, 2022, *Provisional Measures*, *supra* note 72, at 16.

¹²² *Suyen Barahona está de cumpleaños, encerrada en «El Chipote»*, ARTICULO 66, June 9, 2022, available at <https://www.articulo66.com/2022/06/09/suyen-barahona-cumpleanos-encerrada-chipote/> [in Spanish].

¹²³ *Resolution 71/2021 Ana Margarita Vijil Gurdíán et al. for Nicaragua*, INTER-AM. COMM'N ON HUMAN RIGHTS, adopted Aug. 30, 2021, at ¶ 9, available at https://www.oas.org/en/iachr/decisions/mc/2021/res_71-21_mc_593-21,%20665-21%20and%20680-21_ni_en.pdf.

¹²⁴ Public Ministry Accusation, *Judicial File Num. 1772-240-21 JD*, at 1 (Managua Criminal District Court) (Nicar.) (on file with author).

¹²⁵ *Suyen Barahona*, NICAS LIBRES YA, https://nicaslibresya.org/perfiles_pp/suyen-barahona/ (last visited Jan. 23, 2022) [in Spanish].

Barahona was arrested around the same time as Ana Margarita Vijil, Dora María Téllez Arguello, and other UNAMOS leaders on June 13, 2021. Eight police patrol cars raided her home, destroying the gates and detaining Barahona without a warrant.¹²⁶ Police arrested Barahona in front of her family and then spent six hours searching the house, seizing computers, books, surveillance cameras, and other personal items.¹²⁷ The National Police issued a press release announcing its investigation of Barahona for undermining national integrity and other crimes under the *Sovereignty Law 1055*.¹²⁸ About her arrest she expressed “It was the Police, anti-riot units, at least 60. An unnecessary violence because I am 1.48 meters tall [4 ft, 8 in].”¹²⁹

The next day, Barahona’s family members filed a *habeas corpus* request, which the Criminal Chamber of the Managua Appeals Tribunal declared inadmissible.¹³⁰ A special hearing was held for her on June 15, 2021, purportedly to protect her constitutional guarantees; however, Barahona was denied legal counsel, and in the hearing it was decided that her investigation and detention were extended 90 days in accordance with the regime’s reform to the Criminal Procedure Code.¹³¹ She was placed into solitary confinement and initially held *incommunicado*.¹³² The state provided no official information as to her whereabouts, though she was believed to have been taken to *El Chipote*.¹³³ In response, the IACHR granted a request for precautionary measures in favor of Barahona along

¹²⁶ *Resolution 71/2021*, *supra* note 123, at ¶ 14.

¹²⁷ *Id.*

¹²⁸ *Nota de Prensa, 149-2021*, NATIONAL POLICE OF NICARAGUA, June 13, 2021, available at <https://www.policia.gob.ni/?p=69938> [in Spanish].

¹²⁹ *Interview No. 2*, *supra* note 2.

¹³⁰ *Resolution 71/2021*, *supra* note 123, at ¶ 15. Later, on August 20, 2021, family members also filed another habeas corpus request, but it was declared inadmissible as well by the Criminal Chamber of the Managua Appeals Tribunal.

¹³¹ *Id.*

¹³² *Id.*, at ¶ 16.

¹³³ OPINIONES APROBADAS POR EL GRUPO DE TRABAJO SOBRE LA DETENCIÓN ARBITRARIA EN SU 93º PERÍODO DE SESIONES, 30 DE MARZO A 8 DE ABRIL DE 2022, U.N. HUMAN RIGHTS COUNCIL, 93rd Sess., U.N. Doc. A/ HRC/WGAD/2022/10, May 27, 2022, at ¶ 11, available at <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-10-Nicaragua-AEV.pdf> [in Spanish].

with several of her peers.¹³⁴ The Inter-American Court followed suit, granting provisional measures in her favor on several occasions.¹³⁵

Nicaragua did not comply with these measures. On February 15, 2022, Barahona was found guilty of “conspiracy to undermine national integrity,” (Articles 410 and 412 Criminal Code) for which she was sentenced to eight years in jail and prohibited from serving in public office.¹³⁶ Judge Ulisa Yaoska Tapia Silva of the Thirteenth District Criminal Court of Managua found her guilty of encouraging the imposition of economic sanctions against Nicaragua and of inciting international interference with internal affairs.¹³⁷ The Managua Appeals Tribunal upheld her sentence the following June.¹³⁸

Barahona addressed Judge Tapia with the following statement after receiving her sentence of eight years: “I have dedicated most of my adult life to improving Nicaragua and defending the rights of all Nicaraguans. Part of my fight has been for my son, so that he knows that we all need to defend our own rights.”¹³⁹ After more than a year in prison, Barahona was finally permitted to speak with her five-year-old son on Christmas Day 2022.¹⁴⁰

As many other prisoners, Barahona requested a Bible and other reading material, but she was not granted one. She was held in solitary confinement and expressed that this was a form of torture to her: “Not being able to speak, not being able to see your family, not being able to

¹³⁴ *Resolution 71/2021*, *supra* note 123, at ¶ 15.

¹³⁵ *Medidas provisionales, Asunto Juan Sebastián Chamorro y otros respecto de Nicaragua*, INTER-AM. CT. H.R., adopted Nov. 22, 2021, at 18, *available at* https://www.corteidh.or.cr/docs/medidas/chamorro_se_05.pdf [in Spanish].

¹³⁶ Judgement, *Sentencia No. 14-2022*, Feb 15, 2022, at 11–12 (Thirteenth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish].

¹³⁷ *Id.*, at 1–2

¹³⁸ Judgement, *Sentencia No. 097/2022*, June 15, 2022, at 1 (Appellate Tribunal of Managua Region) (Nicar.) (on file with author) [in Spanish].

¹³⁹ *Suyen Barahona está de cumpleaños*, *supra* note 122.

¹⁴⁰ *Suyen Barahona logra ver fotos de su hijo y hablar con él a través de una llamada telefónica*, LA PRENSA, Dec 26, 2022, *available at* <https://www.laprensani.com/2022/12/26/derecho-humano-ni/3083113-permiten-a-suyen-barahona-hablar-con-su-hijo-llamada-fue-en-visita-numero-13-a-presos-del-chipote> [in Spanish].

read, no space to socialize, because they left me alone for so long, was terrible for me.”¹⁴¹

c. Jose Alejandro Quintanilla
(Alex Hernández)



Jose Alejandro Quintanilla Hernández, 32, known as Alex Hernández, is a leader of UNAB and a prominent opposition activist who helped coordinate the April 2018 social protests in Nicaragua.¹⁴² He survived so-called “Operation Clean-up,” in which the Ortega regime brutally retaliated against the protesters,¹⁴³ but was forced into hiding and had to take refuge in safe houses.¹⁴⁴

Hernández was captured the following September and detained for the first time at *La Modelo* until his release in March 2019.¹⁴⁵ Hernández subsequently went into exile in Costa Rica for four months, but had to return to Nicaragua for economic reasons.¹⁴⁶ He quickly rejoined UNAB and was elected to its Political Council in January 2021.¹⁴⁷ In that position, he made public criticisms of the regime’s human rights violations and spoke out in defense of the country’s political prisoners.¹⁴⁸

¹⁴¹ *Interview No. 2. supra* note 2.

¹⁴² *Alex Hernández cumple 480 días en el Chipote*, LA PRENSA, Dec 16, 2022, available at <https://www.laprensani.com/2022/12/16/derecho-humano-ni/3079700-alex-hernandez-cumple-480-dias-en-el-chipote> [in Spanish] and *Resolution 27/2022 José Alejandro Quintanilla Hernández and his Nuclear Family Regarding Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, adopted June 22, 2022, at ¶ 17, available at https://www.oas.org/en/iachr/decisions/mc/2022/res_27-22%20_mc_266-22_ni_en.pdf.

¹⁴³ See *Victims of Operation Cleanup: “Without justice the people will not have peace”*, CONFIDENCIAL, July 22, 2022, available at <https://www.confidencial.digital/english/victims-of-operation-cleanup-without-justice-the-people-will-not-have-peace/>.

¹⁴⁴ *Resolution 27/2022, supra* note 142, at ¶ 17.

¹⁴⁵ *Id.*, at ¶ 18.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

As a result, the Ortega regime identified Hernández as a threat and arrested him a second time on August 23, 2021.¹⁴⁹ He recalls being arrested by hooded special operations police who physically assaulted him, as well as being violently handcuffed and taken to a truck in which he was beaten up too.¹⁵⁰ The authorities provided no information about Hernández's whereabouts for 10 days following his arrest, until it was finally revealed that he had been taken to *El Chipote*.¹⁵¹ In response to the delay, Hernández' brother filed a *habeas corpus* petition on his behalf, but was told that Hernández had already been brought before a judge.¹⁵² His family did not receive any further information about Hernández until his trial on March 1, 2022.¹⁵³ On March 9, Judge Félix Ernesto Salmerón Moreno of the Fifth District Criminal Court of Managua sentenced him to 10 years in prison for “conspiracy to undermine national integrity”¹⁵⁴ (Articles 410 and 412 Criminal Code). Prosecutors involved in his case were Félix Ramón Hernández Muñoz, Heydi Estela Ramírez Olivas, Yubelka del Carmen Pérez Alvarado, Manuel de Jesús Rugama Peña, and Jorge Luis Arias Jarquín.

Hernández remained in arbitrary detention since August 2021, deprived of his freedom and cut off from the necessary medical attention that he required.¹⁵⁵ Already suffering from high blood pressure and a chronic skin condition known as vitiligo, Hernández's health visibly worsened.¹⁵⁶ A request from his lawyer to transfer Hernández to a another

¹⁴⁹ Press Release, *IACHR Grants Precautionary Protection Measures in Favor of José Alejandro Quintanilla Hernández and His Immediate Family in Nicaragua*, INTER-AM. COMM'N ON HUMAN RIGHTS, June 23, 2021, *available at* https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/143.asp.

¹⁵⁰ *Interview No. 14*, *supra* note 2.

¹⁵¹ *Resolution 27/2022*, *supra* note 142, at ¶ 19 and *Opositor Alex Hernández aparece en “El Chipote” tras diez días secuestrado*, CONFIDENCIAL, Sept 2, 2021, *available at* <https://www.confidencial.digital/politica/opositor-alex-hernandez-aparece-en-el-chipote-tras-diez-dias-secuestrado/> [in Spanish].

¹⁵² *Id.*

¹⁵³ *Id.*, and *Medidas provisionales, Asunto 45 Personas Privadas de su Libertad en 8 Centros de Detención Respecto de Nicaragua*, INTER-AM. CT. H.R., *adopted* Oct. 4, 2022, at ¶ 117, *available at* https://www.corteidh.or.cr/docs/medidas/45personas_se_01.pdf [in Spanish] [hereinafter “Oct. 4, 2022, Provisional Measures”].

¹⁵⁴ *Resolution 27/2022*, *supra* note 142, at ¶ 19.

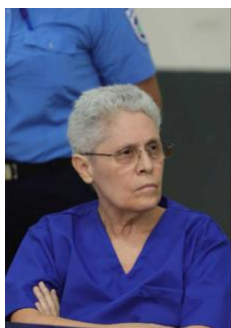
¹⁵⁵ *Id.*, at ¶¶ 20-21

¹⁵⁶ *Id.*, at ¶ 21 and *Oct. 4, 2022, Provisional Measures*, *supra* note 153, at ¶ 117.

location went unanswered by authorities.¹⁵⁷ He faced regular interrogations, even after being sentenced, and was rarely permitted visits from his family.¹⁵⁸ In the first eight months of his detention, Hernández was only allowed five visits, each conducted under police supervision.¹⁵⁹ Hernández conveyed that while physical mistreatment was not as severe as in his first detention, in this occasion the regime systematically and purposefully attempted to attack prisoner's emotional and mental health. In his words "being isolated from the world, from our families, the fact that parents were not allowed to see their children, husbands not allowed to see their wives, is one of the forms of pressure and torture that harms people the most."¹⁶⁰

The IACHR approved a request for precautionary measures in Hernández, given the threat to his life, the inhuman treatment against his person and the risk of irreparable harm to his health.¹⁶¹ The Inter-American Court further issued provisional measures on several occasions, particularly calling for his immediate release of Hernandez (along with 44 other identified political prisoners) and for the adoption of measures necessary to protect their lives, integrity, health, access to food, and personal liberty.¹⁶²

d. Dora Maria Téllez



Dora María Téllez Aruello, 67, is a former Sandinista guerrilla commander, historian, and political activist who founded the MRS, now the UNAMOS political party.¹⁶³ Téllez is perhaps best known for leading the charge on the National Palace on August 22, 1978, during the Nicaraguan revolution.¹⁶⁴ Known as “*Comandante Dos*,” Téllez later helped lead the brigade that liberated the city of León from the

¹⁵⁷ *Resolution 27/2022*, *supra* note 142, at ¶ 21.

¹⁵⁸ *Id.*, at ¶ 22

¹⁵⁹ *Oct. 4, 2022, Provisional Measures*, *supra* note 153, at ¶ 119.

¹⁶⁰ *Interview No. 14*, *supra* note 2.

¹⁶¹ *Resolution 27/2022*, *supra* note 142, at ¶ 1.

¹⁶² *Oct. 4, 2022, Provisional Measures*, *supra* note 153, at 52-53. *See also Nov. 22, 2022, Provisional Measures*, *supra* note 72, at 17.

¹⁶³ *Dora María Téllez*, NICAS LIBRES YA, https://nicaslibresya.org/perfiles_pp/dora-maria-tellez/ (last visited Jan. 23, 2022) [in Spanish] [hereinafter “Nicas Libres: Téllez”].

¹⁶⁴ *Id.*

Somoza dictatorship—the first city to fall to the Sandinistas.¹⁶⁵ She was 23 and a medical student at the time.¹⁶⁶

Téllez became the Minister of Health during the first Sandinista government (1979-1990), at the same time that Ortega was first elected president.¹⁶⁷ However, by 1995, she had distanced herself from the Sandinista party and formed MRS.¹⁶⁸ When Ortega regained power in 2007, he revoked MRS' legal standing and prevented its political candidates from seeking office.¹⁶⁹ Téllez held a 12-day hunger strike in protest.¹⁷⁰ Finally, when the MRS was renamed UNAMOS in the wake of the 2018 protests, she cut all remaining ties with the Sandinistas.¹⁷¹

Téllez has become one of Ortega's most prominent critics, describing him as a "dictator," a man "without scruples," who "betrayed the Sandinista Front."¹⁷² The Ortega regime detained Téllez in 2021 in the midst of its crackdown on the political opposition.¹⁷³ She was violently arrested on June 13, 2021, alongside her partner Ana Margarita Vijil when approximately 100 police special operations officials raided their home.¹⁷⁴

¹⁶⁵ Duncan Campbell & Camilo de Castro, *Sandinista on Hunger Strike Over Ban on Political Party*, THE GUARDIAN, June 13, 2008, available at <https://www.theguardian.com/world/2008/jun/14/6>.

¹⁶⁶ *Nicas Libres Ya: Téllez*, *supra* note 163.

¹⁶⁷ *Dora Téllez: declaran culpable de conspiración a la exaliada de Ortega y figura clave del sandinismo en Nicaragua*, BBC, Feb. 4, 2022, available at <https://www.bbc.com/mundo/noticias-america-latina-60254989> [in Spanish].

¹⁶⁸ *Id.*

¹⁶⁹ *Campbell & Castro*, *supra* note 165.

¹⁷⁰ *Id.*, and *Ex-Rebel Leader Suspends Hunger Strike After 12 Days*, THE TICO TIMES, June 20, 2008, available at <https://ticotimes.net/2008/06/20/ex-rebel-leader-suspends-hunger-strike-after-12-days>.

¹⁷¹ *Nicas Libres Ya: Téllez*, *supra* note 163.

¹⁷² *Quiénes son los 26 detenidos en la arremetida del régimen en contra de la oposición*, CONFIDENCIAL, June 16, 2021, available at <https://www.confidencial.digital/nacion/quienes-son-los-detenidos-por-el-regimen-orteguista-en-nicaragua/> [in Spanish]; J. Jaime Hernández, *Dora María Téllez, pidió el apoyo de México para el proceso electoral en su país*, LA JORNADA, June 13, 2021, available at <https://www.jornada.com.mx/notas/2021/06/13/mundo/detienen-en-nicaragua-a-ex-guerrillera-dora-maria-tellez/> [in Spanish].

¹⁷³ Wilfredo Miranda, *Nicaragua Rounds Up President's Critics In Sweeping Pre-Election Crackdown*, THE GUARDIAN, June 15, 2021, available at <https://www.theguardian.com/global-development/2021/jun/15/nicaragua-critics-of-president-pre-election-crackdown-ortega>.

¹⁷⁴ *Interview No. 6*, *supra* note 2 and *Resolution 71/2021*, *supra* note 123, at ¶ 11.

They beat Téllez and Vijil, detained them, and took them to *El Chipote*. Prison authorities confirmed that night that both women were being held for investigation.¹⁷⁵ They were accused of undermining national integrity under the *Sovereignty Law 1055*.¹⁷⁶ Prosecutor Jean Dylan Falcón Rivas brought the charges against her. Vijil's family members filed for an application of *habeas corpus* for both women, but it was declared inadmissible.¹⁷⁷ A special hearing based on the reform to the Criminal Procedure Code was held, for which neither woman was provided legal counsel. During the hearing, each of their detentions were extended for 90 days.¹⁷⁸

On February 7, 2022, Judge Ángel Jeancarlos Fernández González of the Fourth District Criminal Court of Managua found Téllez guilty and sentenced her to eight years in prison and prohibited her from seeking public office for “conspiracy to undermine national integrity”¹⁷⁹ (Articles 410 and 412 Criminal Code). Téllez's sentence was upheld by the Managua Appeals Tribunal on June 2, 2022.¹⁸⁰ She was found directly responsible for “damaging the integrity of the state and forming part of a criminal organization whose aims were to commit serious crimes against Nicaragua.”¹⁸¹ She was also accused of using her platform on social media and national and international interviews and conferences to “undermine the State of Nicaragua and its institutions and citizens.”¹⁸²

Téllez, along with the other female prisoners was placed in solitary confinement¹⁸³ and spent the whole period of her detention in the male section of *El Chipote*.¹⁸⁴ Despite her already-deteriorated health, Téllez

¹⁷⁵ *Id.*, Resolution 71/2021.

¹⁷⁶ *Nota de Prensa, 148-2021*, NATIONAL POLICE OF NICARAGUA, June 13, 2021, available at <https://www.policia.gob.ni/?p=69934> [in Spanish].

¹⁷⁷ *Resolution 71/2021*, *supra* note 123, at ¶ 12.

¹⁷⁸ *Id.*

¹⁷⁹ Judgement, *Sentencia No. 14-2022*, Feb 7, 2022 (Fourth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish].

¹⁸⁰ Judgement, *Sentencia No. 88-2022*, June 2, 2022, at 1 (Appellate Tribunal of Managua Region) (Nicar.) (on file with author) [in Spanish].

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Regime Exhibits the Female Political Prisoners of El Chipote After 14 months*, CONFIDENCIAL, Sept. 2, 2022, available at <https://www.confidencial.digital/english/regime-exhibits-the-female-political-prisoners-of-el-chipote-after-14-months/>.

¹⁸⁴ *Interview No. 6* *supra* note 2.

held a 21-day hunger strike since August 29, 2022 to protest the inhuman conditions of her incarceration.¹⁸⁵ While she initially thought to do it as a sign of protest against the extreme isolation and to demand that her brother could collect her pension, what triggered her the most was when the regime decided to offer them huge amounts of food. She described the “super meals” spectacle as something “absolutely demeaning” because the prisoners had to parade in the hallway, pick up the plate, and mandatorily pose for photographs with the large plate of food.¹⁸⁶ On November 22, 2022, the Inter-American Court issued its seventh round of provisional measures in favor of Téllez, along with a growing list of similarly-situated political prisoners, urging Nicaragua to comply with its orders, to take steps to protect the lives and personal integrity of the named individuals, and to proceed with their immediate release.¹⁸⁷

During her interview, Téllez stressed that the Ortega regime has crossed a stage in which there are no boundaries. In her words “The Ortegas resort to mass incarcerations, mass arrests, mass confiscations. Another option for the Ortega-Murillo is for you to go into exile. They prefer to pay the price of you leaving than that of having political prisoners. That is because political prisoners are faces that are there and become pressure for the regime, so exile seems best; self-exile, even better.”¹⁸⁸

In November 2022, the New Sorbonne University in Paris awarded an honorary doctorate, “Honoris Causa,” to Téllez for her life-long commitment to social justice and democracy, both in Nicaragua and throughout Latin America.¹⁸⁹ It was accepted on her behalf by journalist Carlos Fernando Chamorro.¹⁹⁰ From her cell in *El Chipote*, Téllez

¹⁸⁵ *At 66 Years Old, Dora María Téllez Has Begun Hunger Strike Despite the Deterioration of her Health in the Inhuman Prison Conditions Imposed Upon Her*, MESOAMERICAN INITIATIVE OF WOMEN HUMAN RIGHTS DEFENDERS, Sept. 26, 2022, available at <https://im-defensoras.org/2022/09/urgent-alert-at-66-years-old-dora-maria-tellez-has-begun-a-hunger-strike-despite-the-deterioration-of-her-health-in-the-inhuman-prison-conditions-imposed-upon-her/>.

¹⁸⁶ *Interview No. 6 supra* note 2.

¹⁸⁷ Nov. 22, 2022, *Provisional Measures*, *supra* note 72, at 17.

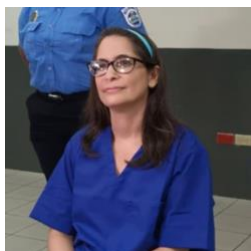
¹⁸⁸ *Interview No. 6, supra* note 2.

¹⁸⁹ *Dora María Téllez Dedicates her Doctorate ‘Honoris Causa’ to Nicaragua’s Political Prisoners*, CONFIDENCIAL, Nov. 29, 2022, available at <https://www.confidencial.digital/english/dora-maria-tellez-dedicates-her-doctorate-honoris-causa-to-nicaraguas-political-prisoners/>.

¹⁹⁰ *Id.*

dedicated the award to all political prisoners, who are committed to the struggle for freedom and democracy in Nicaragua.¹⁹¹

e. Ana Margarita Vijil



For much of her life, Ana Margarita Vijil Gurdíán, 45, has served as a key political activist advocating for social reform in Nicaragua.¹⁹² Between 2012 and 2017, she was the president of the opposition party MRS, now evolved in UNAMOS.¹⁹³ At the time, she was the youngest person to lead a political party in Central America. Vijil is also a lawyer and has worked as a professor of human rights and gender at the Polytechnic University of Nicaragua, where she earned her law degree. She also received an M.A. in Political Science in 2010 from Arizona State University on a Fulbright Scholarship.

Vijil was one of six leaders of UNAMOS to be arrested over the weekend of June 12, 2021, in the midst of a crackdown on political dissidents by the Ortega regime.¹⁹⁴ She was arrested on June 13, alongside fellow political activist and partner Dora María Téllez Arguello.¹⁹⁵ Around a 100 police special operations officials raided their home that day and arrested, beat, and detained Vijil and Téllez, taking them to *El Chipote*.¹⁹⁶ Vijil explained during interview that the National Police initially was not coming for her. “They [the Police] came for Dora [Téllez] and when they saw me home, they called to *El Chipote* on the phone and they were told: ‘bring her.’ I was illegally detained without a judicial order or police order.”¹⁹⁷ She also recalls that the police vehicle in which she was taken had emblems from the FSLN party.

¹⁹¹ *Id.*

¹⁹² Casey Flores, *Justicia Orteguista sentenció a 10 años de cárcel a Ana Margarita Vijil*, LA MESA REDONDA, Feb. 8, 2022, available at <https://www.lamesaredonda.net/justicia-orteguista-sentencio-a-10-anos-de-carcel-a-ana-margarita-vijil/> [in Spanish].

¹⁹³ *Id.* and Ana Margarita Vijil Gurdian, DIPLOMATIC COURIER, Mar. 25, 2014, available at <https://www.diplomaticcourier.com/posts/ana-margarita-vijil-gurdian>.

¹⁹⁴ Flores, *supra* note 192.

¹⁹⁵ Resolution 71/2021, *supra* note 123, at ¶ 11.

¹⁹⁶ *Id.*, and Interview No. 13 *supra* note 2.

¹⁹⁷ *Id.*, Interview No. 13 *supra* note 2.

In a press release, the National Police announced that they were investigating Vijil and Téllez for alleged crimes committed under the *Sovereignty Law 1055*.¹⁹⁸ The next day, Vijil’s family filed a petition for *habeas corpus*, which was declared inadmissible by the Managua Appeals Tribunal.¹⁹⁹ The Public Ministry instead held a special hearing for Vijil and Téllez, for which they were denied representation, and upon which their investigation and detention was extended for 90 days.²⁰⁰ They were not permitted to see or communicate with their relatives or legal representatives in the months that followed, despite multiple requests.²⁰¹ The prosecutor was Jean Dylan Rivas Falcón. On August 30, 2021, the IACHR granted a request for precautionary measures in favor of Vijil in light of the seriousness, urgency, and risk of subjection to irreparable harm.²⁰²

Unfortunately, these precautionary measures were largely ignored, and Vijil was sentenced on February 4, 2022, to 10 years imprisonment for “conspiracy to undermine national integrity” (Articles 410 and 412 Criminal Code) and was further prohibited from serving in public office by Judge Luden Martin Quiroz Garcia of the Ninth District Criminal Court of Managua.²⁰³ The evidence against her consisted of fragments of video clips showing Vijil advocating for free and fair elections, and otherwise exercising freedom of expression to which she is entitled under the Nicaraguan Constitution.²⁰⁴ The Appeals Tribunal nevertheless affirmed

¹⁹⁸ *Nota de Prensa No. 148-2021*, *supra* note 176.

¹⁹⁹ *Resolution 71/2021*, *supra* note 123, at ¶ 12.

²⁰⁰ *Id.*

²⁰¹ *Id.*, at ¶ 13.

²⁰² Press Release, *IACHR Grants Precautionary Measures in Favor of Ana Margarita Vijil Gurdíán, Dora María Téllez Arguello, Suyen Barahona Cuán, Jorge Hugo Torres Jiménez, Víctor Hugo Tinoco Fonseca, Arturo José Cruz Sequeira, and Luis Alberto Rivas Anduray in Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, Sept. 1, 2021, available at

https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/232.asp.

²⁰³ Judgement, *Sentencia No. 11-2022*, Feb 4, 2022 (Ninth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish].

²⁰⁴ Mario Medrano, *Declaran culpable de conspiración a otra opositora en Nicaragua, según familiares*, CNN, Feb. 3, 2022, available at <https://cnnespanol.cnn.com/2022/02/03/declaran-culpable-de-conspiracion-a-otra-opositora-en-nicaragua-segun-familiares-orix/> [in Spanish].

the sentence in its entirety the following May,²⁰⁵ as did the Supreme Court of Justice in December 2022.²⁰⁶

Vijil, along with female prisoners Dora María Téllez, Suyen Barahona, and Tamara Dávila, are among the few at *El Chipote* who was placed into solitary confinement, held in near total isolation.²⁰⁷ Fourteen months into her confinement, Vijil's was noticeably thinned and her health deteriorated.²⁰⁸ The conditions of her detention were reportedly unchanged,²⁰⁹ despite several provisional measures issued by the Inter-American Court since June 2021 denouncing Nicaragua's noncompliance with its human rights obligations.²¹⁰ Vijil continued to be largely prohibited from communicating with family members or lawyers.²¹¹ On the rare times that she had family visits, she was not allowed to be together with her partner, Dora María Téllez—treatment that she attributes to homophobia.²¹² The Court's provisional measures called on Nicaragua to facilitate greater communication with family members and legal representatives and to adopt measures to protect the lives, integrity, and personal liberties of the named political prisoners, including Vijil.²¹³

3. Civil Society Activists

Authorities in Nicaragua have also targeted civil society and human rights groups, many of which have faced regular monitoring and surveillance, while others have been shuttered entirely.²¹⁴ Activists for these groups have been identified and targeted for their perceived

²⁰⁵ Judgement, *Asunto No. 004383-ORM4-2022*, May 18, 2022 (Appellate Tribunal of Managua Region) (Nicar.) (on file with author) [in Spanish].

²⁰⁶ *Corte Suprema de Justicia confirma sentencia a presas políticas Ana Margarita Vijil y Nidia Barboza*, 100% NOTICIAS, Dec 14 2022, <https://100noticias.com.ni/politica/120535-confirman-sentencia-presas-politicas-nicaragua/> [in Spanish].

²⁰⁷ *Regime exhibits the female political prisoners*, *supra* note 183.

²⁰⁸ *Id.*

²⁰⁹ See *Ana Margarita Vijil cumple años en el Chipote*, LA PRENSA, Dec. 19, 2022, available at <https://www.laprensani.com/2022/12/19/derecho-humano-ni/3080686-ana-margarita-vijil-cumple-anos-en-el-chipote> [in Spanish] [hereinafter “*Vijil cumple años*”].

²¹⁰ Nov. 22, 2022, *Provisional Measures*, *supra* note 72, at 16.

²¹¹ *Vijil cumple años*, *supra* note 209.

²¹² *Interview No. 13*, *supra* note 2.

²¹³ Nov. 22, 2022, *Provisional Measures*, *supra* note 72, at 16.

²¹⁴ *Freedom in the World 2022: Nicaragua*, FREEDOM HOUSE, accessed Jan. 26, 2023, available at <https://freedomhouse.org/country/nicaragua/freedom-world/2022>.

opposition to the Ortega regime. Many have been detained or have experienced other reprisals by the regime.²¹⁵ Daniel Ortega has labeled these political prisoners as “traitors to the homeland” and “criminals,” incarcerating those accused of violating the *Sovereignty Law 1055* behind closed-door trials riddled with human rights violations.²¹⁶ The following are some of the stories of these activists, imprisoned for promoting fundamental freedoms and human rights in Nicaragua.

a. Lesther Alemán



Lesther Lenin Alemán Alfaro, 25, is an activist and leader of the Nicaraguan University Student Movement (*Alianza Universitaria Nicaragüense*, AUN), which he founded during the anti-government demonstrations in April 2018.²¹⁷ The movement was formed to provide a voice for students advocating for democratic change.²¹⁸ He obtained a bachelor’s degree in Communications from Central American University, received by his mother while he was in detention.²¹⁹

Alemán rose to fame during a national dialogue between the regime and the opposition in the midst of the 2018 conflict, when he

²¹⁵ E.g., Press Release, *The IACHR requests that the Inter-American Court extends provisional measures to Daisy Tamara Dávila Rivas and her family due to a situation of extreme risk in Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, July 16, 2021, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/181.asp.

²¹⁶ *Regime exhibits the female political prisoners*, supra note 183.

²¹⁷ *Dora Maria Tellez and Lesther Aleman found guilty in mock political trials*, CONFIDENCIAL, Feb. 6, 2022, available at <https://www.confidencial.digital/english/dora-maria-tellez-and-lesther-aleman-found-guilty-in-mock-political-trials/> and *Defensores y promotores de derechos humanos detenidos en condiciones que vulneran sus derechos fundamentales*, LA PRENSA, adopted Dec. 11, 2021, available at <https://www.laprensani.com/2021/12/11/derecho-humano-ni/2922482-defensores-y-promotores-de-derechos-humanos-detenido-en-condiciones-que-vulneran-sus-derechos-fundamentales> [in Spanish].

²¹⁸ *Id.*

²¹⁹ *Madre de Lesther Alemán recibe título y reconocimiento académico de su hijo preso*, LA PRENSA, Feb. 8, 2022, available at <https://www.laprensani.com/2022/02/08/nacionales/2948421-madre-de-lesther-aleman-recibe-titulo-y-reconocimiento-academico-de-su-hijo-preso> [in Spanish].

demanded live on every television channel and social network in Nicaragua (*¡Ríndase!*) that Ortega surrender his power.²²⁰ Alemán and his fellow activists then pulled out a list with the names of dozens of protesters who had been killed in the conflict.²²¹ He became an instant target of the Ortega regime.

Alemán was granted precautionary measures by the IACHR in May 2018 for the severe risk of harm to which he was subjected as a result of his participation in the student movement and the dialogue.²²² For instance, on April 18, 2018, he was chased down during a protest by police who allegedly fired tear gas at him.²²³ Two days later, he delivered food and medicine to a cathedral in Managua, where police laid siege to the building, trapping the people inside and resulting in two deaths and 40 injuries.²²⁴ Over the course of the following months, he continued to receive threats on his life by regime authorities and civilian regime supporters.²²⁵ He finally fled the country in September 2018, upon learning that police were actively searching for him.²²⁶ However, after spending a year in exile, Alemán decided to return to Nicaragua, despite the risks, to more effectively continue his advocacy.²²⁷

On July 5, 2021, Alemán was arrested alongside his co-leader of AUN, Max Jerez, and taken to *El Chipote* to await trial.²²⁸ Assistant

²²⁰ Ismael López, *Lesther Aleman: “I’ve Come to Work for Nicaragua from the Inside”*, CONFIDENCIAL, Oct. 10, 2019, available at <https://www.confidencial.digital/english/lester-aleman-ive-come-to-work-for-nicaragua-from-the-inside/>.

²²¹ *Lesther Alemán está de cumpleaños, lo pasará confinado en «El Chipote»*, ARTÍCULO 66, Jan. 14, 2023, available at <https://www.articulo66.com/2023/01/14/lester-aleman-cumpleanos-25-encerrado-chipote/> [in Spanish].

²²² *Resolución 35/2018, Bosco René Bermúdez y otros respecto de Nicaragua* (Integrantes del movimiento estudiantil), INTER-AM. COMM’N ON HUMAN RIGHTS, adopted May 21, 2018, at ¶ 33, available at <https://www.oas.org/es/cidh/decisiones/pdf/2018/35-18mc472-18-ni.pdf> [in Spanish].

²²³ *Id.*, at ¶ 34.

²²⁴ *Id.*, at ¶ 35.

²²⁵ *Id.*, at ¶¶ 36–38.

²²⁶ *Nicaragua Sentences Student Leader, Ex-Sandinista Commander*, ASSOCIATED PRESS, Feb. 10, 2022, available at <https://apnews.com/article/caribbean-daniel-ortega-nicaragua-sentencing-4f6f50ae1eef8bb003ce15800fb6812>.

²²⁷ *Id.*, and López, *supra* note 220.

²²⁸ *Líderes campesinos y jóvenes opositores cumplen 160 encarcelados*, LA PRENSA, Dec. 11, 2021, available at <https://www.laprensani.com/2021/12/12/derecho-humano->

Prosecutor Heydi Estela Ramírez Olivas accused Alemán of “undermining national integrity,” in violation of the *Sovereignty Law 1055* and the Criminal Code.²²⁹ He was convicted on February 7, 2022, sentenced to 13 years imprisonment and prohibited from seeking public office by Judge Nadia Camila Tardencilla Rodríguez of the Second District Criminal Court of Managua.²³⁰

Throughout the judicial process, Alemán was prevented from communicating with his lawyer.²³¹ He reportedly only learned that his trial would take place minutes before it happened, and his lawyer was permitted neither to review the trial record nor to speak, object or pose questions in the courtroom.²³² Alemán was also prohibited from speaking, with the prosecution and judge ordering him to “shut up” at his own trial.²³³

Alemán remained in detention at *El Chipote* and faced continuous interrogations and was denied basic rights, including access to medical care.²³⁴ He struggled with pain in his leg throughout his detention and regularly suffered from migraines and other medical issues for which he received no diagnosis or treatment.²³⁵ Neither his family nor his lawyer were informed about the state of his health.²³⁶

ni/2922841-lideres-campesinos-y-jovenes-opositores-cumplen-160-encarcelados [in Spanish].

²²⁹ Public Ministry Accusation, *File No. 1819-SEDE-2021 JD*, Aug. 31, 2021, at 3 (Sixth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish] and Statement, *Comunicado 071-2021*, NATIONAL POLICE OF NICARAGUA, Sept. 2, 2021, available at <https://ministeriopublico.gob.ni/wp-content/uploads/2021/09/Comunicado-071-MP-.pdf> [in Spanish].

²³⁰ Judgement, *Sentencia No. 004-2022*, Feb 7, 2022, at 20 (Ninth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish].

²³¹ Mario Medrano, *Justicia de Nicaragua declara culpables a líder estudiantil Lesther Alemán y a Dora María Téllez. Fiscalía pide 15 años de cárcel para Téllez*, CNN, Feb. 4, 2022, available at <https://cnnespanol.cnn.com/2022/02/04/jdora-maria-tellez-lesther-aleman-exguerrillera-carcel-nicaragua-orix/#0> [in Spanish].

²³² *Id.*, and *Dora Maria Tellez and Lesther Aleman found guilty*, *supra* note 217.

²³³ *Dora María Téllez and Lesther Alemán found guilty*, *supra* note 217.

²³⁴ *Lesther Alemán está de cumpleaños*, *supra* note 221 and *Un año de venganza contra Lesther Alemán: “presenta serios problemas de salud” en El Chipote*, DIVERGENTES, July 5, 2022, available at <https://www.confidencial.digital/nacion/lesther-aleman-sigue-sin-recibir-diagnostico-certero-de-su-estado-de-salud/> [in Spanish].

²³⁵ *Id.*, *Un año de venganza contra Lesther Alemán*.

²³⁶ *Id.*

The mistreatment Alemán suffered drew criticism by the international community. The Inter-American Court issued seven provisional measures in his favor—demanding Nicaragua to release Alemán and adopt measures to protect his rights to life, health, and personal integrity.²³⁷

b. Tamara Dávila



Daysi Tamara Dávila Rivas, 42, is a psychologist and long-time feminist activist who dedicated much of her life to advocating for the rights of women.²³⁸ In the wake of the 2018 social unrest, Dávila became more involved in political activism, joining demonstrations against the Ortega regime as a member of UNAMOS and UNAB.²³⁹ She was an active participant in the protests, focusing her efforts on providing humanitarian support for political prisoners and victims of the state's repressive campaign against oppositionists.²⁴⁰ For example, she transported needed supplies, helped injured protesters in need of medical attention, and assisted the family members of those who were killed.²⁴¹

Over the following years, Dávila was detained on several occasions in retaliation for her opposition, beaten, threatened, and harassed by state officials.²⁴² On October 14, 2018, she was arrested for

²³⁷ Nov. 22, 2022, *Provisional Measures*, *supra* note 72, at ¶¶ 2, 6-9.

²³⁸ *¿Quién es Tamara Dávila, la activista y feminista que cumple este domingo 29 días de arresto arbitrario?*, LA PRENSA, July 9, 2021, available at <https://www.laprensani.com/2021/07/09/derecho-humano-ni/2849428-tamara-davila-el-activismo-que-incomodaba-al-regimen> [in Spanish].

²³⁹ *Id.*

²⁴⁰ *Adopción de medidas urgentes, en favor de Daisy Tamara Dávila Rivas y su Núcleo Familiar en el Marco de las Medidas Provisionales Adoptadas en el Asunto Juan Sebastián Chamorro y Otros Respecto de Nicaragua*, INTER-AM. CT. H.R., adopted Jul. 19, 2021, at ¶ 10, available at https://www.corteidh.or.cr/docs/medidas/chamorro_se_02.pdf [in Spanish] [hereinafter “Jul. 19, 2021, Urgent Measures”] and *Resolución 60/2019 sobre Sofía Isabel Montenegro Alarcón y otras dieciséis mujeres defensoras de derechos humanos respecto de Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, adopted Dec. 24, 2019, at ¶ 79, available at <https://www.oas.org/es/cidh/decisiones/pdf/2019/60-19mc1067-18-ni-ampliacion.pdf> [in Spanish].

²⁴¹ *¿Quién es Tamara Dávila?*, *supra* note 238.

²⁴² *Resolution 60/2019*, *supra* note 240, at ¶ 79.

the first time at a protest by riot police and paramilitary men along with 38 other people. She was then beaten, detained, and interrogated for 48 hours at *El Chipote*. They released her with the threat of future imprisonment if she continued to participate in the protests.²⁴³ Since then, Dávila has faced constant surveillance and harassment by regime authorities.²⁴⁴

Dávila was detained again on August 19, 2019, with five other women.²⁴⁵ This time, her detention lasted five hours, during which she was subjected to abuse and interrogation, forced to wear a prison uniform, and accused of being a government opponent.²⁴⁶ In response, the IACHR in December 2019 extended precautionary measures to Dávila, urging Nicaragua to respect her human rights and take action to protect her life and that of her family.²⁴⁷ Regime authorities nonetheless continued subjecting her to constant harassment and surveillance throughout 2020 and 2021.²⁴⁸

At the beginning of 2020, Dávila was elected to the Political Council of UNAB.²⁴⁹ Over the next year-and-a-half, she continued to clash with police at political events until June 12, 2021, when more than 60 police officers raided her home and arrested her without a warrant.²⁵⁰ Dávila was detained at *El Chipote*, held in solitary confinement in a bolted cell, largely *incomunicado*, without contact with her six-year-old daughter.²⁵¹ She was only permitted to see her daughter more than a year later after pressuring regime authorities with a five-day hunger strike.²⁵²

²⁴³ *Id.*

²⁴⁴ *Id.*, at ¶¶ 10–11.

²⁴⁵ *Id.*, at ¶ 14.

²⁴⁶ *Id.*

²⁴⁷ *Resolution 60/2019*, *supra* note 240, at ¶¶ 95–96, 114.

²⁴⁸ *Jul. 19, 2021, Urgent Measures*, *supra* note 240, at ¶¶ 16–17.

²⁴⁹ *Resolution 60/2019*, *supra* note 240, at ¶ 15.

²⁵⁰ OPINIONES APROBADAS POR EL GRUPO DE TRABAJO SOBRE LA DETENCIÓN ARBITRARIA EN SU 93º PERÍODO DE SESIONES, 30 DE MARZO A 8 DE ABRIL DE 2022, U.N. HUMAN RIGHTS COUNCIL, 93rd Sess., U.N. Doc. A/HRC/WGAD/2022/10, May 27, 2022, at ¶ 20, *available at* <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-10-Nicaragua-AEV.pdf> [in Spanish].

²⁵¹ *Regime exhibits the female political prisoners*, *supra* note 183.

²⁵² *Régimen autoriza visita a hijos de los presos políticos Tamara Dávila y Miguel Mora luego de más de 400 días sin abrazarlos*, LA PRENSA, Aug. 20, 2022, *available at* <https://www.laprensani.com/2022/08/20/politica/3033015-regimen-autoriza-visita-a-hija-de-la-presa-politica-tamara-davila-que-estaba-en-huelga-de-hambre-luego-de-mas-de-400-dias-sin-abrazarla/> [in Spanish].

On the rare occasion that her relatives were permitted to visit her, they observed that she suffered substantial weight loss—more than 18 kilograms (40 pounds) in 14 months.²⁵³ Dávila’s family was particularly troubled by the conditions of her detention due to chronic health issues, which require special medication and diet.²⁵⁴ The Inter-American Court adopted urgent measures to order her immediate release on July 19, 2021²⁵⁵ and November 22, 2022,²⁵⁶ both ignored by Nicaraguan authorities at the time.²⁵⁷ In August 2022, she was transferred from a sealed cell to one with bars, but remained in isolation.²⁵⁸

The Public Ministry accused Dávila of forming part of a criminal organization intent on “committing serious crimes against the security of the State”²⁵⁹ and for using her platform to encourage international economic sanctions against Nicaragua.²⁶⁰ Assistant Prosecutor Heydi Estela Ramírez Olivas prosecuted her case. Dávila was convicted of “conspiracy to undermine national integrity,” (Articles 410 and 412 Criminal Code) and sentenced on March 3, 2022, to eight years in prison and prohibited from seeking public office by Félix Ernesto Salmerón Moreno, Judge of the Fifth District Criminal Court of Managua.²⁶¹ On January 15, 2023, Dávila turned 42 at *El Chipote*, forced to spend her birthday isolated from friends and family for the second year in a row.²⁶²

c. Violeta Granera Padilla

²⁵³ *Regime exhibits the female political prisoners*, *supra* note 183.

²⁵⁴ *Jul. 19, 2021, Urgent Measures*, *supra* note 240, at ¶ 34.

²⁵⁵ *Id.*

²⁵⁶ *Nov. 22, 2022, Provisional Measures*, *supra* note 72.

²⁵⁷ See Noel Pérez Miranda, *Tamara Dávila, por segundo año, pasa su cumpleaños encerrada en «El Chipote»*, ARTÍCULO 66, Jan. 15, 2023, available at <https://www.articulo66.com/2023/01/15/segundo-cumpleanos-tamara-davila-encerrada-el-chipote/> [in Spanish].

²⁵⁸ *Regime exhibits the female political prisoners*, *supra* note 183.

²⁵⁹ *Aug. 24, 2021, Accusation*, *supra* note 78, at 3.

²⁶⁰ *Id.*, at 9.

²⁶¹ *March 3, 2022, Ruling*, *supra* note 70, at 57.

²⁶² *Pérez Miranda*, *supra* note 257.



Violeta Granera Padilla, 71, is a political activist, civil society leader, and the oldest female political prisoner. Despite her age and chronic health problems, including high blood pressure, diabetes, and eye problems, she was not considered for house arrest.²⁶³

Granera's father, Ramiro Granera, was a Senator of the Liberal Party and assassinated in 1978 by the FSLN guerrilla. Granera went into exile in the 1980s, and only returned to Nicaragua in 1990 with the election of former President Violeta Barrios de Chamorro. Since then, she has dedicated her life to fighting for the respect of human rights and democracy in Nicaragua. Granera is Director of the Movement for Nicaragua, National Coordinator of the Broad Front for Democracy (*Frente Amplio por la Democracia*, FAD), and member of the Political Council of UNAB.²⁶⁴ Although she was not a member of any political party, she was the Vice-Presidential candidate of the National Coalition for Democracy in 2016, running against Murillo. However, in the months leading up to the election, the Ortega regime stripped these political parties of their legal status.

On June 8, 2021, Granera was violently arrested in her home. After three days of house arrest, she was transferred to *El Chipote* prison. In March 2022, she was convicted of conspiracy to undermine national integrity and sentenced to eight years in prison by Judge Felix Ernesto Salmerón of the Fifth District Criminal Court of Managua. She described being subjected to white torture, in which she was isolated from other inmates and detained *incommunicado* without contact with family for long periods of time. She was not permitted visits from her family for the first 80 days of her detention.²⁶⁵ Granera is the mother of five children and the grandmother of twelve grandchildren. She was denied requests to have a Bible to practice her faith.

The IACHR first granted her precautionary measures in August 2019 due to threats against her and her family, as well as her

²⁶³ *Regime Exhibits the Female Political Prisoners*, *supra* note 183.

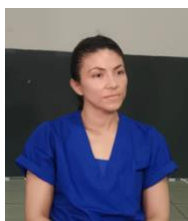
²⁶⁴ Violeta Granera, NICAS LIBRES YA, accessed Feb. 18, 2023, available at <https://nicaslibresya.org/en/profiles/violeta-granera/>.

²⁶⁵ *Id.*

disqualification from public office in the 2016 election.²⁶⁶ In June 2021 after her arrest, the IACHR granted provisional measures in her favor, considering numerous due process and rights violations, including concealment of her location, denial of legal assistance from trusted lawyers, and isolation from loved ones.²⁶⁷ In May 2022, the UN Working Group on Arbitrary Detention similarly concluded that her detention was arbitrary and called for her immediate release.²⁶⁸

After her release, Granera noted, “*El Chipote* could not break us. They used all the techniques to dehumanize us, and it was very hard. But the only thing they achieved was to strengthen my conviction in democracy and my decision to keep up my fight for the respect and dignity of all Nicaraguans, regardless of their political affiliation or social condition.”²⁶⁹

d. Maria Oviedo



Maria del Socorro Oviedo Degado, 40, is a lawyer and human rights defender who worked at the Permanent Human Rights Commission (*Comisión Permanente de Derechos Humanos*, CPDH), defending political prisoners.²⁷⁰ She defended some 40 people accused of betraying the state and has publicly denounced the

²⁶⁶ *Resolución 44/2019 Medidas cautelares No. 1525-18 sobre Violeta Mercedes Granera Padilla y familia respecto de Nicaragua* [in Spanish], INTER-AM. COMM’N ON HUMAN RIGHTS, adopted Aug. 23, 2019, available at <https://www.oas.org/es/cidh/decisiones/pdf/2019/44-19mc1525-18-ni.pdf>.

²⁶⁷ Press Release, *Inter-American Court Adopt Provisional Measures in Favor of Juan Sebastián Chamorro, José Adán Aguerri, Félix Maradiaga, Violeta Granera, and family, Due to Extreme Risk in Nicaragua*, ORG. OF AM. STATES, June 23, 2021, available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/156.asp.

²⁶⁸ *Arturo Cruz Sequeira y otros v. Nicaragua* [in Spanish], Opinion No. 10/2022, U.N. Doc. A/HRC/WGAD/2022/10, U.N. WORKING GROUP ON ARBITRARY DETENTION, May 27, 2022, at ¶ 110, available at <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-10-Nicaragua-AEV.pdf>.

²⁶⁹ Private message from Violeta Granera Padilla, former political prisoner to author, Feb. 18, 2023 [on file with author] [in Spanish].

²⁷⁰ *Defensores y promotores de derechos humanos detenidos en condiciones que vulneran sus derechos fundamentales*, LA PRENSA, Dec. 11, 2021, available at <https://www.laprensani.com/2021/12/11/derecho-humano-ni/2922482-defensores-y-promotores-de-derechos-humanos-detenido-en-condiciones-que-vulneran-sus-derechos-fundamentales> [in Spanish].

widespread human rights violations of political prisoners before she became one herself.²⁷¹ During the week of her arrest, Oviedo was leading the defense of several grassroots leaders, including José Antonio Peraza, who was also detained in *El Chipote*.²⁷² Previously, she worked as a prosecutor at the Public Ministry, but left the government institution to join CPDH after the eruption of the April 2018 protests.²⁷³

Oviedo was arrested on July 29, 2021, at her mother's home in western Nicaragua, only one day after undergoing surgery.²⁷⁴ There was no arrest warrant, and she was provided no reason for her arrest.²⁷⁵ After her detention, she was held *incommunicado*.²⁷⁶ Her initial hearing was conducted without the presence of a defense attorney.²⁷⁷ The Inter-American Court issued provisional measures for Oviedo on October 14, 2021, finding that her detention was carried out in the context of the regime's harassment against anyone identified as a critic.²⁷⁸ It ordered her immediate release and the adoption of necessary measures to protect her life, integrity, and liberty.²⁷⁹

²⁷¹ *Defensora de derechos humanos, María Oviedo cumple 340 días en el Chipote*, LA PRENSA, July 4, 2022, available at <https://www.laprensani.com/2022/07/04/derecho-humano-ni/3016666-defensora-de-derechos-humanos-maria-oviedo-cumple-340-dias-en-el-chipote> [in Spanish]; *Regime exhibits the female political prisoners of El Chipote after 14 months*, CONFIDENCIAL, Sept. 2, 2022, available at <https://www.confidencial.digital/english/regime-exhibits-the-female-political-prisoners-of-el-chipote-after-14-months/>.

²⁷² *Regime Exhibits the Female Political Prisoners*, *supra* note 183.

²⁷³ *Justicia orteguista declara culpable a María Oviedo, la abogada de los presos políticos*, DIVERGENTE, Feb. 14, 2022, available at <https://www.divergentes.com/justicia-orteguista-declara-culpable-a-maria-oviedo-la-abogada-de-los-presos-politicos/> [in Spanish].

²⁷⁴ *María Oviedo cumple 220 días encarcelada y con serios problemas de salud*, LA PRENSA, Mar. 6, 2022, available at <https://www.laprensani.com/2022/03/06/derecho-humano-ni/2962402-maria-oviedo-cumple-220-dias-encarcelada-y-con-serios-problemas-de-salud> [in Spanish].

²⁷⁵ *Medidas provisionales sobre Asunto integrantes del centro nicaragüense de derechos humanos y de la comisión permanente de derechos humanos (CENIDH-CPDH) respecto de Nicaragua*, INTER-AM. CT. H.R., adopted Oct. 14, 2021, at ¶ 5, available at https://www.corteidh.or.cr/docs/medidas/integrantes_centro_ni_se_04.pdf [in Spanish].

²⁷⁶ *Id.*

²⁷⁷ *Id.*, at ¶ 6.

²⁷⁸ *Id.*, at ¶ 14.

²⁷⁹ *Id.*, at 8.

This was not Oviedo's first experience on trial in Nicaragua. In July 2019, she was arrested, detained, and held *incommunicado* for 52 hours for allegedly slapping a police lieutenant who had insulted and touched her in an "obscene way" while she was visiting one of clients in detention.²⁸⁰ At that hearing, the judge denied that there was any evidence to support Oviedo's allegations against the lieutenant. Oviedo was sentenced to 30 days in prison, which she served in liberty after the judge granted a suspended sentence—when the judge pronounced its sentence, it took into account the gender perspective and conditions specific conditions of this event.²⁸¹ The IACHR later cited this incident as basis to call for "the creation of a safe, favorable environment for human rights defenders in the Americas."²⁸²

Upon her second arrest in July 2021, Oviedo was accused of "conspiracy to undermine national integrity" (Articles 410 and 412 Criminal Code) and "propagating false news" using information technology²⁸³ (*Special Cybercrimes Law*). As evidence, the Public Ministry cited a recent interview on an online news program, *Esta Semana*, during which Oviedo criticized the country's criminal procedure laws for violating human rights.²⁸⁴ The Public Ministry identified other statements she made to the media giving her legal opinion about regime's repressive laws and practices, as well as testimony from government officials, as evidence against Oviedo in her closed-door trial.²⁸⁵ Carlos Rafael Espinosa Castillas prosecuted the case. Judge Ulisa Yaoska Tapia Silva of the Thirteenth District Criminal Court of Managua sentenced her

²⁸⁰ NICARAGUA: Lawyer María Oviedo, detained *incommunicado* for 52 hours and accused of obstructing the exercise of law enforcement, INT'L OBSERVATORY OF LAWYERS, available at <https://protect-lawyers.org/en/item/maria-oviedo-3/>, (last updated Mar. 9, 2019).

²⁸¹ *Id.*

²⁸² Press Release, IACHR and UN Human Rights Presences Once Again Call for the Creation of a Safe, Favorable Environment for Human Rights Defenders in the Americas, INTER-AM. COMM'N ON HUMAN RIGHTS, Nov. 27, 2019, available at https://www.oas.org/en/iachr/media_center/PReleases/2019/288.asp.

²⁸³ *Id.*, and Public Ministry Accusation, File No. 1866-240-202 JD, Sept. 7, 2021, at 3–4 (Tenth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish].

²⁸⁴ *Ortega's Police Arrest Defense Attorney Maria Oviedo*, CONFIDENCIAL, Aug. 2, 2021, available at <https://www.confidencial.digital/english/ortegas-police-arrest-defense-attorney-maria-oviedo/>.

²⁸⁵ *Public Ministry Accusation*, *supra* note 283 and *Justicia orteguista declara culpable a María Oviedo*, *supra* note 273.

on February 22, 2022, to eight years in prison—five years for the charge of undermining national integrity and three years for propagating false news—and prohibited her from seeking public office.²⁸⁶ During her trial, Oviedo faced numerous violations of due process, including the lack of access to a lawyer and the inability to prepare an adequate defense; as an attorney with a criminal law background, she had to act as her own counsel in the initial hearing and was neither allowed access to her case files nor permitted to have a Criminal Code or other legal books with her during the proceedings.²⁸⁷

Oviedo's health during her detention at *El Chipote* also deteriorated.²⁸⁸ She was denied adequate time to recover from surgery she underwent shortly before her detention.²⁸⁹ Since then, she lost more than 4.5 kilograms (10 pounds) and suffered from a number of illnesses, including a urinary tract infection and a thyroid condition, which have been ongoing for years.²⁹⁰ An endocrinologist who examined Oviedo informed her family that the thyroid disease is very dangerous and, without adequate treatment, could have irreversible consequences.²⁹¹ Oviedo was only permitted 10 minutes of outdoor time per week, and was otherwise kept in a dark cell.²⁹² Her mother and lawyers at the CPDH requested that she be transferred to house arrest, to be treated for her medical afflictions, but these requests were ignored by authorities.²⁹³

After being released, Oviedo expressed that one of the most difficult situations for her was the violation of her right to family; “Being taken away from my family... my children saw when they took me... After a year and five months, I saw my youngest 10-year-old son, my daughter, after 11 months. My mother was very worried about my health,

²⁸⁶ Judgement, *Asunto No. 005927-ORM4-2022-PN*, May 23, 2022 (Appellate Tribunal of Managua Region) (Nicar.) (on file with author) [in Spanish].

²⁸⁷ *Interview No. 1*, *supra* note 2.

²⁸⁸ *María Oviedo cumple 220 días encarcelada*, *supra* note 274. See *María Oviedo cumple 490 días presa en «El Chipote»*, ARTÍCULO 66, Dec. 1, 2022, available at <https://www.articulo66.com/2022/12/01/maria-oviedo-presa-politica-nicaragua-490-dias/> [in Spanish].

²⁸⁹ *María Oviedo cumple 220 días encarcelada*, *supra* note 274.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Claman «misericordia» para presa política y abogada María Oviedo*, ARTÍCULO 66, Mar. 1, 2022, available at <https://www.articulo66.com/2022/03/01/salud-abogada-maria-oviedo-cpdh-nicaragua/> [in Spanish].

the uncertainty of the arrest took them by surprise. They suffered a lot, and I suffered a lot; They could not know how I was and I could not know how they were.”²⁹⁴

e. Evelyn Pinto



Evelyn Pinto, 63, is a renowned human rights defender identified by the Ortega regime as an opponent of the regime and arrested on the eve of the November 2021 election.²⁹⁵ She is a member of UNAB and UNAMOS, and participated in the peaceful demonstrations during the 2018 sociopolitical crisis.²⁹⁶ She provided humanitarian support for those injured and incarcerated and for the family members of people who had been killed.²⁹⁷ She also used her social media platforms to criticize the regime and its handling of the crisis.²⁹⁸

On November 6, 2021, more than 20 police officers raided Pinto’s home, detained her without a warrant, and forced her to erase all surveillance footage of the police officers.²⁹⁹ Without first informing Pinto or her husband of the grounds for her arrest or where they were taking her, the police took Pinto to the District III Police Station.³⁰⁰ Pinto’s first hearing did not take place until November 21, when the Public Ministry accused her of “conspiracy and advocacy to undermine national integrity” and “propagation of false news through information and communication technology to the detriment of the State of Nicaragua.”³⁰¹ The judge

²⁹⁴ *Interview No. 1, supra note 2.*

²⁹⁵ *Defensores y promotores de derechos humanos, supra note 217.*

²⁹⁶ *Resolution 38/2022 Rusia Evelyn Pinto Centeno Regarding Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, *adopted* July 31, 2022, at ¶ 15, *available at* https://www.oas.org/en/iachr/decisions/mc/2022/res_38-22%20_mc_506-22%C2%A0ni_en.pdf.

²⁹⁷ *Id.*

²⁹⁸ *Id.*,

²⁹⁹ *Id.*, at ¶ 16.

³⁰⁰ *Id.*

³⁰¹ *Id.*, at ¶ 17 and Public Ministry Accusation, *Judicial File No. 25198 ORM4-2021 PN*, Nov. 19, 2021, at 1 (Sixth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish].

approved the charges and a hearing was held several days later.³⁰² Her defense attorney was not notified.³⁰³

Pinto was detained at the police station for 25 days, during which she suffered abuse and was subjected to interrogation nearly every day.³⁰⁴ She was made to sleep on the stone floor of the prison for three nights without sheets or pillows.³⁰⁵ She was not permitted to communicate with her family or attorney or to access needed medical care.³⁰⁶ On December 1, 2021, she was later transferred to the Comprehensive Women's Penitentiary Center *La Esperanza*.³⁰⁷ There, she shared a cell with 65 ordinary prisoners, as opposed to political prisoners.³⁰⁸

On March 11, 2022, Judge Irma Olaya Laguna Cruz of the First District Criminal Court found Pinto guilty on two counts and sentenced her to eight years in prison—five years for undermine national integrity and three years for propagating false news.³⁰⁹ Luis Carlos Mongalo prosecuted her case.

Despite being an elderly woman with numerous chronic health problems, Pinto has been persistently denied medical care,³¹⁰ which put her life at risk.³¹¹ Pinto suffers from chronic renal failure, high blood pressure, respiratory issues, and muscle pain.³¹² By October 2022, more than six months had passed since Pinto's last medical exam or since her prescriptions were updated, despite her continuing pains, respiratory infections, and other medical issues.³¹³ Additionally, she was denied a mosquito net for her bed—which is granted to the common prisoners with

³⁰² *Resolution 38/2022*, *supra* note 296, at ¶¶ 17-18.

³⁰³ *Id.*

³⁰⁴ *Id.*, at ¶ 20.

³⁰⁵ *Id.*, at ¶ 20

³⁰⁶ *Id.*

³⁰⁷ *Id.*, at ¶ 19.

³⁰⁸ *Oct. 4, 2022, Provisional Measures*, *supra* note 153, at ¶ 127.

³⁰⁹ Judgement, *Sentencia No. 036-2022*, Mar. 11, 2022 (Sixth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish].

³¹⁰ *Oct. 4, 2022, Provisional Measures*, *supra* note 153, at ¶ 128.

³¹¹ *Resolution 38/2022*, *supra* note 296, at ¶ 25.

³¹² *Id.*

³¹³ *Familia de Evelyn Pinto preocupada por la salud de la presa política*, LA PRENSA, Oct. 14, 2022, available at <https://www.laprensani.com/2022/10/14/derecho-humano-ni/3055812-familia-de-evelyn-pinto-preocupada-por-la-salud-de-la-presa-politica>.

whom she shares a cell—and this exacerbated her health issues.³¹⁴ She was further only permitted to go out in the sun twice per week.³¹⁵ When her husband was able to visit her, he was forced to sign a document affirming that Pinto is in good health and pledge not to give interviews to the contrary.³¹⁶

The IACHR on July 31, 2022, issued precautionary measures to Pinto, convinced that her case meets the requisite level of severity, urgency, and irreparable harm to her rights to life, personal integrity, and health.³¹⁷ The Inter-American Court also extended provisional measures on October 4, 2022, calling on Nicaragua to immediately release her and take action to safeguard her rights to life, health, and personal integrity.³¹⁸

Pinto explained that conditions at *La Esperanza* are much different than those at *El Chipote*. In her words, the place can be seen as “friendly” and women make the most out of activities and courses offered to them. Nevertheless, she clarified that the treatment for the female political prisoners, like her, detained there was not the same: “We were totally excluded from any activity, no matter how small, especially religious activities. We were not allowed to participate, go to mass, attend ‘*purísima*’, nor any recreational activities,” “there was a volleyball tournament, carnivals on September 14, March 8, May 30, and we were not taken.”³¹⁹

4. Journalists

The adoption of the *Sovereignty Law 1055* and *Anti-Money Laundering, Terrorism, and WMD Law* have significantly expanded the regime’s ability to criminally prosecute independent journalists. Freedom of information and expression activists claim the continued persecution of journalists and communicators in Nicaragua made 2022 the worst year of press freedom in the country in recent memory.³²⁰ In a context of

³¹⁴ Oct. 4, 2022, *Provisional Measures*, *supra* note 153, at ¶ 127.

³¹⁵ *Id.*

³¹⁶ *Id.*, at ¶ 129.

³¹⁷ Resolution 38/2022, *supra* note 296, at ¶ 44.

³¹⁸ Oct. 4, 2022, *Provisional Measures*, *supra* note 153, at 51-52.

³¹⁹ Interview No. 8, *supra* note 2.

³²⁰ Elle Yap, *Nicaragua Experiences Worst Year for Press Freedom as Latin America Criticized For Continued Attacks on Journalists*, LATIN TIMES, Dec. 27, 2022, available at [https://www.latintimes.com/nicaragua-experiences-worst-year-press-freedom-latin-](https://www.latintimes.com/nicaragua-experiences-worst-year-press-freedom-latin)

newsroom raids, pervasive interrogations, and banned networks, journalists are pressured to remain silent, self-censor, or risk imprisonment on politically motivated charges. Leading up to the November 2021 election, many journalists were arrested or incarcerated and more than 150 fled abroad to work in exile.³²¹ The regime's arbitrary detention of journalists showcases Ortega's determination "to use every tool in his arsenal to censor critical voices."³²²

a. Juan Lorenzo Holmann
Chamorro



Juan Lorenzo Holmann, 56, is the General Manager of the Nicaraguan newspaper *La Prensa*, the last independent print newspaper in Nicaragua before of the November 2021 election. Holmann is also a member of the Chamorro family, which owns the newspaper. His detention occurred amid intensifying fear among *La Prensa* staff, shortly after the National Police kidnapped and imprisoned two employees in July 2021.³²³ Many *La Prensa* journalists, editors, photographers, and other personnel subsequently fled Nicaragua to safeguard their freedom.³²⁴

On August 13, 2021, National Police raided *La Prensa*'s office to investigate alleged customs fraud.³²⁵ Police then brought Holmann to *El Chipote* prison to sign papers related to that investigation, but instead detained him under fabricated charges of customs fraud and money

america-criticized-continued-538568. See also WORLD REPORT 2022, HUMAN RIGHTS WATCH, available at <https://www.hrw.org/world-report/2022/country-chapters/nicaragua>.
³²¹ *Id.*

³²² Press Release, *Nicaraguan Police Detain Journalist*, COMM. TO PROTECT JOURNALISTS, June 23, 2021, available at <https://cpj.org/2021/06/nicaraguan-police-detain-journalist-miguel-mendoza-for-alleged-treason/>.

³²³ *Personal de Redacción de LA PRENSA obligado a abandonar Nicaragua por persecución del régimen de Ortega*, LA PRENSA, Jul. 21, 2022, available at <https://www.laprensani.com/2022/07/21/nacionales/3021763-personal-de-redaccion-de-la-prensa-obligado-a-abandonar-nicaragua-por-persecucion-del-regimen-de-ortega> [in Spanish].

³²⁴ See Gabriela Selser, *Nicaragua newspaper says staff have fled the country*, AP NEWS, July 21, 2022, available at <https://apnews.com/article/caribbean-newspapers-nicaragua-daniel-ortega-mother-teresa-3af3ec524eefc22e33dfbc8b4ca24940>.

³²⁵ Press Release, *Nota de Prensa No. 30-2021*, POLICÍA NACIONAL NICARAGUA, Aug. 14, 2021, available at <https://www.policia.gob.ni/?p=72952> [in Spanish].

laundering.³²⁶ At the end of a three-day closed-door trial in March 2022, Holmann was sentenced to nine years in prison and fined approximately 3 million US dollars.³²⁷ Judge Nadia Camila Tardencilla Rodríguez of the Second District Criminal Court of Managua also ordered that the newspaper's facilities remain closed. The newspaper's office has been occupied by police since Holmann's arrest.³²⁸ The trial did not respect minimum standards of due process. For example, Holmann was denied the time and means to prepare an adequate defense and was not permitted to meet with his lawyers.³²⁹ The accusing prosecutor was Martha Carolina Cruz Sánchez and Jorge Luis Arias Jarquín was the prosecutor present in his hearings.

Holmann's family expressed serious concern about his deteriorating health as a result of the conditions of his detention, including limited food and water, constant darkness, isolation from other inmates with exception of one cellmate, and repeated interrogations.³³⁰ Despite his precarious health, officials failed to provide Holmann access to regular medical checks, including treatment for a dark spot on one eye and follow-up from a heart surgery prior to his arrest.³³¹ After photos of Hollmann were released by state media outlets in August 2022, his daughter Renata stated her father looked "completely deteriorated [...] gaunt and wasted," having lost significant weight after one year at *El Chipote*.³³² Due to these

³²⁶ Press Release, *Nicaraguan Publisher Juan Lorenzo Holmann Convicted on Money Laundering Charges*, COMM. TO PROTECT JOURNALISTS, Mar. 24, 2022, available at <https://cpj.org/2022/03/nicaraguan-publisher-juan-lorenzo-holmann-convicted-on-money-laundering-charges/>.

³²⁷ *Id.*

³²⁸ Resolution 49/2022 Precautionary Measure No. 652-22 About Juan Lorenzo Holmann Chamorro and His Family Unit Regarding Nicaragua (General Manager of "Diario La Prensa"), INTER-AM. CT. H.R., adopted Sept. 29, 2022, at ¶ 32, available at https://www.oas.org/en/iachr/decisions/mc/2022/res_49-22_mc_652-22%20_ni_en.pdf.

³²⁹ *Id.*, at ¶¶ 21, 26,

³³⁰ *Id.*, at ¶¶ 28-31. See also *Juan Lorenzo Holmann, gerente de La Prensa, con serios problemas de salud en la cárcel*, CONFIDENCIAL, Oct. 17, 2021, available at <https://www.confidencial.digital/nacion/juan-lorenzo-holmann-gerente-de-la-prensa-con-serios-problemas-de-salud-en-la-carcel/> [in Spanish].

³³¹ *Juan Lorenzo Holmann Chamorro*, COMM. TO PROTECT JOURNALISTS, accessed on Jan. 23, 2023, available at <https://cpj.org/data/people/juan-lorenzo-holmann-chamorro/>.

³³² *Physical appearance of opponents imprisoned in Nicaragua impacts their relatives*, SWISS INFO, Sept. 2, 2022, available at https://www.swissinfo.ch/spa/nicaragua-crisis_apariencia-f%C3%ADsica-de-opositores-presos-en-nicaragua-impacta-a-sus-familiares/47873010. See generally *Aged, Pale, and Scrawny: The Traces of Ortegaism*

concerns and the arbitrary nature of his detention, the IACHR³³³ issued provisional measures in his favor and the Committee to Protect Journalists³³⁴ called for his immediate release from prison.

Regarding his legal proceedings, Holmann expressed “There was never a due process nor did I have a right to legitimate defense. In the first hearing, there was no lawyer, then I had a public lawyer...I did not know what I was being accused of, I did not know the lawyer I was assigned, and I did not know if they were trustworthy.”³³⁵

b. Miguel Mendoza



Miguel Mendoza, 52, is a respected sports radio broadcaster in Nicaragua who also comments on politics and human rights issues on social media. He is an open critic of Daniel Ortega and his regime, denouncing the use of sports stadiums for paramilitary forces, the exposure of athletes to

COVID-19, and threats of jail and death faced by athletes and journalists who criticize the regime.³³⁶ Since 2018, Mendoza has been harassed by the regime and National Police, with “raids on his home, assaults, and theft of personal belongings, surveillance and monitoring, and other acts of intimidation.”³³⁷

On June 21, 2021, the National Police raided Mendoza’s home, confiscating personal documents, a computer, and other equipment, and arrested him for numerous crimes including “treason” and “conspiracy to

in *Political Prisoners*, CONFIDENCIAL, Sept. 1, 2022, available at <https://www.confidencial.digital/especiales/los-presos-politicos-de-la-dictadura-de-daniel-ortega/> [in Spanish].

³³³ *IACHR Resolution 49/2022*, *supra* note 328, at ¶ 53.

³³⁴ *Nicaraguan Publisher Juan Lorenzo Holmann Convicted*, *supra* note 326.

³³⁵ *Interview No. 4*, *supra* note 2.

³³⁶ *Sports Broadcaster Miguel Mendoza Arrested in Nicaragua*, NACIONAL INTERNATIONAL SPORTS PRESS ASSOCIATION, Jun. 22, 2021, available at <https://www.aipsmedia.com/aips/pages/articles/2021/29851.html>.

³³⁷ *Resolution 85/2021 Precautionary Measure No. 733-21 about Miguel Ángel Mendoza Urbina and His Nuclear Family Regarding Nicaragua*, INTER-AM. CT. H.R., adopted Oct. 15, 2021, at ¶ 11, available at https://www.oas.org/en/iachr/decisions/mc/2021/res_85-21_mc_733-21_ni_en.pdf.

undermine national integrity” (Articles 410 and 412 Criminal Code).³³⁸ Mendoza’s family reported that police did not present an arrest or search warrant, nor did they share where Mendoza was being taken. Mendoza was held at *El Chipote*, where he suffered long stretches of *incommunicado* detention, with rare contact with family or counsel. He was prohibited from any type of contact with his daughter, including letters, drawings, or photographs, even after he undertook a 10 day hunger strike in August 2021.³³⁹ After 18 months of imprisonment, he was finally permitted to see his daughter for the first time.³⁴⁰ In brief visits with his wife, Mendoza described the deplorable conditions of his detention, including isolation from other inmates with exception of his cellmate, constant artificial light, minimal food, water, and medical care, and frequent interrogations.³⁴¹ In October 2021, the IACHR granted provisional measures in favor of Mendoza and his immediate family, but no substantive response was given by the regime to address the human rights violations.³⁴²

Minimum due process rights were not respected throughout Mendoza’s trial. Family and trusted lawyers were unable to access the criminal file in a timely manner, or to privately meet with Mendoza to prepare an adequate defense.³⁴³ In a closed-door trial on February 8, 2022, Judge Luden Martínez Quiroz of the Ninth District Criminal Court of Managua convicted Mendoza of “conspiracy to undermine national integrity and disseminating false news” and sentenced to nine years in prison (Articles 410 and 412 Criminal Code and *Special Cybercrimes*

³³⁸ Press Release, *Nota de Prensa No. 164-2021*, POLICÍA NACIONAL NICARAGUA, June 21, 2021, available at <https://www.policia.gob.ni/?p=70315> [in Spanish].

³³⁹ *Mendoza and Reyes on Hunger Strike Due to Deterioration of Their Daughters’ Health*, CONFIDENCIAL, Sept. 27, 2022, available at <https://www.confidencial.digital/english/mendoza-and-reyes-on-hunger-strike-due-to-deterioration-of-their-daughters-health/>.

³⁴⁰ *Hija de periodista preso en Nicaragua se encuentra con su padre tras 18 meses*, EL COMERCIO, Dec. 26, 2022, available at <https://elcomercio.pe/mundo/centroamerica/miguel-mendoza-hija-de-periodista-preso-en-nicaragua-se-encuentra-con-su-padre-tras-18-meses-daniel-ortega-noticia/?ref=ecr> [in Spanish].

³⁴¹ *IACHR Resolution 85/2021*, *supra* note 337, at ¶ 23.

³⁴² *See generally*, *IACHR Resolution 85/2021*, *supra* note 337.

³⁴³ *IACHR Resolution 85/2021*, *supra* note 337, at ¶ 36.

Law).³⁴⁴ Said judge also ordered the journalist's assets be confiscated. According to his defense attorney, evidence included at least 30 tweets and several Facebook posts by Mendoza.³⁴⁵ Assistant Prosecutor Andrea del Carmen Salas Gómez was the prosecutor that accused him.

c. Miguel Mora



Miguel Mora, 57, is journalist and founder of *100% Noticias*, one of the main cable TV channels in Nicaragua. Especially during the 2018 social unrest, *100% Noticias* became a 24-hour platform strived to create citizen awareness of the violence and censorship of the regime through the dissemination of live videos broadcasted in communities.³⁴⁶

As a result of his vocal role in *100% Noticias*, Mora was detained for the first time in December 2018, accused of “incitement to hatred” and terrorist acts. Paramilitary forces raided and occupied the station’s facilities. Mora described his detention as “the most horrendous thing that could happen to a human being. They bury you alive to destroy you morally, to break you, so your thoughts and principles change in their favor.”³⁴⁷ After his release from prison in June 2019, Mora vowed to relaunch *100% Noticias* through social media networks.

In early 2021, Mora publicly announced his intention to run for President in the 2021 election, striving to amplify the voices of those detained arbitrarily in Nicaragua. In May 2021, Ortega subsequently revoked the legal charter of Mora’s party, Democratic Restoration Party

³⁴⁴ Press Release, *CPJ Condemns ‘Harsh’ 9-year Sentence for Nicaraguan Journalist Miguel Mendoza*, COMM. TO PROTECT JOURNALISTS, Feb. 17, 2022, available at <https://cpj.org/2022/02/cpj-condemns-harsh-9-year-sentence-for-nicaraguan-journalist-miguel-mendoza/>.

³⁴⁵ Press Release, *Nicaraguan Journalist Miguel Mendoza Convicted on Conspiracy, False News Charges*, COMM. TO PROTECT JOURNALISTS, Feb. 9, 2022, available at <https://cpj.org/2022/02/nicaraguan-journalist-miguel-mendoza-convicted-on-conspiracy-false-news-charges/>.

³⁴⁶ Carlos F. Chamorro, *Miguel Mora and the Struggle for Press Freedom in Nicaragua*, CONFIDENCIAL, Sept. 27, 2019, available at <https://www.confidencial.digital/english/miguel-mora-and-the-struggle-for-press-freedom-in-nicaragua/>.

³⁴⁷ *Id.*

(PRD), and thus eliminated Mora as a presidential contender.³⁴⁸ On June 20, 2021, about three months after he announced his presidential bid, the National Police violently arrested Mora in his home without a court warrant. Police also raided and searched his home for three hours.³⁴⁹ After 24 hours of being unaware of his location, his wife was finally told by authorities that Mora was taken to *El Chipote*.³⁵⁰ Mora was denied contact with family or lawyers and received limited medical care, water, and food, despite a series of medical conditions that demand constant health care.³⁵¹ In August 2021, the IACHR extended precautionary measures regarding Mora's detention.³⁵² The IACHR called on Nicaragua to adopt necessary measures to guarantee Mora's rights, including his right to life and personal dignity, such as allowing visits with family and legal defense in accordance with international standards.³⁵³

On February 5, 2022, Judge Nadia Camila Tardencilla Rodríguez of the Second District Criminal Court of Managua sentenced Mora to 13 years in prison for “conspiracy to undermine national integrity” (Articles 410 and 412 Criminal Code), and disqualified him from holding public office during that time.³⁵⁴ The regime accused Mora of “inciting foreign interference in internal affairs”³⁵⁵ through the promotion of economic sanctions levied against members of Ortega's regime, citing to four posts on Twitter as “evidence.”³⁵⁶ Assistant Prosecutor Andrea del Carmen Salas was the prosecutor that accused him.

³⁴⁸ *Resolution 61/2021 Precautionary Measure No. 873-18 about Miguel de los Ángeles Mora Barberena regarding Nicaragua (Extension)*, INTER-AM. CT. H.R., adopted Aug. 10, 2021, at ¶ 24, available at https://www.oas.org/en/iachr/decisions/mc/2021/res_61-21_mc_873-18_ni_en.pdf.

³⁴⁹ *Id.*, at ¶ 22.

³⁵⁰ *Id.*, at ¶ 26.

³⁵¹ *Id.*, at ¶ 25.

³⁵² Press Release, *IACHR Extends Precautionary Measure in Favor of Miguel de los Ángeles Mora Barberena in Nicaragua*, INTER-AM. CT. H.R., Aug. 16, 2021, available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/214.asp.

³⁵³ *IACHR Resolution 61/2021*, *supra* note 348, at ¶ 44.

³⁵⁴ *Nicaragua Sentences Journalist, Ex-Minister for “Conspiracy,”* AP NEWS, Feb. 9, 2022, available at <https://apnews.com/article/european-union-daniel-ortega-nicaragua-conspiracy-journalists-0d64c29ad51fb1faba8ff41e04a1d351>.

³⁵⁵ *Id.*

³⁵⁶ *Miguel Mora and María Fernanda Flores Also Convicted by Ortega's Justice System*, CONFIDENCIAL, Feb. 7, 2022, available at <https://www.confidencial.digital/english/miguel-mora-and-maria-fernanda-flores-also-convicted-by-ortegas-justice-system/>.

5. Religious Leaders

Daniel Ortega has persecuted members of the Catholic Church for their perceived political criticism, incarcerating religious leaders on fabricated charges that came with egregious due process violations. Especially since the social unrest in 2018, many Nicaraguan clergy members have spoken out against the abuses of the regime and provided shelter to demonstrators during times of unrest. In response, Ortega has long denounced the Catholic clergy as “terrorists” of a dictatorship, claiming the bishops in Nicaragua are conspiring to ignite a *coup d’état* against his government.³⁵⁷ The regime has similarly persecuted Catholic-affiliated organizations, as it shut down news media and charities, expelled staff, stripped universities of funding and legal status, and eliminated NGOs.³⁵⁸ The following are two examples of the at least 11 priests imprisoned by the regime.³⁵⁹ Bishop Rolando Álvarez, the highest ranking member of the Church detained by the regime, remains in Nicaragua after refusing to board the plane the day of the mass release of 222 political prisoners.

a. Óscar Danilo Benavídez



Father Óscar Benavídez, 50, is a priest that was imprisoned by the Ortega regime as part of the intensifying persecution against the Catholic Church. Benavídez is a priest who recently joined a parish in Mulukukú, a remote town in the North Caribbean of Nicaragua. He was previously of the Matagalpa diocese, which is led by Bishop Álvarez.

³⁵⁷ *Fiscalía sandinista arremete contra sacerdote Enrique Martínez y lo acusa de conspiración*, ARTÍCULO 66, Oct. 19, 2022, available at <https://www.articulo66.com/2022/10/19/fiscalia-sandinista-arremete-contra-sacerdote-enrique-martinez/> [in Spanish].

³⁵⁸ *Crackdown on Religious Freedom in Nicaragua*, US COMM’N ON INT’L RELIGIOUS FREEDOM, accessed Jan 23, 2021, available at <https://www.uscirtf.gov/events/hearings/crackdown-religious-freedom-nicaragua>.

³⁵⁹ *Daniel Ortega profundiza la persecución de sacerdotes con el arresto del cura Enrique Martínez*, EL PAÍS, Oct. 15, 2022, available at <https://elpais.com/internacional/2022-10-15/daniel-ortega-profundiza-la-persecucion-de-sacerdotes-con-el-arresto-del-cura-enrique-martinez.html>.

Shortly after he led a homily critical of Ortega and his oppression, Benavídez was arrested on August 14, 2022.³⁶⁰ Three patrol cars full of riot police blocked Benavídez on his way home from mass, put him into a patrol car, and drove him away to an unknown destination,³⁶¹ later revealed to be *El Chipote* prison. He remained in total isolation for two months.³⁶² In October 2022, he was transferred to *La Modelo* prison in Tipitapa without a specified reason or notice.³⁶³ After being detained for 42 days, Benavídez was formally charged with “conspiracy to undermine national integrity and propagation of false news to the detriment of the Nicaraguan state and society” (Articles 410 and 412 Criminal Code and *Special Cybercrimes Law*).³⁶⁴ Despite these accusations, the alleged crime he committed was still not specified by the Public Ministry. According to his attorney, his crime was later revealed to be commenting on a social media post, the contents of which apparently have not been published by the Court.³⁶⁵ After one hearing, Benavídez was summarily convicted and sentenced to eight years in prison on January 17, 2023 by Judge Nancy Aguirre Gudiel of the Tenth District Criminal Court of Managua.³⁶⁶ The prosecutor involved in his case was Manuel de Jesús Rugama Peña.

³⁶⁰ *Ortega acusa formalmente al sacerdote Óscar Danilo Benavídez, de Mulukukú, sin especificar el delito*, ARTÍCULO 66, Sept. 26, 2022, available at <https://www.articulo66.com/2022/09/26/presentan-acusacion-sacerdote-oscar-benavidez-iglesia-catolica/> [in Spanish].

³⁶¹ *La Justicia del régimen de Ortega en Nicaragua pidió 90 días de prisión para el sacerdote detenido en el centro de torturas “El Chipote”*, INFOBAE, Aug. 18, 2022, available at <https://www.infobae.com/americas/america-latina/2022/08/18/la-justicia-del-regimen-de-ortega-en-nicaragua-pidio-90-dias-de-prision-para-el-sacerdote-detenido-en-el-centro-de-torturas-el-chipote> [in Spanish].

³⁶² *Un sacerdote de Nicaragua, condenado a ocho años de cárcel por opinar en las redes sociales*, EL DEBATE, Jan. 17, 2023, available at https://www.eldebate.com/religion/iglesia/20230117/sacerdote-nicaragua-condenado-ocho-anos-carcel-delito-conspiracion_86716.html [in Spanish].

³⁶³ *Jueza Nancy Aguirre inicia juicio al sacerdote de Mulukukú, Óscar Danilo Benavides*, NICARAGUA ACTUAL, Jan. 16, 2023, available at <https://nicaraguaactual.tv/jueza-nancy-aguirre-juicio-sacerdote-mulukuku-ataques-iglesia-catolica/> [in Spanish].

³⁶⁴ *Id.*

³⁶⁵ *Meet the Priest the Nicaraguan Dictatorship Wants to Put Away for Eight Years*, CATHOLIC NEWS AGENCY, Jan 21, 2023, available at <https://www.catholicnewsagency.com/news/253416/meet-the-priest-the-nicaraguan-dictatorship-wants-to-put-away-for-eight-years>.

³⁶⁶ *Id.*

b. Enrique Martínez



Enrique Martínez, 64, is a Managua priest who has been a prominent critic of the Ortega regime. Since 2018, Martínez has openly called for democracy and denounced the violence against the opposition.³⁶⁷ In the weeks leading up to his arrest, sources close to Martínez claimed that he sensed he could be arrested at any moment, noting he had been harassed and followed by the National Police several times.³⁶⁸

On October 13, 2022, a patrol of riot police forcibly entered Martínez' home, beat him, and took him to *El Chipote* prison. Hours later, Martínez was formally accused of “conspiracy to undermine national integrity in the context of false news to the detriment of the Nicaraguan State”³⁶⁹ by Assistant Prosecutor Heydi Estela Ramírez Olivas. On October 18, 2022, Martínez' family filed a *habeas corpus* request before the Managua Appeals Tribunal against the General Commissioner of *El Chipote* prison.³⁷⁰ Details of his trial or alleged crimes were not available to his family nor attorney.³⁷¹

Martínez was tortured in *El Chipote*, including being denied specialized medical care or medication for his life-threatening chronic

³⁶⁷ *Padre Enrique Martínez está en riesgo de muerte en El Chipote*, NICARAGUA ACTUAL, Nov. 24, 2022, available at <https://nicaraguaactual.tv/padre-enrique-martinez-en-riesgo-de-muerte-en-el-chipote/> [in Spanish].

³⁶⁸ *The Violent Arrest of Father Enrique Martínez Gamboa*, CONFIDENCIAL, Oct. 19, 2022, available at <https://www.confidencial.digital/english/the-violent-arrest-of-father-enrique-martinez-gamboa/>.

³⁶⁹ *Freedom of Religion or Belief Victims Database – Enrique Martínez*, US COMM'N ON INT'L RELIGIOUS FREEDOM, accessed Jan. 23, 2023, available at <https://www.uscifr.gov/religious-prisoners-conscience/forb-victims-database/enrique-martinez>.

³⁷⁰ *Fiscalía sandinista arremete contra sacerdote Enrique Martínez y lo acusa de conspiración*, ARTÍCULO 66, Oct. 19, 2022, available at <https://www.articulo66.com/2022/10/19/fiscalia-sandinista-arremete-contra-sacerdote-enrique-martinez/> [in Spanish].

³⁷¹ *Ortega Regime Hides the Files of Jailed Religious Leaders*, HAVANA TIMES, Jan. 12, 2023, available at <https://havanatimes.org/features/ortega-regime-hides-the-files-of-jailed-religious-leaders/>.

illnesses.³⁷² He suffers from hypertension, which can cause fatal blood clots without medication, diabetes, and kidney problems. His family attempted to bring medication, supplies, and food for Martínez, but on most occasions, authorities did not accept them.³⁷³

³⁷² *Padre Enrique Martínez está en riesgo de muerte en El Chipote*, NICARAGUA ACTUAL, Nov. 24, 2022, <https://nicaraguaactual.tv/padre-enrique-martinez-en-riesgo-de-muerte-en-el-chipote/> [in Spanish].

³⁷³ *Id.*

IV. THE PERPETRATORS – COMMAND RESPONSIBILITY

Although many officials of the regime are involved in the persecution of political prisoners, President Daniel Ortega and Vice President Rosario Murillo may bear the most direct responsibility for crimes committed under their authority under the principle of command responsibility.¹ Nevertheless, Ortega and Murillo depend on a loyal network of judges, prosecutors, prison officials, and police officers to suppress pro-democracy activities and eliminate the threat of political opposition. The GHREN found that state agencies and dependencies including the National Police, the Public Ministry, the Judiciary, the National Penitentiary System, the National Assembly, and the Ministry of the Interior are responsible for human rights violations,² among which the imprisonment of political prisoners is included.

1. Daniel Ortega



Daniel Ortega is the President of Nicaragua. Formerly a *guerrilla* of the Sandinista rebellion over the Somoza dictatorship, Ortega has evolved from an agent of revolution to one of the very repression he once helped overthrow.³ After the Sandinistas took power in 1979, Ortega joined the revolutionary junta, which had taken

¹ While command responsibility is traditionally used in the context of armed conflicts, international courts have also used it to impute responsibility for serious crimes committed by civilian authorities. *Prosecutor v. Kayishema*, Case No. ICTR-95-I-T, INT'L CRIM. TRIB. FOR RWANDA, May 21, 1999, at ¶ 216, *available at* http://www.worldcourts.com/ict/eng/decisions/1999.05.21_Prosecutor_v_Kayishema_1.pdf (“[T]he Chamber accepts the submission made by the Prosecution that a civilian in a position of authority may be liable under the doctrine of command responsibility.”) and *Prosecutor v. Delalic*, Case No. IT-96-21-T, Int'l Crim. Trib. for the Former Yugoslavia, Nov. 16, 1998, at ¶ 363, *available at* http://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf (command responsibility “extends not only to military commanders but also to individuals in non-military positions of superior authority”).

² Report of the Group of Human Rights Experts on Nicaragua, U.N.Doc. A/HRC/52/63, Mar. 2, 2023, at ¶ 120, *available at* <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session52/list-reports>.

³ See Joshua Partlow, *From Rebel to Strongman: How Daniel Ortega Became the Thing He Fought Against*, WASH. POST, Aug. 24, 2018, *available at* https://www.washingtonpost.com/world/the_americas/from-rebel-to-strongman-how-daniel-ortega-became-the-thing-he-fought-against/2018/08/24/117d000a-97fe-11e8-818b-e9b7348cd87d_story.html.

over leadership of the country.⁴ In 1984, he was elected President of Nicaragua for a single six-year term.⁵ Three unsuccessful campaigns later, Ortega was finally reelected President in 2006.⁶

Having recaptured the presidency, Ortega embarked on a mission to secure his hold on power, progressively dismantling all constitutional and institutional checks on presidential power, tightening his hold on the legislature and judiciary, and silencing opposition.⁷ Already under his thumb, the Ortega-backed National Assembly and Supreme Court, in 2009⁸ and 2014,⁹ abolished the constitutional restrictions on term limits, enabling Ortega to indefinitely renew his candidacy.¹⁰ In the 2016 election cycle, the Supreme Court stripped Ortega's main opposition candidate of his party's leadership, and the Supreme Electoral Council removed 16 opposing government legislators from office.¹¹ Then, in 2020, the National Assembly passed into law a bill proposed by Ortega effectively barring all opposition candidates from seeking office in the 2021 elections.¹² In effect, Ortega secured victories for every election since 2006 and has foreclosed the possibility of free and fair elections going forward.

⁴ Alma Guillermoprieto, *The Revolution Eats Itself in Nicaragua*, THE NEW YORKER, Mar. 10, 2022, available at <https://www.newyorker.com/news/news-desk/the-revolution-eats-itself-in-nicaragua>.

⁵ *Id.*

⁶ *Daniel Ortega: From Revolutionary Leader to Opposition Hate Figure*, BBC NEWS, Jan. 10, 2022, available at <https://www.bbc.com/news/world-latin-america-15544315>.

⁷ *Nicaragua: Events of 2021*, HUMAN RIGHTS WATCH, 2022, available at <https://www.hrw.org/world-report/2022/country-chapters/nicaragua>; Joshua Partlow, *From Rebel to Strongman: How Daniel Ortega Became the Thing He Fought Against*, WASH. POST, Aug. 24, 2018, available at https://www.washingtonpost.com/world/the_americas/from-rebel-to-strongman-how-daniel-ortega-became-the-thing-he-fought-against/2018/08/24/117d000a-97fe-11e8-818b-e9b7348cd87d_story.html.

⁸ *Nicaragua Court Opens Way for Daniel Ortega Re-Election*, REUTERS, Oct. 20, 2009, available at <https://www.reuters.com/article/oukwd-uk-nicaragua-ortega-idAFTRE59J11820091020>.

⁹ *Nicaragua: Ortega Allowed to Run for Third Successive Term*, BBC NEWS, Jan. 29, 2014, available at <https://www.bbc.com/news/world-latin-america-25937292>.

¹⁰ *Id.*

¹¹ Press Release, *IACHR Expresses Concern over Removal of Opposition Legislators in Nicaragua*, INTER-AM. COMM'N ON HUMAN RIGHTS, Aug. 8, 2016, available at https://www.oas.org/en/iachr/media_center/PReleases/2016/111.asp.

¹² *Nicaragua: Law Threatens Free, Fair Elections*, HUMAN RIGHTS WATCH, Dec. 22, 2020, available at <https://www.hrw.org/news/2020/12/22/nicaragua-law-threatens-free-fair-elections>.

Thus, Nicaragua has devolved into a “highly centralized, authoritarian political system dominated by” Daniel Ortega and his wife, Rosario Murillo, who was “elected” Vice President alongside her husband in 2016.¹³ Together they exercise total control over the executive, legislative, judicial, and electoral government branches.¹⁴ With all government functions at their disposal, as well a loyal network of trusted figures in the police, military, and court system,¹⁵ Ortega and Murillo have ruled with an iron fist, systematically crushing dissent and eliminating all political opposition.¹⁶ In 2018, they ordered police and paramilitary groups to crack down on pro-democracy protesters, leaving more than 300 dead and many others subject to mistreatment and abuse.¹⁷ Police were further empowered to detain hundreds of protesters in the wake of the protests.¹⁸ Such arbitrary detentions would become one of Ortega’s most effective tools to secure his power in the coming years.¹⁹ As such, holding political prisoners has become a policy for Ortega and an intentional strategy to keep himself and his wife in power by silencing everyone who criticizes the regime, represents a real or perceived threat, or stands up for democracy and human rights in Nicaragua. With all branches of power and public institutions under his sleeve, he has been able to run a repressive state machinery that persecutes, arrests, convicts, and detain anyone at his will.

¹³ *Nicaragua*, in 2021 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, U.S. DEP’T OF STATE, Apr. 12, 2022, available at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/nicaragua> [hereinafter 2021 DOS COUNTRY REPORT: NICARAGUA]; accord *Nicaragua: Freedom in the World 2017*, FREEDOM HOUSE, accessed Mar. 2, 2023, available at <https://freedomhouse.org/country/nicaragua/freedom-world/2017>.

¹⁴ 2021 DOS COUNTRY REPORT: NICARAGUA, *supra* note 13.

¹⁵ See *The Seven Families of Power: Nepotism in Nicaragua*, CONNECTAS, accessed Mar. 3, 2023, available at <https://www.connectas.org/seven-familie-power-nepotism-in-nicaragua/>.

¹⁶ *Nicaragua: Events of 2022*, HUMAN RIGHTS WATCH, accessed Mar. 2, 2023, available at <https://www.hrw.org/world-report/2023/country-chapters/nicaragua#cb8491>.

¹⁷ 2021 DOS COUNTRY REPORT: NICARAGUA, *supra* note 13.

¹⁸ Press Release, *IACHR Condemns the Excessive Use of Force during Social Protests in Chile, Expresses Its Grave Concern at the High Number of Reported Human Rights Violations, and Rejects All Forms of Violence*, INTER-AM. COMM’N ON HUMAN RIGHTS, Dec. 6, 2019, available at https://www.oas.org/en/iachr/media_center/PReleases/2019/317.asp.

¹⁹ See *Nicaragua: Trumped-Up Charges Against Critics*, HUMAN RIGHTS WATCH, Sept. 20, 2021, available at <https://www.hrw.org/news/2021/09/20/nicaragua-trumped-charges-against-critics>.

In anticipation of the November 2021 elections, seeking to secure his reelection, Ortega ordered the arrests of dozens of political opponents, beginning in June 2021 with seven opposing presidential candidates, two former officials of the Violeta Barrios de Chamorro Foundation, a business union leader, and six members of the MRS.²⁰ Among them were Ortega's former guerrilla comrades from the first Sandinista Revolution, Hugo Torres, and Dora Maria Téllez.²¹ They were only the beginning of a wave of arbitrary arrests and detentions ordered by Ortega, in a campaign that targeted political opponents, journalists, human rights defenders, students, and business and community leaders.²² The Ortega regime justified its actions by labeling the political prisoners as “traitors to the homeland,”²³ and “foreign agents” intent on carrying out a coup d'état on behalf of the United States.²⁴ However, the rush to detain them—years after the crisis—in the run-up to another election made clear Ortega's political motivation.²⁵ By 2023, the regime had imprisoned more than 200 political prisoners on trumped-up charges of treason and “conspiring to undermine national integrity.”²⁶

In February 2023, Ortega approved the release of 222 political prisoners for reasons that are still unclear.²⁷ Perhaps by expelling them from Nicaragua and subsequently stripping many of their citizenship, he

²⁰ José Luis Rocha, *Why Did Daniel Ortega Imprison His Former Comrades?*, NACLA, June, 21, 2021, available at <https://nacla.org/ortega-elections-sandinistas-fsln>.

²¹ *Id.*; *Nicaragua: Five more opposition figures detained ahead of election*, BBC NEWS, June 14, 2021, available at <https://www.bbc.com/news/world-latin-america-57465142>.

²² *Nicaragua: Trumped-Up Charges Against Critics*, *supra* note 19.

²³ Ryan C. Berg & Margarita R. Seminario, *Did Ortega Just Kill Nicaragua's Democracy?*, FOREIGN POL'Y, June 9, 2021, available at <https://foreignpolicy.com/2021/06/09/ortega-arrests-opposition-election-democracy-killed/>

²⁴ William I. Robinson, *Crisis in Nicaragua: Is the US Trying to Overthrow the Ortega-Murillo Government? (Part II)*, NACLA, Aug. 20, 2021, available at <https://nacla.org/news/2021/08/18/crisis-nicaragua-overthrow;>

²⁵ *Id.*, (quoting José Miguel Vivanco, Americas director at Human Rights Watch) (internal quotations omitted).

²⁶ *Id.*

²⁷ Catherin Osborn, *Ortega Escalates His Repression*, FOREIGN POL'Y, Feb. 17, 2023, available at <https://foreignpolicy.com/2023/02/17/nicaragua-political-prisoners-released-ortega-citizenship/>.

means simply to ease his continued hold on power by replacing their imprisonment with forced exile.²⁸

2. Rosario Murillo



Rosario Murillo is Vice President of Nicaragua and wife to President Ortega. Though she was officially elected in 2016, Murillo has served as Nicaragua's *de-facto* co-president with Ortega since his reelection in 2006, and shares with him 50 percent of the presidential power.²⁹ Presenting a united front across billboards and government broadcasts throughout the nation, Murillo and Ortega developed a reputation for ruling together as a “single unit.”³⁰ There are those, however, who suspect that the power imbalance has pivoted in favor of Murillo in recent years, especially since the 2018 crisis.³¹

Between Ortega and Murillo, Murillo is more vocal. Speaking publicly on behalf of the regime has long been her principal function,³² having acted as chief of communications to the Ortega regime prior to her formal ascension to Vice President.³³ She has, thus, established herself as

²⁸ See *Nicaragua: Replacing prison by forced exile, Daniel Ortega's government's new pattern of repression*, AMNESTY INT'L, Feb. 21, 2023, available at <https://www.amnesty.org/en/latest/news/2023/02/nicaragua-exilio-forzado-por-carcel-el-nuevo-patron-represivo-del-gobierno-de-daniel-ortega/>.

²⁹ Press Release, *Treasury Targets Nicaraguan Vice President and Key Advisor Over Violent Response to Protests*, DEP'T OF TREASURY, Nov. 27, 2018, available at <https://home.treasury.gov/news/press-releases/sm554> [hereinafter “U.S. Treasury 2018 Sanctions”].

³⁰ Partlow, *supra* note 3; Guillermprieto, *supra* note 4.

³¹ Jennifer Ortiz, *¿Ya tomó el control total del Gobierno Rosario Murillo?*, NICARAGUA INVESTIGA, Feb. 11, 2020, available at <https://nicaraguainvestiga.com/politica/12627-ya-tomo-el-control-total-del-gobierno-rosario-murillo/>.

³² *Id.*, and *Daniel Ortega: From Revolutionary Leader to Opposition Hate Figure*, *supra* note 6.

³³ Frances Robles, *Wife and Running Mate: A Real-Life 'House of Cards' in Nicaragua*, NY TIMES, Oct. 30, 2016, available at <https://www.nytimes.com/2016/10/31/world/americas/nicaragua-daniel-ortega-rosario-murillo-house-of-cards.html>.

the voice and second face of the nation through daily radio and television appearances.³⁴

Murillo has frequently used her platform as the regime's spokesperson to vehemently defend the regime's repressive actions and to demonize the opposition.³⁵ In the midst of the 2018 uprising, for instance, she endorsed and justified the regime's violent tactics, which helped escalate the crackdown.³⁶ She would accuse the protesters of instigating violence, and referred to them as "criminals" or "vampires demanding blood."³⁷ She additionally co-led the regime's response to the protests, directing police and paramilitary forces to forcibly suppress peaceful protesters, leaving more than 300 dead.³⁸ As the leader of the Sandinista Youth (*Juventud Sandinista*, JS)—a pro-government armed youth group borne out of the first Sandinista revolution—Murillo militarized its young membership and used them to suppress political opposition during the protests.³⁹ In response to her actions at the head the regime's repressive actions, the US government issued sanctions against Murillo in November 2018.⁴⁰ Canada (June 2019),⁴¹ the European Union (August 2021),⁴²

³⁴ Guillermprieto, *supra* note 4; see also CID Gallup: 59% of Nicaraguans Never Listen to Rosario Murillo's Daily Monologue, CONFIDENCIAL, Nov. 4, 2021, available at <https://www.confidencial.digital/english/cid-gallup-59-of-nicaraguans-never-listen-to-rosario-murillos-daily-monologue/>.

³⁵ HUMAN RIGHTS WATCH, CRITICS UNDER ATTACK: HARASSMENT AND DETENTION OF OPPONENTS, RIGHTS DEFENDERS AND JOURNALISTS AHEAD OF ELECTIONS IN NICARAGUA 7 (June 2021).

³⁶ CRITICS UNDER ATTACK, *supra* note 35, at 7; see INTERDISCIPLINARY GROUP OF INDEPENDENT EXPERTS (GIEI), IACHR, REPORT ABOUT THE ACTS OF VIOLENCE THAT OCCURRED BETWEEN APRIL 18 AND MAY 30, 2018 (December 2018).

³⁷ CRITICS UNDER ATTACK, *supra* note 35, at 10, 31.

³⁸ See *Quién es Rosario Murillo, la esposa de Daniel Ortega y "copresidenta" de Nicaragua (y cuál es su verdadero poder)*, BBC NEWS, Nov. 8, 2021, available at <https://www.bbc.com/mundo/noticias-america-latina-59213663> [in Spanish]; 2021 DOS COUNTRY REPORT: NICARAGUA, *supra* note 13.

³⁹ *Id.*; Maynor Salazar & Ismael López, *The New Sandinista Youth: Exclusive Domain of 'Compañera Rosario'*, CONFIDENCIAL, Nov. 4, 2019, available at <https://www.confidencial.digital/english/the-new-sandinista-youth-exclusive-domain-of-companera-rosario/>.

⁴⁰ U.S. Treasury 2018 Sanctions, *supra* note 29.

⁴¹ *Nicaragua Sanctions*, GLOBAL AFFAIRS CANADA, June 21, 2019, available at <https://www.canada.ca/en/global-affairs/news/2019/06/nicaragua-sanctions.html/>

⁴² Commission Regulation 2021/1276 of July 30, 2021, Implementing Regulation (EU) 2019/1716 Concerning Restrictive Measures in View of the Situation in Nicaragua, annex, 2021 O.J. (L 262) 13, 13, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1276&from=EN>.

Switzerland (August 2021),⁴³ and the United Kingdom (November 2021)⁴⁴ each followed suit in the following years, citing her instrumental role in the 2018 crisis and continuing repression against political oppositionists and journalists.

Together, Murillo and Ortega escalated their repression against opposition leaders, journalists, and human rights defenders in the following years, incarcerating more than 200 anti-government critics between June 2021 and February 2023.⁴⁵ In her daily press briefings, Murillo continued her vilification of the opposition, referring to the political prisoners as “terrorists” and “coup-mongers,”⁴⁶ and threatened independent journalists with imprisonment.⁴⁷

Murillo’s level of influence on the regime’s political prisoner policy is so strong that in the end, releasing and sending the prisoners into exile was her idea.⁴⁸ As described by Ortega during a televised speech on February 9, 2023, Murillo herself called the US ambassador and told him to take the “mercenaries of the empire” without any negotiation.⁴⁹

⁴³ *Ordinance on Measures Against Nicaragua*, FED. DEP’T ECON. AFF. OF SWITZERLAND, Jan. 24, 2023, available at <https://www.seco.admin.ch/seco/en/home/seco/nsb-news.msg-id-84704.html>.

⁴⁴ *The UK Sanctions List Publication*, GOV.UK, accessed Mar. 3, 2023, available at <https://www.gov.uk/government/publications/the-uk-sanctions-list>.

⁴⁵ *Nicaragua: Events of 2022*, *supra* note 16.

⁴⁶ 2021 DOS COUNTRY REPORT: NICARAGUA, *supra* note 13.

⁴⁷ *Rosario Murillo amenaza a periodistas con aplicarles “Ley Mordaza”*, CONFIDENCIAL, July 7, 2021, available at <https://www.confidencial.digital/nacion/rosario-murillo-amenaza-a-periodistas-con-aplicarles-ley-mordaza/> [in Spanish]

⁴⁸ Mary Beth Sheridan & Karina Elwood, *Nicaragua Frees More than 200 Political Prisoners, Sends Them to U.S.*, WASH. POST., Feb. 9, 2023, available at <https://www.washingtonpost.com/world/2023/02/09/nicaragua-frees-more-than-200-political-prisoners-held-harsh-conditions/>.

⁴⁹ *Ortega dice que destierro a presos políticos lo ideó Rosario Murillo*, NICARAGUA INVESTIGA, Feb. 9, 2023, available at <https://nicaraguainvestiga.com/politica/108642-ortega-destierro-presos-politicos-ideo-rosario-murillo/> [in Spanish] (internal quotations omitted).

V. THE CONSTITUTION OF NICARAGUA AND KEY DOMESTIC LAWS USED TO PERSECUTE POLITICAL PRISONERS

Ortega has leveraged his control over the National Assembly to erect a new legal framework that violates due process, legitimizes persecution and detention of the regime's opponents, and sharply undermines basic rights. The new legislation allows Ortega's regime to detain prisoners in pretrial detention excessive periods of time under reprehensible conditions and to hand down harsh sentences after sham trials that violate domestic and international standards. Beginning in 2018, the regime adopted a package of new laws and reforms to the Constitution, Criminal Code, and Criminal Procedure Code, ostensibly aimed at protecting national security. These laws and reforms, explained below, have been applied broadly to silence the regime's critics and legitimize repression. While these reforms contradict human rights protections enshrined in Nicaragua's Constitution, the regime's tight control of the National Assembly and Judiciary, makes challenging the new provisions impossible.

This section will begin with an overview of the various protections of fundamental rights, political rights, and due process rights guaranteed under the Constitution of Nicaragua. Afterwards, this section will describe how the regime's new overly broad laws that have amended the Constitution, Criminal Code, and Criminal Procedure Code, allow the detention and imprisonment of political opponents.

A. Constitution of Nicaragua

An FSLN-dominated National Assembly drafted and approved the Nicaraguan Constitution, promulgated in 1987 and amended several times through 2014. It established a democratic system of government with a

mixed economy based on a separation of powers. The Constitution provides for fundamental rights,¹ political rights,²

¹ *Article 25* – “Everyone has the right to: 1. Individual Liberty; 2. Security...”

Article 26 – “Everyone has the right to: 1. Privacy in his/her life and that of his/her family. 2. Respect of his/her honor and reputation . . . 4. Inviolability of his/her domicile, correspondence, and communication of any kind...”

Article 27 – “All individuals are equal before the law and have the right to equal protection. There shall be no discrimination based on [usual list of protections including] ... political belief ... [or opinion] ...”

Article 29 – “Everyone has the right to freedom of conscience and thought and to profess or not profess a religion. No one shall be the object of coercive measures which diminish these rights...”

Article 30 – “Nicaraguan’s have the right to freely express their convictions in public or in private, individually or collectively, in oral, written, or any form...”

Article 31 – “Nicaraguans have the right to circulate and to establish their residence in any part of the national territory, and to freely enter and exit the country.”

Article 36 – “All persons shall have their physical, psychological, and moral integrity respected. No one shall be subjected to torture, procedures, punishments, or inhumane, cruel or degrading treatment. Violation of this right constitutes a crime and shall be punished by law.”

² *Article 49* – “[T]he population in general have the right to form organizations with the goal of realizing their aspirations according to their own interests, without discrimination...”

Article 50 – “Citizens have the right to participate under equal conditions in public affairs and in State management...”

Article 51 – “Citizens have the right to vote and be elected at periodic elections and to run for office...”

Article 52 – “Citizens have the right, individually and collectively, to petition, denounce irregularities, and make constructive criticism to the Powers of the State or to any authority...”

Article 53 – “The right to peaceful gathering is recognized . . . [and] does not require prior permission.”

Article 54 – “The right to public assembly, demonstration, and mobilization ... is recognized.”

and due process rights³ that were designed to constrain all branches of the Government from oppressing its people.⁴

Yet, Ortega's progressive co-opting of the executive, legislative, and judicial branches has eroded the checks and balances intended to safeguard civil liberties. The Ortega-controlled judiciary will neither hear nor uphold constitutional challenges to the validity of the new laws designed. For example, civil society organizations such as the Nicaraguan Center for Human Rights (*Centro Nicaragüense de Derechos Humanos*, CENIDH) have formally submitted constitutional challenges for these laws, yet the Supreme Court of Justice has repeatedly delayed the proceedings.⁵

B. Repressive Laws and Amendments to Constitution, Criminal Code, and Criminal Procedure Code

1. Sovereignty Law 1055

³ *Article 33* – “No one may be arbitrarily detained or imprisoned, or be deprived of liberty... Therefore: ...1. An arrest may be made only on the basis of a warrant issued by a competent judge or by authorities specifically empowered by law... 2. Any arrested person has the right: ... 2.1. To be informed without delay . . . in detailed manner of the causes of his/her arrest2.2. ... To be released or brought before a competent authority within a 48 hour period subsequent to the arrest”

Article 34 – “Any accused has the right, under equal conditions, to a fair and effective judicial protection, which includes the following minimal guarantees: 1. To enjoy the presumption of innocence. 2. To be tried without delay by a competent court established by law... 4. To have one's participation and defense guaranteed from the very initiation of the legal process and to have the time and means adequate to one's defense... 5... The accused shall have the right to communicate freely and privately with one's counsel... The judicial process must be oral and public...” However, the proceedings political prisoners over the past years have undermined all of these rights enshrined in the Constitution. The regime violated many of these rights, as it will be explained in Section VI of the report.

⁴ CONSTITUTION OF NICARAGUA, Nov. 9, 1987, Art. 33(2.2), *available at* https://www.constituteproject.org/constitution/Nicaragua_2014.pdf?lang=en.

⁵ *See CSJ admite recurso por inconstitucionalidad contra la Ley 977 Contra el Lavado de Activos, el Financiamiento al Terrorismo y el Financiamiento a la Proliferación de Armas de Destrucción Masiva*, CENIDH, Oct. 18, 2018, *available at* <https://www.cenidh.org/noticias/1096/> [in Spanish] and *Núñez considera que recurso por inconstitucionalidad de la Ley 1060 quedará “engavetado,”* LA PRENSA, Sept. 30, 2021, *available at* <https://www.laprensani.com/2021/09/30/politica/2888031-nunez-considera-que-recurso-por-inconstitucionalidad-de-la-ley-1060-quedara-engavetado> [in Spanish].

In December 2020, the National Assembly passed *Law 1055 on the Defense of the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace* (Sovereignty Law 1055),⁶ which barred opposition political candidates from participating in the November 2021 presidential election. The law prohibits so-called “traitors,” broadly defined as those who “undermine independence, sovereignty, and self-determination” or “damage the supreme interests of the nation,” from running for or holding public office.⁷ Since May 2021, the Ortega regime has repeatedly applied the *Sovereignty Law 1055* to persecute political opponents and undermine free and fair elections. It must be noted that this law is not a criminal law provision in its nature; it does not establish the definition, nor the consequence of a crime and it does not reform the Criminal Code. Instead, it bars individuals deemed “traitors” from holding public office. Nonetheless, the regime has unjustly used it as justification to initiate criminal proceedings against, arrest, and detain perceived political opponents, critics, and human rights defenders.

The *Sovereignty Law 1055* is not a criminal law provision, so the regime has had to rely on related articles of the Criminal Code to justify its criminalization of the opposition. For example, *Article 410* of the Nicaraguan Criminal Code prohibits acts intended to undermine or fracture Nicaragua’s territorial integrity, subject all or part of the country to foreign control and affect its condition as a sovereign and independent state.⁸ This crime carries a maximum punishment of 15 years of imprisonment and an absolute ban on holding public office for the same amount of time.⁹ In addition, under *Article 412*, any person convicted of the crimes listed in the “Acts of Treason” chapter of the Criminal Code will receive a sentence with the maximum limit applied or even

⁶ Law for the Defense of the Rights of the People to Independence, Sovereignty and Self-Determination for Peace, No. 1055, Dec. 22, 2020, (Nicar.), *available at* <https://ni.vlex.com/vid/ley-n-1055-ley-853335459> [in Spanish] [hereinafter “Sovereignty Law”].

⁷ *Nicaragua: Law Threatens Free, Fair Elections*, HUMAN RIGHTS WATCH, Dec. 22, 2020, *available at* <https://www.hrw.org/news/2020/12/22/nicaragua-law-threatens-free-fair-elections>.

⁸ Criminal Code of Nicaragua, No. 641, Nov. 13, 2007, (Nicar.), at Art. 410, *available at* https://siteal.iiep.unesco.org/sites/default/files/sit_accion_files/ni_0018.pdf [in Spanish] [hereinafter “Nicaragua Criminal Code”].

⁹ *Id.*

surpassed.¹⁰ Between May 2021 and December 2022, 81 percent of the political prisoners were convicted for “undermining national integrity.”¹¹

The Ortega regime applied the *Sovereignty Law 1055* and Criminal Code to justify the arrest, detention, and conviction of six presidential candidates: Arturo Cruz, Juan Sebastián Chamorro, Félix Maradiaga, Medardo Mairena, Miguel Mora, and Noel Vidaurre. For example, in the case of Arturo Cruz, former ambassador to the US and a presidential candidate, the regime claimed “strong evidence that [Cruz] had conspired against Nicaraguan society and the rights of the Nicaraguan people.”¹² Cruz was sentenced to nine years of prison on March 3, 2022.¹³ On this same day, two other presidential candidates, Félix Maradiaga and Juan Sebastián Chamorro, were also sentenced to 13 years in prison; each candidate was convicted under the charge of “undermining national integrity” after eight months of illegal days of enforced disappearance, torture, prolonged *incommunicado* detention, and gross due process violations.¹⁴ Cruz, Maradiaga, and Chamorro belonged to the group of 46 opponents detained in the time leading up to the November 2021 elections.¹⁵ From that group, at least 33 individuals were convicted for “undermining national integrity”—and at least 25 received prison sentences between eight and 13 years.¹⁶

Moreover, on September 22, 2021 the Public Ministry placed Irving Isidro Larios Sánchez under investigation, citing “strong evidence that he had conspired against Nicaraguan society and the rights of the

¹⁰ *Id.*, at Art. 412.

¹¹ List of Political Prisoners Between May 2021–December 2022, Colectivo Derechos Humanos Nicaragua Nunca Más [in Spanish] (on file with author).

¹² *Human Rights Watch*, *supra* note 7 and Public Statement, *Comunicado 008-2021*, PUBLIC MINISTRY NICARAGUA, Jun. 5, 2021, *available at* <https://ministeriopublico.gob.ni/comunicado-08-2021/> [in Spanish].

¹³ *3 of Ortega’s Ex-Rivals Are Sentenced to Up to 13 Years in Nicaragua*, THE TICO TIMES, Mar. 4, 2022, *available at* <https://www.ticotimes.net/2022/03/04/3-of-ortegas-ex-rivals-are-sentenced-up-to-13-years-in-nicaragua>.

¹⁴ *Briefing Note on the Trial of Juan Sebastián Chamorro and Félix Maradiaga*, PERSEUS STRATEGIES, Mar. 3, 2022, *available at* https://www.perseus-strategies.com/wp-content/uploads/2022/03/trial-summary-report-03.03.22_VERSION-FINAL_eng_esp-1.pdf.

¹⁵ *The Tico Times*, *supra* note 13.

¹⁶ *Id.*

Nicaraguan people pursuant to Law 1055 and the Criminal Code.”¹⁷ According to the regime, Larios, a sociologist, economist, and member of the Association of Social Movements, allegedly undermined the independence, sovereignty, and self-determination of Nicaragua, including having celebrated the imposition of sanctions against Nicaragua and its citizens.¹⁸ Larios was sentenced to 13 years in prison, banned from holding public office, and fined 160,000 Córdoba (approximately USD \$4,300).¹⁹ In another example, the regime cited under *Articles 410 and 412* of the Criminal Code to convict Pedro Joaquín Mena Amador, a rural community leader, and Maria del Socorro Oviedo Delgado, a human rights lawyer and defender, to 10 and 8 years in prison, respectively. Both Mena and Oviedo were imprisoned by the regime for a second time, showing that repression is ceaseless.

2. Special Cybercrimes Law

In October 2020, the National Assembly enacted *Law 1042 of 2020 on Special Cybercrimes* (Special Cybercrimes Law), which establishes criminal sentences of up to four years in prison for anyone who uses communications technology to “publish” or “disseminate” “false or distorted information, likely to spread anxiety, anguish or fear.” It also punishes with up to five years in prison anyone who publishes “false or distorted information” that “promotes hate and violence, [or] endangers economic stability, public order or health, or national security.” The law is overbroad and illegal under international law standards and allows the regime unlimited discretion to interpret its vague wording.²⁰

The Ortega regime used the *Special Cybercrimes Law* to legitimize its crackdown on the Catholic Church. The regime applied the law to accuse and sentence Rolando José Álvarez Lagos, Bishop of Matagalpa, of “propagation of false news through information and communication

¹⁷ Public Statement, *Comunicado 078-2021*, PUBLIC MINISTRY NICARAGUA, Sept. 22, 2021, available at <https://ministeriopublico.gob.ni/comunicado-78-2021/> [in Spanish].

¹⁸ *Id.*

¹⁹ *El preso político Irving Larios, integrante de la Articulación de Movimientos Sociales, cumple 190 días detenido*, LA PRENSA, Mar. 31, 2022, available at <https://www.laprensani.com/2022/03/31/derecho-humano-ni/2974886-irving-larios-integrante-de-la-ams-cumple-190-dias-detenido> [in Spanish].

²⁰ *Nicaragua Approves “cybercrimes” Law, Alarming Rights Groups*, ASSOCIATED PRESS, Oct. 27, 2020, available at <https://apnews.com/article/legislature-legislation-crime-daniel-ortega-cybercrime-ce252ed4721a759ed329798a7e2e30db>.

technologies to the detriment of the State and Nicaraguan society” as well as “conspiracy to undermine national integrity.”²¹ The regime arrested Álvarez on August 19, 2022, along with four priests, seminarians and lay people,²² violating the bishop’s rights to freedom of expression, assembly, thought, conscience, and religion. He was sentenced to 26 years in prison on February 10, 2023.

In other examples, the regime applied *Article 30* of the *Special Cybercrimes Law* to charge and convict Maria del Socorro Oviedo Delgado,²³ a lawyer and human rights defender, and Edgard Francisco Parrales Castillo,²⁴ a 79-year-old former priest and Nicaraguan Ambassador to the OAS, of “propagation of false news” and “conspiracy to undermine national integrity.”

3. Anti-Money Laundering, Financing Terrorism, and Proliferation of Weapons of Mass Destruction Law

In July 2018, the National Assembly passed *Law 977 of 2018 Against Money Laundering, Financing Terrorism, and Financing for the Proliferation of Weapons of Mass Destruction* (Anti-Money Laundering, Terrorism, and WMD Law) meant to “protect the national economy and integrity of the financial system from risks related to money laundering, terrorism, and the proliferation of weapons of mass destruction.”²⁵ The law also reformed *articles 394* (Terrorism) and *395* (Financing Terrorism) of the Criminal Code by imposing a punishment of 15 to 20 years in prison for those crimes.

²¹ Press Release, *Statement*, MANAGUA CENTRAL JUDICIAL COMPLEX, Dec. 14, 2022, available at https://www.poderjudicial.gob.ni/prensa/notas_prensa_detalle.asp?id_noticia=12187 [in Spanish].

²² *Nicaragua: Bishop Álvarez ordered to remain under house arrest*, VATICAN NEWS, Dec. 14, 2022, available at <https://www.vaticannews.va/en/church/news/2022-12/nicaragua-house-arrest-bishop-rolando-alvarez.html>.

²³ *Public Ministry Statement*, *supra* note 17.

²⁴ Public Statement, *Comunicado 004-2022*, PUBLIC MINISTRY NICARAGUA, Feb. 24, 2022, available at <https://ministeriopublico.gob.ni/comunicado-004-2022/> [in Spanish].

²⁵ Law Against Money Laundering Assets, the Financing of Terrorism, and the Financing of the Proliferation of Weapons of Mass Destruction, With its Reforms, No. 977, (Nicar.), at Art. 1, available at https://www.bcn.gob.ni/sites/default/files/marco_juridico_financiero/12_Ley_No_977_Ley_contra_el_Lavado_de_Activos.pdf [in Spanish].

The regime has used this law in conjunction with the Criminal Code to criminalize NGOs and restrict their operations under the guise of preventing money laundering. As such this law restricts civic space and is contrary to the country's human rights obligations.²⁶ *Article 282* of the Criminal Code sentences those convicted of money laundering to five to seven years in prison, and fines up to three times the value of the money or assets in question.²⁷ The fine grows if resources are used for the financing of political activities.²⁸ For example, in 2021, prosecutors investigated employees for money laundering at the Violeta Barrios de Chamorro Foundation, a non-profit organization dedicated to defending freedom of expression in Nicaragua.²⁹ In March 2022, Cristiana Chamorro, founder and director of the organization as well as a presidential candidate, was convicted and sentenced to eight years in prison.³⁰ The prosecutors claimed that she had used funds “for purposes different from those for which the organization was created” and that the organization was funding persons “aimed at destabilizing” the “economic and social development of the country.”³¹ Her indictment excludes information about how the alleged unreported funds were used.³² She was kept under house arrest.

4. Foreign Agents Regulation Law

In October 2020, the National Assembly passed *Law 1040 of 2020 on the Regulation of Foreign Agents* (Foreign Agents Regulation Law), inspired by a similar law adopted in Russia in 2012, which forces organizations and individuals receiving funding from abroad to register with the Interior Ministry,³³ report their monthly income and spending,³⁴

²⁶ *Nicaragua: New Law Heralds Damaging Crackdown on Civil Society, UN warns*, UN NEWS, May 9, 2022, available at <https://news.un.org/en/story/2022/05/1117802>.

²⁷ *Nicaragua Criminal Code*, *supra* note at 8 Art. 282.

²⁸ *Id.*, at Art. 283.

²⁹ Public Statement, *Comunicado 079-2021*, PUBLIC MINISTRY NICARAGUA, Sept. 23, 2021, available at <https://ministeriopublico.gob.ni/comunicado-79-2021/> [in Spanish].

³⁰ *Cristiana Chamorro: Nicaragua opposition leader sentenced*, BBC NEWS, Mar. 22, 2022, available at <https://www.bbc.com/news/world-latin-america-60834048>.

³¹ *Nicaragua: Trumped Up-Charges Against Critics*, HUMAN RIGHTS WATCH, Sept. 20, 2021, available at <https://www.hrw.org/news/2021/09/20/nicaragua-trumped-charges-against-critics>.

³² *Id.*

³³ Regulation of Foreign Agents, No. 1040, Oct. 19, 2020, (Nicar.), at Art. 6, available at <https://perma.cc/FAS6-DQGM> [in Spanish].

³⁴ *Id.*, at Art. 10.

and explain the use and destination of the funds.³⁵ The Ortega regime can then easily persecute organizations given that it has all relevant information on them and can use it to fabricate charges against the people involved in these organizations. The law establishes sanctions for those who do not register, including cancelling their legal registration.³⁶ *Article I* provides that the law's objective is to establish a framework for persons using foreign funds to prohibit, using overbroad terms, "government interference" or "threatening independence, self-determination, and national sovereignty, as well the country's economic and political stability."³⁷

In response to this law, the IACHR issued a press release calling for the repeal of this law, as it is both contrary to the requirements of the American Convention of Human Rights and "seeks to silence individuals and organizations who are deemed to oppose the Nicaraguan regime and to prevent the exercise of civil liberties."³⁸ With it, the regime criminalized and aimed to eliminate outside sources of funding for civil society organizations, civic movements, and political opponents that represent a threat to Ortega and the FSLN. The process of cancelling registrations has been overbroad and arbitrary. For example, in June 2022, the National Assembly cancelled the legal registration of 100 NGOs by asserting, without due process, that they had failed to submit "detailed financial statements," the names of their board members, "prior international donations," and "information on the identity and source of all donors," and that they had failed to "promote policies of transparency, integrity, and public trust."³⁹ In December 2022, the OHCHR reported that more than 3,000 national and international NGOs had been shut down in Nicaragua, including the Nicaragua Chapter of PEN International and the

³⁵ *Id.*, at Art. 9.

³⁶ *Id.*, at Art. 15.

³⁷ *Id.*, at Art. 1.

³⁸ Press Release, *IACHR Rejects Nicaragua's Foreign Agent's Act and Calls on the State to Repeal It*, OAS, Feb. 26, 2021, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/043.asp.

³⁹ *Iniciativa de Decreto Legislativo de Cancelación de Personalidad Jiridica de Asociaciones/Fundaciones*, NATIONAL ASSEMBLY, Jun. 28, 2022, available at [http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/17A15F48388BB4780625886F00738C2B/%24File/INICIATIVA%20DECRETO%20CANCELACION%20100%20PJ%20\(28-06-2022\).pdf?Open](http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/17A15F48388BB4780625886F00738C2B/%24File/INICIATIVA%20DECRETO%20CANCELACION%20100%20PJ%20(28-06-2022).pdf?Open).

Violeta Barrios de Chamorro Foundation, both shuttered in February 2021.⁴⁰⁴¹

5. Constitutional Reform Establishing Life Imprisonment for Hate Crimes

In January 2021, the National Assembly approved of *Law 1057 of 2021*, which changed *Article 37* of the Constitution of Nicaragua.⁴² The modified article allows life sentences for any person convicted of “serious crimes when they occur in hateful, cruel, humiliating, and inhuman circumstances that cause shock, rejection, indignation, and disgust in the national community.”⁴³ Human rights organizations decried that it could be used to target political opponents,⁴⁴ and could put political prisoners at risk of receiving a life sentence.

6. Reform to the Criminal Procedure Code

In February 2021, the National Assembly reformed the Criminal Procedure Code through *Law 1060 of 2021*.⁴⁵ The law created a misnamed new legal procedure called the “Special Hearing for the Protection of Constitutional Rights,” through which the Public Ministry can request a judge to extend the 48-hour constitutional time limit to investigate a

⁴⁰ Press Statement by Department Spokesman Ned Price, *Nicaragua’s Foreign Agents Law Drives Nicaragua Towards Dictatorship, Silencing Independent Voices*, US DEPARTMENT OF STATE, Feb. 8, 2021, available at <https://www.state.gov/nicaraguas-foreign-agents-law-drives-nicaragua-toward-dictatorship-silencing-independent-voices/>.

⁴¹ *Oral Update on the Situation of Human Rights in Nicaragua*, OHCHR.ORG, Dec. 15, 2022, accessed Dec. 22, 2022, available at <https://www.ohchr.org/en/statements-and-speeches/2022/12/oral-update-situation-human-rights-nicaragua-0>.

⁴² Reform Law to Article 37 of the Political Constitution of the Republic of Nicaragua, No. 1057, Jan. 19, 2021, (Nicar.), available at <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/259e2fcbbc244949106258662007a06e6?OpenDocument#:~:text=Se%20reforma%20el%20art%C3%ADculo%2037,duren%20m%C3%A1s%20de%20treinta%20a%C3%B1os> [in Spanish].

⁴³ *Id.*, at Art. 1.

⁴⁴ Ismael Lopez, *Nicaraguan Parliament Approves Controversial Hate Crimes Law*, REUTERS, Nov. 10, 2022, available at <https://www.reuters.com/article/us-nicaragua-human-rights-idUSKBN27R04X>.

⁴⁵ Reform and Addition Law to Law No. 406, Criminal Procedure Code of the Republic of Nicaragua, No. 1060, Feb. 5, 2021, available at [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/49C912ED7DDE58CE062586760053C890?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/49C912ED7DDE58CE062586760053C890?OpenDocument) [in Spanish].

detained person for a period ranging between 15 to 90, while investigators collect more evidence to support an indictment.⁴⁶ The regime selectively used this provision to feign legality in its 90-day *incommunicado* detention orders of political prisoners. For example, the regime used the law in the money laundering case against the Violeta de Barrios Chamorro Foundation in May 2021, in which a judge approved a 90-day extension on the investigation and detention period of Walter Antonio Gómez and Marco Antonio Fletes,⁴⁷ financial manager and accountant of the organization, respectively. This provision was used in other political prisoner cases described in the Illustrative Cases section of this report.

7. Constitutional Reform and Law Stripping Former Political Prisoners of their Nationality

On February 9, 2023, the same day the Ortega regime released 222 political prisoners and sent them to the US, the National Assembly introduced a reform to *Article 21* of the Nicaraguan Constitution, which effectively legitimized the released prisoners' expatriation and denaturalization. *Article 21* provides that "[t]he granting, loss, and recuperation of nationality shall be regulated by law."⁴⁸ The reform adds a new sentence to the article which says: "Traitors to the homeland will lose the quality of Nicaraguan nationals."⁴⁹ The reform clearly contravenes *Article 20* of the Constitution providing that "[n]o national may be deprived of his/her citizenship"⁵⁰ and international human rights standards.⁵¹

⁴⁶ *Id.*, at Art. 2.

⁴⁷ Press Release, *Amplían plazo para investigar a detenidos en causa por lavado de dinero, bienes y activos*, PODER JUDICIAL, May 29, 2021, available at https://www.poderjudicial.gob.ni/prensa/notas_prensa_imprimir.asp?id_noticia=10999 [in Spanish].

⁴⁸ *Constitution of Nicaragua*, *supra* note 4, at Art. 21.

⁴⁹ Iniciativa Ley de Reforma al Artículo 21 de la Constitución Política de Nicaragua, Feb. 9, 2023, available at <https://www.confidencial.digital/wp-content/uploads/2023/02/INICIATIVA-DE-LEY-DE-REFORMA-AL-ARTI%CC%81CULO-21-DE-LA-CONSTITUCIO%CC%81N-POLI%CC%81TICA-DE-LA-REPU%CC%81BLICA-DE-NICARAGUA-9-2-2023.pdf> [in Spanish].

⁵⁰ *Constitution of Nicaragua*, *supra* note 4, at Art. 20.

⁵¹ *IACHR Welcomes Release of Political Prisoners in Nicaragua but Rejects Arbitrary Deprivation of Nationality*, OAS, Feb. 13, 2023, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/021.asp.

Also on February 9, the National Assembly passed a *Special Law Regulating the Loss of Nicaraguan Nationality (Law 1045 of 2023)* (Loss of Nationality Law) to implement the constitutional reform, which will need another legislative term to enter into force.⁵² This law stipulates in *Article 2* that those sentenced based on the *Sovereignty Law 1055* will lose their Nicaraguan nationality.⁵³ Given that the political prisoners were sentenced under *Sovereignty Law 1055* and the Criminal Code, the reform directly targets them.

The decision to strip Nicaraguans of their citizenship was extended to 94 other people on February 16, 2023. That day, Judge Ernesto Rodríguez Mejía of the Managua Appeals Tribunal read a judicial decision taken by several Managua District Criminal Courts in which 94 people, many already living outside Nicaragua, were summarily found guilty of being “traitors to the homeland” and deemed fugitives of justice.⁵⁴ Thus, under the *Loss of Nationality Law* they would lose their citizenship. Moreover, their assets and property were ordered to be confiscated and seized by the regime.⁵⁵

⁵² *Despojo de nacionalidad es una “aberración al Estado de derecho en Nicaragua,”* CONFIDENCIAL, Feb. 16, 2023, available at <https://www.confidencial.digital/nacion/despojo-de-nacionalidad-es-una-aberracion-al-estado-de-derecho-en-nicaragua/> [in Spanish].

⁵³ *Special Law Regulating the Loss of Nicaraguan Nationality*, No. 1145, Feb. 9, 2023, available at <https://www.el19digital.com/app/webroot/tinymce/source/2023/Febrero/09Feb/ASAMBLA/Ley%201145.pdf> [in Spanish].

⁵⁴ Carlos Maldonado, *Ortega despoja la nacionalidad a otros 94 nicaragüenses, entre ellos los escritores Sergio Ramírez y Gioconda Belli*, EL PAÍS, Feb. 16, 2023, available at <https://elpais.com/internacional/2023-02-15/ortega-despoja-de-su-nacionalidad-a-otros-94-nicaraguenses-entre-ellos-los-escritores-sergio-ramirez-y-gioconda-belli.html?outputType=amp>.

⁵⁵ *Id.*

VI. INTERNATIONAL LEGAL ANALYSIS

Nicaragua's treatment of political prisoners severely violates both its own Constitution and international law. Nicaragua's Constitution explicitly provides that "[a]ll persons in the national territory shall enjoy State protection and recognition of the rights inherent to the human person, as well as unrestricted respect, promotion and protection of those human rights, and the full applicability of the rights set forth in the Universal Declaration of Human Rights; in the American Declaration of the Rights and Duties of Man [...] in the International Pact of Civil and Political Rights of the UN; and in the American Convention of Human Rights of the Organization of American States."¹ Nicaragua is a signatory to the Universal Declaration of Human Rights (UDHR), and it has ratified both the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT).² Although the Ortega regime expelled OAS representatives from Managua in 2022, Nicaragua is also a signatory to the American Declaration of the Rights and Duties of Man (American Declaration) and ratified the American Convention of Human Rights (American Convention).³

Nicaragua's Constitution prohibits arbitrary arrest, detention⁴ and torture,⁵ and guarantees due process, including the right to presumption of innocence,⁶ the right to a fair and public trial,⁷ the right to a competent tribunal,⁸ the right to facilities for an adequate defense,⁹ and access to private communication with counsel.¹⁰ These prohibitions and rights are

¹ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, 1987, at Art. 46 [hereinafter "CONSTITUTION OF THE REPUBLIC OF NICARAGUA"].

² *Ratification Status for Nicaragua*, U.N. TREATY BODY DATABASE, U.N. HUMAN RIGHTS TREATY BODIES, accessed Feb. 1, 2023, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=125&Lang=EN.

³ The Ortega regime expelled the OAS from Nicaragua in 2022. See AFP, *Nicaragua Expels OAS, Leaves Organization Early*, VOICE OF AMERICA, Apr. 25, 2022, available at <https://www.voanews.com/a/nicaragua-expels-oas-leaves-organization-early-foreign-minister-/6543602.html>.

⁴ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 1, at Art. 33.

⁵ *Id.*, at Art. 36.

⁶ *Id.*, at Art. 34(1).

⁷ *Id.*, at Art. 34.

⁸ *Id.*, at Art. 34(2).

⁹ *Id.*, at Art. 34(4).

¹⁰ *Id.*, at Art. 34(5).

enshrined in all of the ICCPR, CAT, American Convention, American Declaration, and the UDHR.¹¹ Moreover, Nicaraguan prison law provides a standard of treatment and set of rights for detainees as well as specific regulations for penitentiary centers. These rights include free access to counsel,¹² an adequate nutrition program,¹³ listening to the radio, reading newspapers and magazines,¹⁴ as well as having a suitable place to receive family visits.¹⁵ More specifically, domestic law provides that visits shall take place every 21,15, or eight days¹⁶ and phone calls at least every two weeks, weekly, or twice a week¹⁷ depending on each prisoners' status. Prisoners in maximum security are allowed visits and phone calls every 30 days.¹⁸

¹¹ See, e.g., International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 52 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, at Arts. 9(1-4) (prohibiting arbitrary arrest and detention and requiring a speedy trial before a competent court) and 14(1-3) (requiring due process guarantees and outlining those same guarantees described in the Constitution of Nicaragua) [hereinafter "ICCPR"]; Convention Against Torture, G.A. Res. 39/46, U.N. GAOR, 1465 U.N.T.S. 85, *entered into force* Jun. 26, 1987, at Arts. 1-2 (prohibiting torture) [hereinafter "CAT"]; American Convention on Human Rights, Organization of American States, *adopted* Nov. 22, 1969, at Arts. 7(3) (prohibiting arbitrary arrest and detention); 8(1) (describing the right to a competent and impartial tribunal), 8(2) (outlining the presumption of innocence), 8(2)(d) (describing the right of access to counsel) [hereinafter "American Convention"]; Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, *adopted* 1948, at Arts. 5 (prohibiting torture or ill-treatment), 9 (prohibiting arbitrary arrest and detention), and 11(1) (establishing the presumption of innocence as a human right) [hereinafter "UDHR"]; and American Declaration of the Rights and Duties of Man, Organization of American States, *adopted* 1948, at Arts. XXV (prohibiting arbitrary arrest and detention) and XXVI (protecting due process of law, presumption of innocence, and the right to a public hearing by an impartial tribunal) [hereinafter "American Declaration"].

¹² Law of the Penitentiary Regime and Execution of the Sentence, No. 473 Reforms and Regulation, Nov. 21, 2003, (Nicar.), at Art. 95(3), available at https://www.poderjudicial.gob.ni/pjupload/spenal/pdf/2003_ley01.pdf [in Spanish] [hereinafter "Prison Law"].

¹³ *Id.*, at Art. 95(8).

¹⁴ *Id.*, at Art. 95(9).

¹⁵ *Id.*, at Art. 95(11).

¹⁶ Decree, Reforms to Decree No. 16-2004, Regulation of Law No. 473, Law of the Penitentiary Regime and Execution of the Sentence, No. 473 Reforms and Regulation, Apr. 8, 2005, (Nicar.), at Art. 130, *available at* <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/debb63de925e60e4062570a60067a438?OpenDocument> [in Spanish] [hereinafter "Prison Law Regulation"].

¹⁷ *Id.*, at Art. 132.

¹⁸ *Id.*, at Art. 130.

For the reasons set forth below, Nicaragua’s political prisoners were detained in violation of both Nicaraguan and international law. First, Nicaragua’s political prisoners were detained for exercising their fundamental rights and freedoms. As discussed in Section III above, the political prisoners were detained either after declaring their candidacy for election in 2021 or for speaking out against the regime’s abuse. Second, once in detention, the political prisoners faced severe due process violations. The regime prosecuted many of the political prisoners in a kangaroo court—located within the *El Chipote* detention center—and deprived them of their fair trial rights, access to counsel, and adequate facilities to prepare a defense. Third, the Ortega regime lawlessly arrested and detained opposition candidates, disappearing and holding them in arbitrary, *incommunicado* detention. And fourth, the political prisoners were tortured or subjected to cruel, inhuman, or degrading treatment.

Although 222 political prisoners are now in the US, this legal analysis provides a window into the Ortega regime’s ruthless targeting of human rights and democracy advocates, as well as its attempt to consolidate power by jailing its political opposition. The regime cannot invoke national security exceptions or national sovereignty to justify these gross abuses, and, further, responsible officials of the Ortega regime should be held liable for the crimes against humanity it has waged against ordinary Nicaraguans since 2018.

A. *Nicaragua’s Political Prisoners Were Detained for Exercising Their Fundamental Rights and Freedoms*

Each of the political prisoners was detained for exercising a fundamental right or freedom protected by the Nicaraguan Constitution and international law. Historically, and as discussed in Section III above, detaining individuals who speak out against Ortega has been the regime’s *modus operandi*. In the cases brought against the Ortega regime before the UN Working Group on Arbitrary Detention, this UN body has found that dissidents were detained without a legal basis, since their detention “resulted from the exercise of rights guaranteed” under the ICCPR and UDHR, including freedom of opinion and expression, freedom of association, freedom of assembly, and freedom to participate in public

affairs.¹⁹ Political prisoners were also detained due to exercising these rights, as well as the right to freedom of religion and belief. The Ortega regime has sought to criminalize their activities, including peaceful protests, activism in NGOs or political parties, belonging to the Catholic Church while speaking out against the government’s abuses, criticism of the regime, and declaring a political candidacy.

1. Freedom of Opinion and Expression

Article 19(2) of the ICCPR states that “everyone shall have the right to freedom of expression,” and articles 13 of the American Convention and 19 of the UDHR assert that this right includes “freedom to hold opinions without interference and to seek, receive and impart information and ideas”²⁰ through any medium. Restrictions on freedom of opinion and expression may “never be invoked as a justification for the

¹⁹ *Cristiana María Chamorro Barrios and Others v. Nicaragua*, Opinion No. 58/2022, U.N. Doc. A/HRC/WGAD/2022/58, U.N. WORKING GROUP ON ARBITRARY DETENTION, Sept. 1, 2022, at ¶ 5 [hereinafter “Cristiana Chamorro WGAD Opinion”]; *Carlos Ramón Brenes Sánchez v. Nicaragua*, Opinion No. 16/2019, U.N. Doc. A/HRC/WGAD/2019/16, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 29, 2019, at ¶¶ 32-33 (finding detention arbitrary when the source was detained due to publicly criticizing the Ortega regime); *Tomás Ramón Maldonado Pérez v. Nicaragua*, Opinion No. 19/2019, U.N. Doc. A/HRC/WGAD/2019/19, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* May 1, 2019, at ¶ 43 (finding detention arbitrary when the source was detained due to criticizing the Ortega regime’s policy); *Amaya Eva Coppens Zamora v. Nicaragua*, Opinion No. 43/2019, U.N. Doc. A/HRC/WGAD/2019/43, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Aug. 14, 2019, at ¶¶ 65-66 (finding detention arbitrary when the source was detained for criticizing the Ortega regime through protests and strikes); *Miguel Mora and Lucia Pineda v. Nicaragua*, Opinion No. 17/2020, U.N. Doc. A/HRC/WGAD/2020/17, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* May 1, 2020, at ¶¶ 82-83 (finding detention arbitrary when the sources were detained due to their media reporting which was considered critical of the Ortega regime); *16 persons v. Nicaragua*, Opinion No. 21/2020, U.N. Doc. A/HRC/WGAD/2020/21, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* May 1, 2020, at ¶¶ 71-72 (finding the sources were detained arbitrarily when the activities for which they were detained were critical of the Ortega regime); *Kevin Roberto Solís v. Nicaragua*, Opinion No. 39/2020, U.N. Doc. A/HRC/WGAD/2020/39, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Aug. 24, 2020, at ¶ 44 (finding the source was detained arbitrarily when he was detained for being critical of the Ortega regime) and *Juan Sebastián Chamorro and Félix Maradiaga v. Nicaragua*, Opinion No. 73/2022, U.N. Doc. A/HRC/WGAD/2022/73, *adopted* Nov. 15, 2022, at ¶ 109 (finding the sources were detained arbitrarily for being political candidates of the opposition).

²⁰ *ICCPR*, *supra* note 11, at Art. 19(2); *UDHR* *supra* note 11, at Art. 19; *American Convention*, *supra* note 11, at Art. 13(1).

muzzling of any advocacy or multi-party democracy, democratic tenets, or human rights.”²¹ Additionally, an attack on a person, “because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life or killing [...]” is incompatible with Article 19 of the ICCPR “under any circumstance.”²²

Contrary to national and international law, the Ortega regime has used fabricated and politically motivated charges to muzzle human rights advocates and media critical of the regime. For instance, Jamie Arellano Arana was kept under arbitrary house arrest for having criticized the regime on his talk show, *Jaime Arellano en la nación*.²³ In 2021, he was interrogated at the Public Ministry for making remarks critical of the regime and subsequently placed under house arrest and later charged for “undermining national integrity.”²⁴ The regime also arrested feminist and environmental activists, including Suyen Barahona Cuán, Ana Margarita Vijil, and Dora María Téllez Arguello, who were detained for their longtime criticism of the regime.

The conducted interviews showed that the regime used activities widely connected to the right to freedom of opinion and expression as “evidence” against the former political prisoners to convict and sentence them for “undermining national integrity.” The Ortega regime used eight public videos in which Barahona gave her opinion about repression in the country and in support of sanctions, as well as a congratulatory letter

²¹ *General Comment No. 34 on Article 19: Freedoms of Opinion and Expression*, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. No. CCPR/C/GC/34, adopted Sep. 12, 2011, at ¶ 23, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/453/31/PDF/G1145331.pdf?OpenElement> [hereinafter “General Comment No. 34”].

²² *General Comment No. 34*, *supra* note 21, at ¶ 23.

²³ May 25, 2022, *Extension of Provisional Measures, Ampliación de medidas provisionales, Asunto Juan Sebastián Chamorro y otros respecto de Nicaragua*, INTER-AM. CT. H.R., adopted May 25, 2022, at ¶ 19 14, available at https://www.corteidh.or.cr/docs/medidas/chamorro_se_06.pdf [in Spanish] [hereinafter “May 25, 2022, Extension of Provisional Measures”] and *Resolución 82/21 sobre Jaime José Arellano Arana respecto de Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, adopted Oct. 12, 2021, at ¶ 10, available at https://www.oas.org/es/cidh/decisiones/mc/2021/res_82-21_mc_206-20_ni_es.pdf [in Spanish].

²⁴ Press Release, *Nota de Prensa 204-2021*, NATIONAL POLICE OF NICARAGUA, June 24, 2021, available at <https://www.policia.gob.ni/?p=71832> [in Spanish].

addressed to President Biden when he was elected as “evidence.”²⁵ Former political prisoners manifested that the regime widely surveilled their social media accounts and used re-tweets, publications, and likes as evidence against them. They also recalled that some of this evidence was fabricated or edited. Some even claim to have never seen the posts or re-tweets of which they were accused of or even state not even having an account on the social media that was being used against them. Vijil explained that the evidence against her included tweets and re-tweets of statements from Carlos Fernando Chamorro, a prominent Nicaraguan journalist, someone from the EU, and public interviews, as well as a resolution from her party making a declaration about the national situation. In short, all “evidence” was the result of these individuals’ right to express their opinion about the issues of their country.

Other individuals were also persecuted and prosecuted under the *Special Cybercrimes Law*, which broadly criminalizes “propagating false news,”²⁶ and gives the regime unfettered discretion to silence opposition views. For instance, Miguel Mendoza was sentenced to nine years in prison under this law for denouncing the use of sports stadiums for paramilitary forces.²⁷ Similarly, Maria Oviedo was accused in July 2021 of “propagating false news” using information technology.²⁸ As evidence of her alleged crime, the Public Ministry merely cited public interviews during which Oviedo, an experienced lawyer, expressed her opinion about the regime’s package of repressive laws explaining how they could be unconstitutional.²⁹

The Ortega regime also used fabricated and politically motivated charges to undermine multi-party democracy. Cristiana Chamorro, Juan

²⁵ *Interview No. 2, supra* note 2.

²⁶ Special Cybercrime Law, No. 1042, Oct. 30, 2020, (Nicar.), at Art. 30, *available at* <https://perma.cc/5F86-ZK4P> [in Spanish] [hereinafter Special Cybercrime Law].

²⁷ Press Release, *CPJ condemns ‘harsh’ 9-year sentence for Nicaraguan journalist Miguel Mendoza*, COMM. TO PROTECT JOURNALISTS, Feb. 17, 2022, *available at* <https://cpj.org/2022/02/cpj-condemns-harsh-9-year-sentence-for-nicaraguan-journalist-miguel-mendoza/>.

²⁸ *Id.*, and Public Ministry Accusation, File No. 1866-240-202 JD, Sept. 7, 2021, at 3–4 (Tenth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish].

²⁹ *Interview No. 1, supra* note 2 and *Ortega’s Police Arrest Defense Attorney Maria Oviedo*, CONFIDENCIAL, Aug. 2, 2021, *available at* <https://www.confidencial.digital/english/ortegas-police-arrest-defense-attorney-maria-oviedo/>.

Sebastián Chamorro, Arturo Cruz, Medardo Mairena, Félix Maradiaga, Miguel Mora, and Noel Vidaurre were all targeted for advocating for democracy and subsequently launching presidential bids. On June 2, 2021, Cristiana Chamorro was detained only hours after visiting a political organization and having submitted a letter declaring her presidential candidacy.³⁰ She planned to run on a campaign of advocating for freedom of speech and social change in Nicaragua. The National Police entered by force and raided her home before placing her under arbitrary house arrest.³¹ Similarly, Juan Sebastián Chamorro announced his presidential campaign, running on a platform for democracy and justice for victims of human rights abuse. He was later summoned to appear at the Public Ministry for an interview and was arrested shortly afterwards by forty armed police officers.³²

2. Freedom of Assembly and Association

Under Article 21 of the ICCPR, “[t]he right of peaceful assembly shall be recognized.”³³ This right is also enshrined in the UDHR, American Convention, and American Declaration.³⁴ The failure to recognize the right to freedom of assembly is “typically a marker of repression.”³⁵ Under Article 22 of the ICCPR, “[e]veryone shall have the right to freedom of association with others.”³⁶ This right includes both the freedom to form, belong to, and lead political parties and human rights

³⁰ *Cristiana Chamorro WGAD Opinion*, *supra* note 19, at ¶ 11.

³¹ *Id.*, at ¶ 12.

³² Petition to the UN Working Group on Arbitrary Detention, *Juan Sebastián Chamorro and Félix Maradiaga v. Government of Nicaragua*, Oct. 28, 2021, at 14, *available at* https://www.perseus-strategies.com/wp-content/uploads/2021/10/Chamorro_Maradiaga-v-Nicaragua_WGAD_10.28.21_PUBLIC.pdf [hereinafter “WGAD Petition”]; *see also La prioridad es la unidad y la candidatura única*, JUANSEBASTIAN.CH, *accessed* Feb. 7, 2023, *available at* <https://juansebastian.ch/la-prioridad-es-la-unidad-y-la-candidatura-unica/> [in Spanish].

³³ *ICCPR*, *supra* note 11, at Art 21.

³⁴ *UDHR*, *supra* note 11, at Art. 20; American Convention, *supra* note 11, at Art. 15; American Declaration, *supra* note 11, at Art. XXI.

³⁵ *General Comment No. 37 on Article 21: The Right of Peaceful Assembly*, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. No. C/CCPR/GC/37, at ¶ 2, *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/232/15/PDF/G2023215.pdf?OpenElement> [hereinafter “General Comment No. 37”].

³⁶ *ICCPR*, *supra* note 11, at Art 22.

organizations, and to pursue their statutory activities.³⁷ Any restrictions on the rights to freedom of assembly and association must be provided by law, comply with principles of “democracy, the rule of law, political pluralism, and human rights,” must be necessary and must involve the “least intrusive”³⁸ means available to protect “national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.”³⁹

Since 2018, the Ortega regime has brutally cracked down on the right of peaceful assembly through the implementation of “Operation Clean Up” (*Operación Limpieza*) which resulted in detaining, killing, torturing, and assaulting unarmed protesters.⁴⁰ The regime’s pension cuts sparked large and peaceful demonstrations in 2018, which the National Police and parapolice groups met with excessive force, extrajudicial killings, and arbitrary detention.⁴¹ One of the former political prisoners, Lester Alemán, was chased down during a protest on April 18, 2018, and the police fired tear gas at him.⁴² When he later delivered food and medicine to a cathedral in Managua, the police laid siege to the building—

³⁷ *Korneenko, et al. v. Belarus*, Communication No. 1274/2004, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. No. CCPR/C/88/D/ 1274/2004, Nov. 10, 2006, at ¶ 7.2.

³⁸ *General Comment No. 37*, *supra* note 35, at ¶ 40.

³⁹ *ICCPR*, *supra* note 11, at Arts. 21-22.

⁴⁰ *Resolution 27/2022 José Alejandro Quintanilla Hernández and his Nuclear Family Regarding Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, *adopted* June 22, 2022, at ¶ 17, *available at* https://www.oas.org/en/iachr/decisions/mc/2022/res_27-22%20_mc_266-22_ni_en.pdf.

⁴¹ ANNUAL REPORT 2021, CHAPTER IV. B. NICARAGUA, INTER-AM. COMM’N OF HUMAN RIGHTS, May 26, 2022, at ¶ 3, *available at* <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Nicaragua-en.pdf>; PERSONS DEPRIVED OF LIBERTY IN NICARAGUA IN CONNECTION WITH THE HUMAN RIGHTS CRISIS THAT BEGAN ON APRIL 18, 2018, INTER-AM. COMM’N OF HUMAN RIGHTS, Oct. 5, 2020, at ¶ 66, *available at* <http://www.oas.org/en/iachr/reports/pdfs/Nicaragua-PPL-en.pdf> [hereinafter “Inter-American Commission Report on Persons Deprived of Liberty”]; ANNUAL REPORT 2021, CHAPTER IV. B. NICARAGUA, INTER-AM. COMM’N OF HUMAN RIGHTS, May 26, 2022, at ¶ 3, *available at* <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Nicaragua-en.pdf>.

⁴² *Resolución 35/2018, Bosco René Bermúdez y otros respecto de Nicaragua (Integrantes del movimiento estudiantil)*, INTER-AM. COMM’N ON HUMAN RIGHTS, *adopted* May 21, 2018, at ¶¶ 34, *available at* <https://www.oas.org/es/cidh/decisiones/pdf/2018/35-18mc472-18-ni.pdf> [in Spanish] [hereinafter “Resolución 35/2018”].

trapping people inside, resulting in two deaths and 40 injuries.⁴³ Another democracy and human rights activist, Alex Hernández, was also targeted and labeled by the regime as an “agitator” after voluntarily joining the protest movement. He recalls the regime publishing photos of his face and accusing of him being violent to further prevent him from participating in the demonstrations.⁴⁴ He was threatened and had to live in several safe houses.

The regime has also systematically retaliated against human rights organizations with politically motivated registration and licensing requirements, violating the right to freedom of association. For example, the Violeta Barrios de Chamorro Foundation, a non-profit organization founded by Cristiana Chamorro that promotes free speech and civic initiatives for social and political change in Nicaragua, was forced to shutter in February 2021 under the *Foreign Agents Regulation Law*.⁴⁵ The indictment included unfounded allegations of “aims to destabilize” Nicaragua’s economy and social progress because the organization allegedly underreported the amount of its foreign funding.⁴⁶ Among other requirements, this law forced human rights organizations to register with the government as “foreign agents” and provide detailed reports of their income and expenditures to the regime (or face fines, expropriation, or jail time).⁴⁷ Under this law, NGOs that must register are unable to “finance or promote the financing of any type of organization, movement, political party, coalition or political alliance or association.”⁴⁸ The law is widely considered to be a tool to stymie human rights grantmaking to Nicaraguan NGOs.⁴⁹ The regime has shut down more than 3,199 NGOs since 2018

⁴³ *Id.*, at ¶ 35.

⁴⁴ *Interview No. 14, supra* note 2.

⁴⁵ *Nicaragua Foundation Announces Suspension in Face of New Law*, AP NEWS, Feb. 5, 2021, available at <https://apnews.com/article/violeta-chamorro-philanthropy-nicaragua-latin-america-laws-f9bcca83a428801f4f565acbefbc213a>.

⁴⁶ *Nicaragua: Trumped Up Charges Against Critics*, HUMAN RIGHTS WATCH, Sep. 20, 2021, available at <https://www.hrw.org/news/2021/09/20/nicaragua-trumped-charges-against-critics> [hereinafter “*Nicaragua: Trumped Up Charges Against Critics*, HUMAN RIGHTS WATCH”].

⁴⁷ *Id.*

⁴⁸ *New Nicaraguan Legislation Impacts Foreign Grantmaking*, COUNCIL ON FOUNDATIONS, accessed Feb. 20, 2023, available at <https://cof.org/news/new-nicaraguan-legislation-impacts-foreign-foundation-grantmaking>.

⁴⁹ *Id.*

under the law's restrictive funding and licensing requirements intended to shrink civic space.⁵⁰

The regime also targeted individual leaders and founders of civic engagement NGOs and political parties. For instance, Juan Sebastián Chamorro has been targeted since 2018 for his leadership in the Civic Alliance for Justice and Democracy, a prominent opposition organization that advocates for civic engagement and democracy.⁵¹ He was personally charged with “undermining national integrity” and sentenced to 13 years in prison.⁵² Félix Maradiaga has suffered what he calls an “early persecution” starting before 2018 for his decision to belong to civil society organizations working for the strengthening of democracy.⁵³ In 2018, he was targeted for his leadership of the UNAB opposition group and was himself falsely accused of financing anti-government protests.⁵⁴ In May 2021, the regime questioned Cristiana Chamorro about alleged inconsistencies in the Foundation's financial statements. She was subsequently accused of abusive management, falsifying documents, and money laundering, without any evidence provided of these crimes.⁵⁵

⁵⁰ *Oral Update on the Situation of Human Rights in Nicaragua*, OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, Dec. 15, 2022, *available at* <https://www.ohchr.org/en/statements-and-speeches/2022/12/oral-update-situation-human-rights-nicaragua-0> and *Gobernación cancela a la Asociación de Bancos Privados y otras 16 oenegés*, CONFIDENCIAL, Feb. 3, 2023, *available at* https://www.confidencial.digital/nacion/gobernacion-cancela-a-la-asociacion-de-bancos-privados-y-otras-16-oeneges/?utm_source=Bolet%C3%ADn+Informativo+%7C+Confidencial&utm_campaign=50230123bf-BOLETIN_DIARIO_CONFIDENCIAL&utm_medium=email&utm_term=0_222aa13b5f-50230123bf-294823210&mc_cid=50230123bf&mc_eid=2c5ec3614d [in Spanish].

⁵¹ *WGAD petition*, *supra* note 32, at 14 (noting that persecution of ACJD leaders has been the subject of at least one other case against the Ortega regime).

⁵² V INFORME OBSERVATORIO NICARAGÜENSE CONTRA LA TORTURA, COLECTIVO DE DERECHOS HUMANOS NICARAGUA NUNCA MÁS, Apr.-Nov. 21, 2021, at 41, 53, 53, 83, *available at* <https://colectivodhnicaragua.org/wp-content/uploads/2021/12/101221-5to-reporte-del-Observatorio-de-la-tortura.pdf> [in Spanish] and VI INFORME OBSERVATORIO NICARAGÜENSE CONTRA LA TORTURA, COLECTIVO DE DERECHOS HUMANOS NICARAGUA NUNCA MÁS, Dec. 2021-Mar. 2022, at 20, 37, *available at* <https://colectivodhnicaragua.org/wp-content/uploads/2022/05/Sexto-Informe-Parte-Narrativa.pdf> [in Spanish].

⁵³ *Interview No. 9*, *supra* note 2.

⁵⁴ *Nicaraguan Opposition Activist Félix Maradiaga Faces Arrest*, BBC, Sep. 25, 2018, *available at* <https://www.bbc.com/news/world-latin-america-45637087>.

⁵⁵ Public Ministry Accusation, *Judicial File Num. 1091-SEDE-21JD*, Jun. 1, 2021, at 1 (Managua Criminal District Court) (Nicar.) (on file with author) [in Spanish].

The regime cannot justify its actions as lawful restrictions on the rights to freedom of peaceful assembly and freedom of association. At the time of the political prisoners' 2021 arrests, there was no justification provided by law for restricting these rights, and the actions that the regime pursued were neither necessary nor proportionate to protect "national security or public safety, public order [...] public health or morals, or [...] the rights and freedoms of others."⁵⁶

3. Freedom of Religion and Belief

Articles 12 of the American Convention and 18 of the ICCPR provide that "[e]veryone shall have the right to freedom of thought, conscience and religion."⁵⁷ This right includes the freedom, "either individually or in community with others and in public or private, to manifest his religion [...] in worship, observance, [and] practice [...]"⁵⁸ Worship extends to "ritual and ceremonial acts" and "the use of ritual formulae and objects."⁵⁹ States may never derogate from the right to have or adopt a religion or belief,⁶⁰ and may limit the freedom to manifest religion only when prescribed by law and "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."⁶¹ Limitations may never be imposed for discriminatory purposes.⁶² The Nicaraguan Constitution notes that "[e]veryone has the right to freedom of conscience and thought and to profess or not profess a religion. No one shall be the object of coercive measures which diminish these rights."⁶³

The Ortega regime did not allow political prisoners to have access to Bibles during the time they were imprisoned in *El Chipote*. All of the former political prisoners who were interviewed reported that they were

⁵⁶ ICCPR, *supra* note 11, at Arts. 21-22.

⁵⁷ American Convention, *supra* note 11, at Art. 12; ICCPR, *supra* note 11, at Art. 18(1).

⁵⁸ *Id.*, at Art. 19(1); UDHR, *supra* note 11, at Art. 18.

⁵⁹ General Comment No. 22 on Article 18: Freedom of Thought, Conscience, and Religion, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. No. CCPR/C/21/Rev.1/Add.4, at ¶ 4, available at <https://www.refworld.org/docid/453883fb22.html> [hereinafter "General Comment No. 22"].

⁶⁰ ICCPR, *supra* note 11, at Art. 4(2).

⁶¹ ICCPR, *supra* note 11, at Art. 18(3).

⁶² General Comment No. 22, *supra* note 59, at ¶ 8.

⁶³ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 1, at Art. 29.

denied Bibles during their detention, despite repeatedly requesting one from authorities. Many of them are devout people of faith who practice their religion through prayer and reading the Bible. Former prisoners also reported facing limitations to pray together, such as collective rosary. During certain points of their time of detention, in which they were forced to maintain strict silence, they would get punished if they spoke loudly and among each other—and this included praying.⁶⁴ In *La Esperanza*, Evelyn Pinto and the other political prisoners detained in that location were denied participation in religious activities that were held in the prison. For example, she recalled not being permitted to attend mass, which is mandatory for Catholics, nor the *purísima* celebrations, a Catholic festival in Nicaragua.⁶⁵

Moreover, the Catholic Church played a key role in mediating differences between the regime and civil society. Several clergy members spoke out against the regime's crackdown on protesters and have advocated for the respect of human rights. In response, the Ortega regime has cracked down on the Church since 2018. The regime has targeted and imprisoned at least 11 Catholic priests, including Bishop Rolando Álvarez.⁶⁶ Many members of the clergy provided shelter to protesters in 2018, leading Ortega to denounce the Catholic Church clergies as “terrorists” and accusing Nicaraguan bishops of conspiring to overthrow the Nicaraguan government.⁶⁷ The regime has also persecuted Catholic organizations, news media, charities, and universities,⁶⁸ in violation of the rights to freedom of religion, freedom of opinion and expression, and freedom of association. Its actions specifically target Catholics, and especially Church leaders.

⁶⁴ Interview No. 5, *supra* note 2.

⁶⁵ Interview No. 8, *supra* note 2.

⁶⁶ *Daniel Ortega profundiza la persecución de sacerdotes con el arresto del cura Enrique Martínez*, EL PAÍS, Oct. 15, 2022, available at <https://elpais.com/internacional/2022-10-15/daniel-ortega-profundiza-la-persecucion-de-sacerdotes-con-el-arresto-del-cura-enrique-martinez.html>.

⁶⁷ *Fiscalía sandinista arremete contra sacerdote Enrique Martínez y lo acusa de conspiración*, ARTÍCULO 66, Oct. 19, 2022, available at <https://www.articulo66.com/2022/10/19/fiscalia-sandinista-arremete-contra-sacerdote-enrique-martinez/> [in Spanish].

⁶⁸ *Crackdown on Religious Freedom in Nicaragua*, US COMM’N ON INT’L RELIGIOUS FREEDOM, accessed Jan 23, 2021, available at <https://www.uscifr.gov/events/hearings/crackdown-religious-freedom-nicaragua>.

4. Right to Participate in Public Affairs

Under Article 25 of the ICCPR, “[e]very citizen shall have the right and opportunity to [...] take part in the conduct of public affairs,” as well as the rights to be elected and to have equal access to public service, without unreasonable restrictions.”⁶⁹ This right protects a person’s ability, individually or by association with political groups, to engage in political activity through criticism of the government or participating in meetings or debates concerning political affairs.⁷⁰ For example, in a case against the Ortega regime, the UN Working Group on Arbitrary Detention found an Article 25 violation when an activist and government critic had a history of being arrested in connection with the public expression of his opinions.⁷¹ The right to participate in government affairs is also protected under the American Convention, which protects citizens’ right to “vote and to be elected in genuine periodic elections,” circumscribed only by age, nationality [...] or sentencing by a competent court in criminal proceedings.”⁷²

In 2021, the Ortega regime weaponized *Sovereignty Law 1055* against opposition presidential candidates to prevent them from running against him. As discussed above, the penalty for violating this law is being barred from running for public office.⁷³ The regime invoked this law to justify detaining seven presidential candidates during an election year, shortly after they announced their intention to run for office. Political opposition leaders were also targeted under this law to prevent them from later declaring candidacies (*see* Section III(A)(2)). The arrests of other candidates also highlight how the regime violated Article 25 of the

⁶⁹ ICCPR, *supra* note 11, at Art. 25.

⁷⁰ *Aduayom, et al. v. Togo*, Communication No. 422-24/1990, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. No. CCPR/C/57/D/422- 424/1990, Aug. 19, 1996.

⁷¹ *Kevin Roberto Solís v. Nicaragua*, *supra* note 19, at ¶¶ 43–44.

⁷² *American Convention*, *supra* note 11, at Art. 23(1)(b), (2).

⁷³ *Law of the Defense of the Rights of the People to Independence, the Sovereignty, and Self-Determination for Peace* (Law 1055), at Art. 1, available at [http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/C4084E2665A5610F06258642007E9C3F/\\$File/Ley%20N%C2%B0%201055,%20Ley%20Defensa%20de%20los%20Derechos%20del%20Pueblo.pdf?Open](http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/C4084E2665A5610F06258642007E9C3F/$File/Ley%20N%C2%B0%201055,%20Ley%20Defensa%20de%20los%20Derechos%20del%20Pueblo.pdf?Open) [in Spanish].

ICCPR. For instance, Medardo Mairena, was arrested shortly after launching his presidential campaign in April 2021.⁷⁴

The regime has also violated the American Convention. There are no grounds under this treaty which the Ortega regime could invoke to deny the political prisoners from running for President. Particularly, the OAS does not consider the secret court proceedings held in *El Chipote* as “competent” and has repeatedly expressed concern that the *Sovereignty Law 1055* has been invoked solely to discriminate against political opposition.⁷⁵ Based upon these facts, the long histories of persecution against the political prisoners, and the timing of the arrests as well as the penalties under the *Sovereignty Law 1055*, presidential candidates’ and opposition leaders’ exercise of their right to participate in public affairs is clearly connected to their detention.

B. The Ortega Regime Deprived Nicaragua’s Political Prisoners of Their Due Process Rights

As discussed above, both Nicaragua’s Constitution and international law guarantee and protect fairness and due process of law, including the presumption of innocence,⁷⁶ the right to a fair and public trial,⁷⁷ the right to a competent tribunal,⁷⁸ the right to facilities for an adequate defense,⁷⁹ and access to private communication with counsel.⁸⁰ However, since 2018, the Ortega regime has brought politically motivated

⁷⁴ Carlos Larios, *Medardo Mairena oficializa su precandidatura a la Presidencia por el Movimiento Campesino*, LA PRENSA, Apr. 7, 2021, available at <https://www.laprensani.com/2021/04/07/politica/2805582-medardo-mairena-oficializa-su-precandidatura-a-la-presidencia-por-el-movimiento-campesino> [in Spanish].

⁷⁵ NICARAGUA: CONCENTRATION OF POWER AND UNDERMINING THE RULE OF LAW, INTER-AMERICAN COMM. ON HUMAN RIGHTS, Oct. 25, 2021, at ¶ 162, available at https://www.oas.org/en/iachr/reports/pdfs/2021_nicaragua-en.pdf (noting that the Commission and OAS believe Law 1055 violates international norms and standards).

⁷⁶ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 1, at Art. 34(1); ICCPR, *supra* note 11, at 14(2); UDHR, *supra* note 11, at 11(1).

⁷⁷ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 1, at Art. 34; ICCPR, *supra* note 11, at 14(1); UDHR, *supra* note 11, at Art. 10.

⁷⁸ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 1, at Art. 34(2); ICCPR, *supra* note 11, at Art. 14(1).

⁷⁹ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 1, at Art. 34(4); ICCPR, *supra* note 11, at Art. 14(3)(b); UDHR, *supra* note 11, at Art. 11(1).

⁸⁰ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 1, at Art. 34(5); ICCPR, *supra* note 11, at Art. 14(3)(b).

criminal proceedings against government critics that “have been characterized by violations of the presumption of innocence, the right to defense, equality of arms, publicity of the hearings and the principles of impartiality, independence, and the natural judge.”⁸¹ Given these violations, the proceedings against Nicaragua’s political prisoners utterly failed to comply with domestic and international fair trial standards.

1. Right to the Presumption of Innocence

Article 14(2) of the ICCPR guarantees that “[e]veryone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.”⁸² This right is reiterated in the UDHR, American Convention, and American Declaration,⁸³ and is essential to protecting the human right to a fair trial.⁸⁴ States may not derogate from the right to the presumption of innocence,⁸⁵ which applies at all stages of criminal proceedings.⁸⁶ The UN Human Rights Committee has explained

⁸¹ REPORT OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, *Human Rights Situation in Nicaragua*, U.N. Doc. A/HRC/51/42, Sept. 2, 2022, at ¶ 46.

⁸² *ICCPR*, *supra* note 11, at Art. 14(2).

⁸³ UDHR, *supra* note 11, at Art. 11(1); American Convention, *supra* note 11, at Art. 8(2); *American Declaration*, *supra* note 11, at Art. XXVI.

⁸⁴ *General Comment No. 32*, *supra* note 94, at ¶ 6.

⁸⁵ *General Comment No. 29 on Article 4: Derogations During a State of Emergency*, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. CCPR/C/GC/29, Aug. 31, 2001, at ¶ 11, available at <https://www.refworld.org/docid/453883fd1f.html> (“States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of . . . fundamental principles of fair trial, including the presumption of innocence.”).

⁸⁶ *See General Comment No. 24: Issues Relating to Reservations Made Upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or In Relation to Declarations Under Article 41 of the Covenant*, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. CCPR/C/GC/24, Nov. 4, 1994, at ¶ 8, available at <https://www.refworld.org/docid/453883fc11.html> (interpreting the non-derogable nature of the presumption of innocence under the ICCPR means that “a State may not reserve the right . . . to presume a person guilty unless he proves his innocence” without specifying that the presumption applies only to the trial stage); *see also* AMNESTY INTERNATIONAL FAIR TRIAL MANUAL, 2d Ed., at 125-26 (2014), available at <https://www.amnesty.org/en/wpcontent/uploads/2021/06/pol300022014en.pdf>; Michelle Coleman, *THE PRESUMPTION OF INNOCENCE IN INTERNATIONAL HUMAN RIGHTS AND CRIMINAL LAW*, at 33 (Routledge, 2021) (explaining that the presumption of innocence applies to all criminal proceedings but is not strictly limited to trial).

that media coverage that affirms the accused's guilt, or portrays the accused in a way that undermines the presumption of innocence must be avoided.⁸⁷ Further, excessive pretrial detention can violate the presumption of innocence.⁸⁸

In prior cases against the Ortega regime, the UN Working Group on Arbitrary Detention found violations of the presumption of innocence when the judiciary and members of the regime publicly treated individuals in pretrial detention as though they were convicted criminals,⁸⁹ and where individuals were automatically placed in pretrial detention without an opportunity to challenge its legality.⁹⁰

The Ortega regime has used the media to violate the presumption of innocence. For instance, on June 8, 2021, Rosario Murillo publicly referred to the arrested presidential candidates Cristiana Chamorro, Juan Sebastián Chamorro, Arturo Cruz, and Félix Maradiaga as “terrorists” and “criminals” when they were being investigated under the *Sovereignty Law 1055*,⁹¹ publicly treating critics as though they had been found guilty and convicted of crimes violates the presumption of innocence. Moreover, with the sham “Special Hearing for the Protection of Constitutional Guarantees” which was applied to many prisoners and explained in section V of this report, the regime extended the prisoners’ pretrial detention to 90 days to allow the regime to further investigate the allegations against them. These 90 days are the “practical equivalent”⁹² of a criminal sentence and a presumption that they deserved to be punished without being convicted of a crime.

2. Right to a Public Hearing by a Fair and Impartial Tribunal

Article 14(1) of the ICCPR provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and

⁸⁷ *General Comment No. 32*, *supra* note 94, at ¶ 30.

⁸⁸ *General Comment No. 35*, *supra* note 102, at ¶ 37.

⁸⁹ *WGAD Petition*, *supra* note 32, at 18 (citing *Carlos Ramón Brenes Sánchez v. Nicaragua*, *supra* note 19, at ¶ 55).

⁹⁰ *Id.* (citing *Solís v. Nicaragua*, *supra* note 19, at ¶ 46).

⁹¹ *Nicaragua Arrests Potential Challengers to President Daniel Ortega*, NBC NEWS, Jun. 9, 2021, available at <https://www.nbcnews.com/news/latino/nicaragua-arrests-potential-challengers-president-daniel-ortega-rcna1154>.

⁹² *WGAD Petition*, *supra* note 32, at 19.

impartial tribunal established by law,” which is reiterated in article 10 of the UDHR, article 8(1), (5) of the American Convention, and article XXVI of the American Declaration.⁹³ The UN Human Rights Committee has noted that “courts have the power to exclude all or part of the public from hearings for reasons of morals, public order, or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice.”⁹⁴ But beyond these circumstances, hearings must be open to the public.⁹⁵ Further, States must ensure the “actual independence of the judiciary from political interference by the executive branch.”⁹⁶

Proceedings against many of Nicaragua’s political prisoners took place in secret inside *El Chipote*. The regime never explained why they were conducted in secret. The conducted interviews to former *El Chipote* prisoners show that the regime’s tactic was to hold the proceedings usually during early hours in the morning without previously notifying them or their lawyers that they would take place. Prisoners reported that authorities would wake them up at 2:00 am without a specific reason, only to find out minutes later that they might be facing a judicial proceeding. Dora María Téllez’s preliminary hearing was held at 3:00 am local time with a judge that did not identify themselves in a room filled with armed police where not even the Nicaraguan flag was present.⁹⁷ The June 9 and 10, 2021 hearings against Juan Sebastián Chamorro and Félix Maradiaga took place around 2:00 or 3:00 am local time, as well. In addition, family members of prisoners were not allowed to attend. For instance, the regime did not allow Suyen Barahona’s mother to be present during the trial.⁹⁸ Independent media was also prohibited from viewing the proceedings,

⁹³ *ICCPR*, *supra* note 11, at Art. 14(1); UDHR, *supra* note 11, at Art. 10; American Convention, *supra* note 11, at Art. 8(1), (5) (noting that everyone has a right to fair trial and that publicity may be limited only to serve the interests of justice); American Declaration, *supra* note 11, at Art. XXVI.

⁹⁴ *General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, at ¶ 29 [hereinafter “General Comment No 32”].

⁹⁵ *Id.*

⁹⁶ *Id.*, at ¶ 19.

⁹⁷ *Interview No. 6*, *supra* note 2.

⁹⁸ *Interview No. 2*, *supra* note 2.

contrary to national legislation which permits their attendance.⁹⁹ Regarding his trial, Félix Maradiaga said: “My trial was a pantomime.”¹⁰⁰ The regime’s control over the judiciary (see Section I) virtually ensured that the political prisoners would remain detained and would be convicted.

3. Right to be Free from Excessive Pretrial Detention

The ICCPR contains a presumption against pretrial detention. First, Article 9(3) states that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody.”¹⁰¹ The UN Human Rights Committee notes that pretrial detention “must be based on an individualized determination that it is reasonable and necessary [...] for such purposes as to prevent flight, interference with evidence, or the recurrence of crime.”¹⁰² While article 9(3) applies only to “persons awaiting trial on criminal charges, that is, after the defendant has been charged [...] a similar requirement prior to charging results from the prohibition of arbitrary detention in [ICCPR Article 9(1)].”¹⁰³ To prevent excessive pretrial detention, Article 9(4) of the ICCPR requires that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention.”¹⁰⁴ This right is reiterated in Article 7(5) of the American Convention.¹⁰⁵

⁹⁹ Press Release, *IACHR Condemns Manipulation of Criminal Law and Lack of Guarantees in Trials of Political Prisoners in Nicaragua*, OAS, Feb. 11, 2022, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/027.asp.

¹⁰⁰ *Interview No. 9*, *supra* note 2.

¹⁰¹ *ICCPR*, *supra* note 11, at Art. 9(3).

¹⁰² *General Comment No. 35 on Article 9: Liberty and Security of Person*, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. CCPR/C/GC/35, Dec. 16, 2014, at ¶ 38 [hereinafter “General Comment No. 35”].

¹⁰³ *Id.*

¹⁰⁴ *ICCPR*, *supra* note 11, at Art. 9(4).

¹⁰⁵ *American Convention*, *supra* note 11, at Art. 7(5) (“Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.”).

All Nicaraguan political prisoners have suffered excessive pretrial detention. For example, Suyen Barahona Cuán, Ana Margarita Vijil, and Dora María Téllez Arguello were arrested on June 13, 2021, but they were not tried until February 15, 2022.¹⁰⁶ Similarly, Miguel Mora was arrested on June 20, 2021, but was not tried until February 5, 2022, after having been held for several months in *El Chipote* without access to his regular medical care and limited food and water.¹⁰⁷ Miguel Mendoza was arrested on June 21, 2021, but was not tried until February 8, 2022.

Further, *Law 1060 of 2021* enabled the judiciary to order up to 90 days of *incommunicado* detention pending investigation.¹⁰⁸ Juan Sebastián Chamorro and Félix Maradiaga were remanded to 90 days of pretrial detention pursuant to this law. They were both held for 78 days before being charged. *Law 1060* does not require a finding that pretrial detention is reasonable or necessary. It merely requires the court in ordering investigative detention to consider whether detention is relevant to the alleged crime, among other factors.¹⁰⁹ Thus, “[Law 1060] falls far short of the individualized determination for investigative detention required under the ICCPR.”¹¹⁰

The political prisoners were not promptly brought before a judge to challenge the lawfulness of their pretrial detention. On February 5, 2021, at Ortega’s express request, the National Assembly amended Nicaragua’s Criminal Procedure Code to extend the 48-hour pretrial detention period for criminal suspects.¹¹¹ Nicaraguan lawyers objected this change, arguing

¹⁰⁶ Judgement, *Sentencia No. 14-2022*, Feb 15, 2022, at 11–12 (Thirteenth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish].

¹⁰⁷ *Resolution 61/2021 Precautionary Measure No. 873-18 about Miguel de los Ángeles Mora Barberena regarding Nicaragua (Extension)*, INTER-AM. CT. H.R., adopted Aug. 10, 2021, at ¶ 25, available at https://www.oas.org/en/iachr/decisions/mc/2021/res_61-21_mc_873-18_ni_en.pdf.

¹⁰⁸ Reform and Addition Law to Law No. 406, Criminal Procedure Code of the Republic of Nicaragua, No. 1060, at Art. 2, Feb. 5, 2021, available at [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/49C912ED7DDE58CE062586760053C890?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/49C912ED7DDE58CE062586760053C890?OpenDocument) [in Spanish].

¹⁰⁹ *Id.*

¹¹⁰ Urgent Appeal on Behalf of Félix Maradiaga, PERSEUS STRATEGIES, Jun. 11, 2021, available at <https://www.perseus-strategies.com/wp-content/uploads/2021/06/Felix-Maradiaga-SRT-Urgent-Appeal-06.11.21.pdf> [hereinafter “Urgent Appeal”].

¹¹¹ Reform and Addition Law to Law No. 406, Criminal Procedure Code of the Republic of Nicaragua, No. 1060, Feb. 5, 2021, available at

that the amendment violated the Nicaraguan Constitution,¹¹² and the OHCHR condemned the amendment as contrary to international standards.¹¹³ Nevertheless, Arturo Cruz was not brought before a judge within 48 hours of his arrest. Suyen Barahona Cuán was provided a preliminary hearing on June 15, 2021, and she was remanded for another 90 days of pretrial detention¹¹⁴ and was placed into *incommunicado* solitary confinement.¹¹⁵ Juan Sebastián Chamorro and Félix Maradiaga were detained for 84 days *incommunicado* before being remanded to another 90 days of pretrial detention. During this time, neither man had the opportunity to challenge the lawfulness of his detention. Following a hearing on September 3, 2021, they were remanded for another 41 days of pretrial detention.¹¹⁶

4. Right to Access Counsel of Choice

Under Article 14(3)(b) of the ICCPR, everyone has the right, “[i]n the determination of any criminal charge against him,” to “communicate with counsel of his own choosing.”¹¹⁷ Lawyers should be able to advise and represent accused persons without interference.¹¹⁸ The right to choose one’s own counsel is also protected under Nicaraguan law.¹¹⁹ This right requires that an accused be given “prompt access to”¹²⁰ and private and confidential communication with the chosen counsel.¹²¹ The American Convention protects “the inalienable right to be assisted by counsel provided by the state [...] if the accused does not defend himself personally or engage his own counsel [...]”¹²² Nicaraguan domestic

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/49C912ED7DDE58CE062586760053C890?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/49C912ED7DDE58CE062586760053C890?OpenDocument) [in Spanish].

¹¹² CONSTITUTION OF NICARAGUA, *supra* note 1, at Art. 33(2.2).

¹¹³ Tweet by OHCHR (@OACNUDH), TWITTER, Feb. 3, 2021, 8:19 am, *available at* <https://twitter.com/oacnudh/status/1356955406187307008?lang=es> [in Spanish].

¹¹⁴ *Id.*

¹¹⁵ *Id.*, at ¶ 16.

¹¹⁶ *WGAD Petition*, *supra* note 32, at 13.

¹¹⁷ ICCPR, *supra* note 11, at Art. 14(3)(b).

¹¹⁸ *General Comment No. 32*, *supra* note 94, at ¶ 34.

¹¹⁹ Código Procesal Penal de Nicaragua (Ley No. 406), MINISTERIO PÚBLICO DE LA REPÚBLICA DE NICARAGUA, at Art. 95.10, *available at* https://web.oas.org/mla/en/Countries_Intro/Nica_intro_textfun_esp_2.pdf.

¹²⁰ *General Comment No. 32*, *supra* note 94, at ¶ 34.

¹²¹ *Id.*

¹²² *American Convention*, *supra* note 11, at 8(2)(e).

prison law provides for the right to free access to counsel of choice as well.¹²³

Nicaragua's political prisoners were denied access to counsel in several ways. First, the regime strongly interfered with the lawyers' ability to represent the political prisoners. In some cases, lawyers were not notified of the proceedings that took place inside *El Chipote*, which were held in secret, and could not attend.¹²⁴ In other cases, judges refused to allow political prisoners' lawyers to attend hearings. For instance, in Cristiana Chamorro's case, a judge conducted a preliminary hearing and refused to allow Chamorro's lawyer to attend, instead he assigned her a public defender against her will, in violation of her right to choose her own counsel¹²⁵—prisoners were usually imposed a public defender. In Lester Alemán's case, his lawyer was denied the chance to review the trial record, speak, object, or question witnesses in the courtroom,¹²⁶ which also violates the international legal principle of equality of arms.¹²⁷ Alemán was unable to defend himself, either. During his trial, he was ordered by the prosecution and the judge to “shut up.”¹²⁸

¹²³ *Prison Law*, *supra* note 12, at Art. 95(3).

¹²⁴ *Resolution 38/2022 Rusia Evelyn Pinto Centeno regarding Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, *adopted* July 31, 2022, at ¶¶ 17-18, *available at* https://www.oas.org/en/iachr/decisions/mc/2022/res_38-22%20_mc_506-22%C2%A0_ni_en.pdf (describing how Rusia Evelyn Pinto Centeno's defense attorney was not notified when she was officially charged).

¹²⁵ *Cristiana Chamorro WGAD Opinion*, *supra* note 19, at ¶ 11.

¹²⁶ Mario Medrano, *Justicia de Nicaragua declara culpables a líder estudiantil Lester Alemán y a Dora María Téllez. Fiscalía pide 15 años de cárcel para Téllez*, CNN, Feb. 4, 2022, *available at* <https://cnnespanol.cnn.com/2022/02/04/jdora-maria-tellez-lesther-aleman-exguerrillera-carcel-nicaragua-orix/#0> [in Spanish].

¹²⁷ *See ICCPR*, *supra* note 11, at Art. 14(3)(e).

¹²⁸ *Dora Maria Tellez and Lester Aleman found guilty in mock political trials*, CONFIDENCIAL, Feb. 6, 2022, *available at* <https://www.confidencial.digital/english/dora-maria-tellez-and-lesther-aleman-found-guilty-in-mock-political-trials/> and *Defensores y promotores de derechos humanos detenidos en condiciones que vulneran sus derechos fundamentales*, LA PRENSA, *adopted* Dec. 11, 2021, *available at* <https://www.laprensani.com/2021/12/11/derecho-humano-ni/2922482-defensores-y-promotores-de-derechos-humanos-detenido-en-condiciones-que-vulneran-sus-derechos-fundamentales> [in Spanish].

The regime has threatened, coerced, and harassed political prisoners' lawyers,¹²⁹ and, in some cases, compelled them to flee Nicaragua.¹³⁰ Juan Sebastián Chamorro's first local counsel fled the country in June 2021, citing threats made against him and his family. Maradiaga's local lawyer fled Nicaragua in October 2021, also citing persecution by the regime.¹³¹ Also due to intimidation and threats, two of Juan Lorenzo Holmann's lawyers had to flee the country.¹³²

Many of the political prisoners, including Suyen Barahona, Juan Sebastián Chamorro, Daysi Tamara Dávila Rivas, Félix Maradiaga, Miguel Mendoza, and Maria del Socorro Oviedo Delgado, were all subjected to enforced disappearance and/or *incommunicado* detention, during which time they were prevented from promptly accessing their lawyers, or anyone at all from the outside world, including their families. And the prisoners under house arrest, including Arturo Cruz and Francisco Aguirre, were likewise denied access to their attorneys due to the strong security presence outside their homes, which does not allow anyone to visit, including counsel.¹³³

The regime has also denied political prisoners the opportunity to communicate with their chosen lawyer confidentially. For instance, during his trial in February 2022, Jaime José Arellano Arana was denied his right to consult a counsel throughout the proceedings.¹³⁴ When he was finally permitted to meet with his lawyer, he was never permitted to communicate with the attorney outside of police presence for more than five minutes.¹³⁵ The regime's interference with access to chosen counsel and denial of confidential communication illuminates both the political nature of the trials and their predetermined outcome. The conducted interviews showed that many prisoners only met their lawyers for the first time the day of the

¹²⁹ Press Release, *IACHR Urges State of Nicaragua to Release All People Held in Arbitrary Detention*, OAS, Jan. 31, 2022, available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/023.asp.

¹³⁰ *WGAD Petition*, *supra* note 32, at 9.

¹³¹ *Id.*

¹³² *Interview No. 4*, *supra* note 2.

¹³³ *What House Arrest Means for Ortega's Political Prisoners*, CONFIDENCIAL, Mar. 1, 2022, available at <https://www.confidencial.digital/english/what-house-arrest-means-for-ortegas-political-prisoners/>.

¹³⁴ *May 25, 2022, Extension of Provisional Measures*, *supra* note 23, at ¶ 19.

¹³⁵ *Id.*

trial and they were only allowed to speak with them for an average of 2-5 mins, with police officers listening to the conversations.

5. Right to Facilities to Prepare an Adequate Defense

Article 14(3)(b) of the ICCPR further provides an accused individual the right “[t]o have adequate time and facilities for the preparation of his defense.”¹³⁶ This right is also protected by the American Convention.¹³⁷ “Adequate facilities” includes “access to documents and other evidence,” including “all materials that the prosecution plans to offer in court against the accused.”¹³⁸ Moreover, in a case against the Ortega regime, the UN Working Group on Arbitrary Detention held that an accused person’s lawyer must have the necessary time to prepare an adequate defense; otherwise it may violate both the right to access counsel and the right to facilities to prepare an adequate defense. For a lawyer to gain access to the case file mere minutes before a proceeding is insufficient time to prepare.¹³⁹

The Ortega regime regularly denied political prisoners with the access to their case files and to alleged evidence against them. For instance, Cristiana Chamorro was denied access to her case file ahead of her preliminary hearing on June 3, 2021.¹⁴⁰ The regime also denied the political prisoners’ lawyers the time necessary to prepare an adequate defense. Juan Sebastián Chamorro and Félix Maradiaga’s lawyers were not informed of their June 9, 2021 and August 26, 2021 hearings.¹⁴¹ Further, neither man’s lawyer was given any time alone with his client and the attorneys were denied access to their investigative case files making the preparation of any defense impossible.¹⁴² Dora María Téllez expressed “I never saw my lawyer, I never prepared my defense, I never saw the

¹³⁶ *ICCPR*, *supra* note 11, at Art. 14(3)(b).

¹³⁷ *American Convention*, *supra* note 11, at Art. 8(2)(c).

¹³⁸ *General Comment No. 32*, *supra* note 94, at ¶ 33.

¹³⁹ *Solís v. Nicaragua*, *supra* note 19, at ¶ 50 (holding, in a case against the Ortega regime, that the lawyer was given access to the case file only minutes before a hearing, and that the inability to prepare an adequate defense directly impacted his client’s due process rights).

¹⁴⁰ *Cristiana Chamorro WGAD Opinion*, *supra* note 19, at ¶ 20.

¹⁴¹ *WGAD Petition*, *supra* note 32, at 18.

¹⁴² *Nicaragua: Trumped Up Charges Against Critics*, HUMAN RIGHTS WATCH, *supra* note 46.

accusation, never, until today, only what I heard during the trial, I never saw any evidence and the lawyer was not given the files.”¹⁴³ Maria Oviedo, who had to act as her own counsel, was not permitted to have a Criminal Code or other legal material relevant for her defense.¹⁴⁴

C. Nicaragua’s Political Prisoners Were Subjected to Arbitrary Detention

The ICCPR, American Convention, UDHR, American Declaration, and Nicaragua’s Constitution all prohibit arbitrary arrest and detention.¹⁴⁵ Arrest or detention as punishment for the “legitimate exercise of the rights as guaranteed by the [ICCPR] is arbitrary,” including freedom of opinion and expression, freedom of assembly, freedom of association, and freedom of religion.¹⁴⁶ Further, an arrest or detention may be arbitrary even if it is authorized under domestic law.¹⁴⁷ As discussed above, Nicaragua’s political prisoners were arbitrarily detained, since they were detained for exercising their fundamental rights. However, many of the political prisoners were also detained pursuant to a statute which does not authorize detention, subjected to enforced disappearance, and held in prolonged *incommunicado* detention, which also amount to arbitrary detention.

1. Unauthorized Arrests Beyond Regime’s Legal Authority

Article 9(1) of the ICCPR explains that those authorities carrying out an arrest may not exceed their legal authority.¹⁴⁸ An extra-legal arrest renders the arrest arbitrary. Lesther Alemán, Jaime Arellano, Suyen Barahona, Cristiana Chamorro, Juan Sebastián Chamorro, Arturo Cruz, Tamara Dávila, Félix Maradiaga, Maria Oviedo, Evelyn Pinto, Jose Alejandro Quintanilla Dora María Téllez, Ana Margarita Vijil, among other former prisoners, were arrested pursuant to *Sovereignty Law 1055*, a law which does not authorize arrests for violations but only allows for

¹⁴³ *Interview No. 6, supra* note 2.

¹⁴⁴ *Interview No. 1, supra* note 2.

¹⁴⁵ *ICCPR, supra* note 11, at Art. 9(1); *American Convention, supra* note 11, at Art. 7(3); *UDHR, supra* note 11, at Art. 9; *American Declaration, supra* note 11, at Art. XXV; *CONSTITUTION OF THE REPUBLIC OF NICARAGUA, supra* note 1, at Art. 33.

¹⁴⁶ General Comment No. 35, *supra* note 102, at ¶ 17.

¹⁴⁷ *Id.*, at ¶ 12.

¹⁴⁸ *ICCPR, supra* note 11, at Art. 9(1).

civil proceedings with the potential for disqualification from running for political office.

Moreover, the regime has a pattern of conducting arrests without presenting arrest warrants or any type of documentation as a basis for the police proceeding. A common trend found in all of the conducted interviews is that the National Police did not present arrest warrants to the prisoners and did not explain to them the specific reasons for which they were being arrested. The lack of legality for arrests was particularly evident in the case of Ana Margarita Vijil; the National Police was going to arrest her partner, Dora María Téllez, and when they saw that she was in the same residence, they ended up arresting her too.¹⁴⁹

2. Enforced Disappearance

According to the UN Human Rights Committee, enforced disappearances “violate numerous substantive and procedural provisions of the [ICCPR] and constitute a particularly aggravated form of arbitrary detention.”¹⁵⁰ Enforced disappearances occur when an “arrest, detention, abduction, or any other form of deprivation of liberty by agents of the State” occurs and is “followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”¹⁵¹ Juan Sebastián Chamorro and Félix Maradiaga were disappeared for the first 84 days of their detention, and their families did not know if they were alive. They were held in an undisclosed location and were denied access to both their lawyers and their families.¹⁵² When their family members attempted to find them at the *El Chipote* prison, the guards refused to confirm whether the two men were inside.¹⁵³ The regime did not reveal their whereabouts until August 31, 2021.¹⁵⁴ Other prisoners who

¹⁴⁹ *Interview No. 13, supra* note 2.

¹⁵⁰ *General Comment No. 35, supra* note 102, at ¶ 17.

¹⁵¹ International Convention for the Protection of All Persons from Enforced Disappearance, 2716 U.N.T.S. 3, *entered into force* Dec. 23, 2010, at Art. 2, *available at* <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>.

¹⁵² *WGAD Petition, supra* note 32, at 13 (citing Urgent Appeal, *supra* note 110).

¹⁵³ *Id.*

¹⁵⁴ *Press Release, Media Release Announcing Proof of Life of Juan Sebastián Chamorro and Félix Maradiaga, Closed Hearing to Be Held September 3, 2021, PERSEUS STRATEGIES*, Sep. 1, 2021, *available at* <https://www.perseus->

were forcefully disappeared were Suyen Barahona, Daysi Tamara Dávila, Violeta Granera, Miguel Mendoza, José Pallais, Dora María Tellez, Victor Hugo Tinoco, Jorge Hugo Torres, and Ana Margarita Vijil given that the regime did not disclose their whereabouts after their arrest.¹⁵⁵

3. *Incommunicado* Detention

Prolonged *incommunicado* detention violates Article 9(1) of the ICCPR,¹⁵⁶ and any *incommunicado* detention which prevents prompt presentation before a judge is an inherent violation.¹⁵⁷ The Ortega regime has made it a practice since 2018 to hold prisoners in prolonged and unjustifiable *incommunicado* detention.¹⁵⁸ 81 days passed by before Suyen Barahona could see her family after being arrested. 84 days passed without Félix Maradiaga and Juan Sebastián Chamorro having any contact with family or lawyers—their location was also unknown during this time. Juan Lorenzo Holmann was not able to see his wife for almost a month after his detention. Then, the former prisoners reported that there was no established schedule for family visits and that they would usually take place every 45 days, even when Nicaraguan law prescribes for visits to happen every 21, 15, or 8 days, depending on the specific prison conditions.¹⁵⁹ In the second semester of 2022, prisoners at *El Chipote* endured another 84-day period of *incommunicado* detention. The regime also denied family members to send letters or have phone calls with the prisoners, even when phone calls are allowed by Nicaraguan law at least every two weeks,¹⁶⁰ or even in cases where prisoners are in maximum security, they have the right to have visits and make phone calls every 30 days.¹⁶¹ It was only until December 2022, that Félix Maradiaga was allowed to receive a letter from his daughter and in total he could only

strategies.com/wpcontent/uploads/2021/08/Nicaragua-Press-Release_08.27.21_ENG_ESP.pdf.

¹⁵⁵ ¿¿DONDE ESTÁN?! DESAPARICIÓN FORZADA COMO ESTRATEGIA DE REPRESIÓN EN NICARAGUA, AMNESTY INTERNATIONAL, Aug. 25, 2021, at 27, *available at* <https://www.amnesty.org/es/documents/amr43/4631/2021/es/> [in Spanish].

¹⁵⁶ *General Comment No. 35*, *supra* note 102, at ¶ 56.

¹⁵⁷ *Id.*, at ¶ 35.

¹⁵⁸ *See* CRITICS UNDER ATTACK, HUMAN RIGHTS WATCH, Jun. 22, 2021, *available at* <https://www.hrw.org/report/2021/06/22/critics-under-attack/harassment-and-detention-opponents-rights-defenders-and>.

¹⁵⁹ *Prison Law Regulation*, *supra* note 16 at Art. 130.

¹⁶⁰ *Id.*, at Art. 132.

¹⁶¹ *Id.*, at Art. 130.

have three phone calls with his family members; the same as Juan Sebastián Chamorro.

D. Nicaragua's Political Prisoners were Subjected to Torture and Cruel, Inhuman or Degrading Treatment

The Nicaraguan Constitution, ICCPR, CAT, American Convention, UDHR, and Nicaraguan domestic prison law all prohibit torture and cruel, inhuman or degrading treatment.¹⁶² Torture occurs when a public official commits an act by which severe mental or physical pain or suffering is inflicted on a person to obtain information, such as a confession, or to punish the individual.¹⁶³ Enforced disappearance is not only a risk factor for torture, but may itself constitute a form of torture.¹⁶⁴ Additionally, it is widely recognized that both prolonged *incommunicado* detention and prolonged solitary confinement facilitate the perpetration of torture and ill-treatment, and may themselves constitute such treatment.¹⁶⁵ Under the Nelson Mandela Rules, the global framework outlining standards for the treatment of prisoners, prolonged solitary confinement refers to isolation for longer than 15 days.¹⁶⁶

¹⁶² CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 1, at Art. 36; ICCPR, *supra* note 11, at Art. 7; CAT, *supra* note 11, at Art. 2(1-3); American Convention, *supra* note 11, at Art. 5(2); UDHR, *supra* note 11, at Art. 5 and *Prison Law*, *supra* note 12 at Art. 95.

¹⁶³ CAT, *supra* note 11, at Art. 1(1).

¹⁶⁴ *S. Jegatheeswara Sarma v. Sri Lanka*, Communication No. 950/2000, U.N. Doc. CCPR/C/78/D/950/2000, U.N. COMM. ON HUMAN RIGHTS, Jul. 16, 2003, at ¶ 9.3, available at <https://juris.ohchr.org/Search/Details/1051> (“Any act of such disappearance [as defined under the Rome Statute] constitutes a violation of many of the rights enshrined in the Covenant, including . . . the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7) . . .”).

¹⁶⁵ *WGAD Petition*, *supra* note 32, at 19 (citing *General Comment No. 20 on Article 7: Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. HRI/GEN/1/Rev.1, Mar. 10, 1992, at ¶ 6 (“The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7.”); *REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION*, U.N. HUMAN RIGHTS COUNCIL, 16th Sess., U.N. Doc. A/HRC/16/ 47, Jan. 19, 2011, at ¶ 54, available at <https://undocs.org/A/HRC/16/47> (“Prolonged incommunicado detention may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment, and may in itself constitute such treatment.”)).

¹⁶⁶ UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), G.A. Res. 70/175, U.N. Doc. A/RES/70/175, *adopted* Dec. 17, 2015, at Rule 58(1), available at <https://undocs.org/A/RES/70/175>.

The interviews conducted with former prisoners in *El Chipote* to inform production of this report show a wide array of examples of how the regime tortured and subjected the prisoners to other cruel, inhuman, or degrading treatment or punishment. While the prisoners in post-2018 *El Chipote* did not suffer physical torture or assaults during their detention, their treatment gravely affected their mental and physical health. The following abuses were common in the interviews:¹⁶⁷

Cell conditions: Former *El Chipote* prisoners reported that the cells were dark, small, had little ventilation, and no access to direct sunlight. There were different types of cells in *El Chipote*, one of them being a punishment cell, completely sealed with solid doors— only with a slit in the door to allow food to come in. The lights were never turned off in the punishment cell. Some cells lacked a proper toilet and only had a hole which prisoners used as bathroom. Several of them reported that the cells were so dark, that they could barely see when they were going to the bathroom.

Insufficient food: For the first year of detention at *El Chipote*, food was very scarce. Former prisoners did not generally complaint about the quality of the food but about its quantity during the first stage of their detention. This made them lose a tremendous amount of weight, with some losing as much as 36 kilograms (80 pounds), which made them very susceptible to getting sick. This treatment changed in the summer of 2022 when a public campaign showing portraits of how the prisoners were losing weight made the regime react and started giving them more food. Former prisoners recall that there were different periods in which food was abundant and then suddenly scarce again. After their release, they report that now they understand that those changes in the amount of food had to do with the international pressure faced by the regime, including sanctions or other types of pressure.

Lack of proper medical attention: According to the interviews, *El Chipote* had a general medical staff that only had the capability to treat symptomatic issues but no specialized treatment. Prisoners were offered a basic medical attention but did not have the possibility to see the doctors that they required in case they had a chronic disease, an injury, recent

¹⁶⁷ Interviews No. 1,2, 4, 5, 6, 9, 13, 14, *supra* note 2.

surgery, or other condition requiring special attention. Despite the law providing that prisoners could receive specialized medical care under their own cost,¹⁶⁸ this was not permitted. In particular, former prisoners highlighted the authorities' negligent attitude towards the deteriorating health of Hugo Torres, who died during his detention in February 2022, apparently due to cancer. Several former prisoners recalled how Torres demanded medical care given that he was suffering deeply, and this was not duly attended by the authorities.

Incommunicado Detention: Out of all the harsh treatments that the prisoners had to endure, the worst form of torture for all of them was the lack of communication with their families. The regime isolated them from the world and kept them away from their families for up to three months at a time. This was a perpetual agony for both the prisoners and the families outside. Visits did not follow a regular schedule and if they did occur, police officers would be present violating their privacy. In addition, prisoners with families abroad were denied their right to communicate with them either by telephone or by writing until some six weeks before their release in February 2023. This is a violation of not only international law, but also of Nicaraguan domestic prison law, which provides for regular visits every 21, 15, or eight days and phone calls at least every two weeks.¹⁶⁹

Solitary Confinement of Women: The treatment against women was particularly harsh in *El Chipote*. Women were selectively placed in solitary confinement for most of their detention. Suyen Barahona, Tamara Dávila, Dora María Téllez, and Ana Margarita Vijil spent their whole time in *El Chipote* isolated and without the ability to speak to anyone.

Mandatory silence: Former *El Chipote* prisoners reported that until their trials, vigilance in the detention center was 24 hours. This meant that police officers had the instruction to not let the prisoners communicate with each other. There was always some official to stop anyone from speaking. As expressed by Dora María Téllez, this was a “regime of total silence.” Prisoners could only whisper with their cellmates; and even if they did, they could face punishment. If they broke the rules by talking, they could be sent to the punishment cell and have the food, water, and other goods provided by their families confiscated.

¹⁶⁸ *Prison Law Regulation*, *supra* note 16, at Art. 26.

¹⁶⁹ *Id.*, at Art. 130, 132.

No access to reading or writing materials: As if the conditions were not harsh enough, they were made much worse because prisoners were denied access to all reading materials, including a Bible. In addition, prisoners were also denied their right to receive reading and writing materials.

Frequent and intense questioning: Prisoners faced harsh interrogations lasting several hours every single day called “interviews” by the regime. When they had just arrived to *El Chipote*, they faced interrogations at least three times a day: one in morning, one in the middle of lunch, and one in the middle of the night. Former prisoners report these interrogations being “political” in the sense that the police officers involved were constantly asking about the prisoner’s political opinions, political activities, engagement with the international community, sources of funding, among others. They were an attempt by the regime to exhaust the prisoners mentally and emotionally.

Scarce access to sunlight: Interviews showed that for the first month of detention, prisoners were not allowed to go into the sun. Suyen Barahona recalls that she only spent a total of 30 minutes in the sun during the first month. After the first month, they were allowed every 15 days for more or less two hours. This progressively changed and they were subsequently allowed outside twice a week for two hours or less. Nevertheless, Félix Maradiaga informed that authorities used access to sunlight as way of blackmailing the prisoners and affecting their psyche. They would usually not know when they would have time outside and the prison authorities would constantly play with their hopes in this regard.

No access to potable water: All of the interviewees explained that there was no potable water to drink in *El Chipote*. The water prisoners drank was provided by their families, who had to bring bottles of water to the detention center every single day. These bottles of water and other products brought by families were not always given to the prisoners.

These harsh conditions also violated numerous provisions of the Body of Principles for the Protection of All Persons Under Any Form of

Detention or Imprisonment¹⁷⁰ and the rights of political prisoners under the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).¹⁷¹

E. Nicaragua May Also Be Committing Crimes Against Humanity

In the attached Appendix II, there is a detailed analysis that explains the evolution of the understanding and application of crimes against humanity from 1945 through present from the London Charter in 1945 to the statutes and jurisprudence of the special tribunals (e.g., Rwanda, Former Yugoslavia, Sierra Leone) to the Rome Statute of the International Criminal Court (ICC). While there is no current means to hold individual perpetrators of the Ortega regime in Nicaragua accountable for the commission of crimes against humanity, such crimes may have already been committed. Thus, it is important to examine this question and to prepare for the possibility of future prosecutions. First, this section provides a generalized description of what is required to prove

¹⁷⁰ *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*, UN GENERAL ASSEMBLY, A/RES/43/173, adopted Dec. 9, 1988, available at <https://www.refworld.org/docid/3b00f219c.html>. (Principle 1 (Respect and Dignity); Principle 2 (Arrest, Detention, and Imprisonment Must Be Legal); Principle 6 (No Torture or Other Mistreatment); Principle 10 (Informed Promptly of Charges); Principle 12 (Recording All Elements of Arrest); Principle 17 (Counsel of One's Choosing); Principle 18 (Regular Private Communication With Counsel); Principle 19 (Communication With Family); Principle 24 (Regular Medical Treatment); Principle 28 (Access to Educational, Cultural, and Informational Materials); Principle 32 (Challenge Detention Before Judge); Principle 33 (Complain About Treatment); and Principle 36 (Presumption of Innocence and Public Trial)).

¹⁷¹ *UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UN GENERAL ASSEMBLY, A/RES/70/175, adopted Jan. 8, 2016, available at <https://www.refworld.org/docid/5698a3a44.html>. (Rule 1 (Treatment with Respect); Rule 3 (*Incommunicado* Detention Prohibited); Rule 4 (Access to Education, Training, Work, Spiritual Assistance, etc); Rule 13 (All Cells Must Meet Health, Climate, Lighting, Heating, Ventilation, and Space Requirements); Rule 14 (Windows and Lighting Required); Rule 18 (Water and Proper Hygiene Materials Required); Rule 22 (Sufficient Food Required); Rule 24 (Health Care Matching Outside Required); Rule 30 (Full Physical by Doctor Required); Rule 42 (Proper Prison Conditions Required Without Exception); Rule 43 (Prolonged Solitary Confinement Prohibited); Rule 58 (Regular Communication With Family by Mail, Phone, and Electronic Communication Required); Rule 61 (Regular Access to Confidential Communication to Counsel of Choosing Required); Rule 64 (Prison Must Have Library With Books); Rule 65 (If Many Prisoners of Same Religion, Qualified Representative Must Be Appointed); and Rule 68 (Right to Immediate Family Contact if Necessary)).

crimes against humanity have been committed. Second, it explains the elements of the crime against humanity of imprisonment or other severe deprivation of physical liberty. Third, it applies these definitions to the prior and current imprisonment of political prisoners in Nicaragua. And finally, it explains potential ways in which such crimes might one day be investigated and prosecuted.

1. Elements of Crimes Against Humanity

While there are slightly different definitions of crimes against humanity under customary international law and the Rome Statute of the ICC, for the sake of simplicity this report will present and apply the Rome Statute definition for two reasons. First, it would be possible immediately, with a referral from the UN Security Council, for the ICC to be given jurisdiction to investigate alleged international crimes, even if in the near term this would be quite unlikely. And second, it is less likely that the international community would set up a special tribunal on international crimes being committed in Nicaragua, whose jurisdiction would be presented in a statute for such a tribunal and align with customary international law.

Article 7(1) of the Rome Statute is divided into two parts: the international or jurisdictional elements and the enumerated prohibited acts. The *chapeau* of Article 7(1) identifies the five international or jurisdictional elements that constitute the requisite circumstances that elevate a domestic crime to the international level:

- 1) there must be an attack;
- 2) the acts of the accused must be part of the attack;
- 3) the attack must be widespread or systematic;
- 4) the attack must be directed against any civilian population; and
- 5) the accused must have knowledge of the attack.¹⁷²

There are a wide array of crimes which, if committed in the way described in the *chapeau* of Article 7(1), constitutes crimes against humanity. These include, murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of

¹⁷² *Rome Statute*, INTERNATIONAL CRIMINAL COURT, at Art. 7(1), available at <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

international law; torture; rape, sexual slavery, enforced pregnancy, enforced sterilization, etc.; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, or other grounds; enforced disappearance of persons; the crime of apartheid; and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health enslavement.¹⁷³

2. Elements of Crime Against Humanity of Imprisonment or Other Severe Deprivation of Liberty

While other acts such as enforced disappearance and torture have been committed in the context of political prisoner cases in Nicaragua, the clearest set of abuses that relate to political prisoners is under Article 7(e) of the Rome Statute relating to “imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.”¹⁷⁴

According to the ICC’s Elements of Crimes:

Article 7 (1) (e)

Crime against humanity of imprisonment or other severe deprivation of physical liberty

Elements

1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.
2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

¹⁷³ *Id.*

¹⁷⁴ *Id.*, at Art. 7(e).

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.¹⁷⁵

3. Application to the Situation in Nicaragua

Under the Rome Statute: “The Court may exercise its jurisdiction with respect to a crime [...] in accordance with the provisions of this Statute if: [...] (b) A situation in which one or more crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under its Chapter VII of the Charter of the UN.”¹⁷⁶ If a case relating to the situation in Nicaragua were referred to the ICC in this manner, then the Prosecutor would conduct an investigation, with the authorization Pre-Trial Chamber, to determine ultimately if “there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court.”¹⁷⁷ If so, then the Prosecutor can, under Article 58, request that the Pre-Trial Chamber issue a warrant of arrest of the person.¹⁷⁸

In addition, under the Rome Statute, “a person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment”¹⁷⁹ or if the person “commits such a crime, whether as an individual, jointly with another, or through another person,”¹⁸⁰ or “orders, solicits, or induces the commission of such a crime.”¹⁸¹ In addition, “a military commander [...] shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control”¹⁸² where “that military commander [...] knew [...] [or] should have known that the forces were committing or about to commit such crimes”¹⁸³ and “that military commander [...] failed to take all necessary and reasonable measures [...] to prevent or repress their commission.”¹⁸⁴

¹⁷⁵ *Elements of Crimes*, INTERNATIONAL CRIMINAL COURT, 2013, available at <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>.

¹⁷⁶ *Rome Statute*, *supra* note 172, at Art. 13(b).

¹⁷⁷ *Id.*, at Art. 58(1)(a).

¹⁷⁸ *Id.*, at Art. 58(1).

¹⁷⁹ *Id.*, at Art. 25(2).

¹⁸⁰ *Id.*, at Art. 25(3)(a).

¹⁸¹ *Id.*, at Art. 25(3)(b).

¹⁸² *Id.*, at Art. 28(a).

¹⁸³ *Id.*, at Art. 28(a)(1).

¹⁸⁴ *Id.*, at Art. 28(a)(2).

Next, this section will demonstrate that as it relates to President Daniel Ortega and Vice President Rosario Murillo, as a start, that there are reasonable grounds to conclude the five elements of the crime against humanity of imprisonment or other severe deprivation of physical liberty have been fulfilled.

a. The perpetrator imprisoned
one or more persons or
otherwise severely deprived
one or more persons of
physical liberty.

In Section IV on perpetrators, the architects of the system to engage in the widespread and arbitrary imprisonment of their opponents as political prisoners are identified as Ortega and Murillo. It has been repeatedly and widely reported over many years that they are a power couple who together maintain their hold on power. This description begins with Ortega himself, who said “Here we have two presidents because we respect the 50-50 principle – in other words, here we have the co-president in Comrade Rosario.”¹⁸⁵ Former Nicaraguan Ambassador to the Organization of American States Arturo McFields, who defected from the regime, was asked who was in charge. He responded “On a day-to-day basis Rosario is the one who is more in charge. But when there are decisions of extreme importance, the president has the last word.”¹⁸⁶

This analysis is also repeated widely in the media. For example, Reuters reported that after the April 2018 crackdown on peaceful political opponents that “Ortega and his wife . . . again employed authoritarian tactics to keep a grip on power: imprisoning dozens of opponents, including seven candidates for the presidency.”¹⁸⁷ Associated Press reported that Ortega and Murillo “oversaw the jailing of opposition

¹⁸⁵ *Ortega and Murillo: Nicaragua’s Power Couple*, AGENCE FRANCE PRESS, Nov. 5, 2021, available at <https://www.france24.com/en/live-news/20211105-ortega-and-murillo-nicaragua-s-power-couple>.

¹⁸⁶ *An Interview With Former Nicaraguan Ambassador Arturo McFields*, TICO TIMES, Apr. 17, 2022, available at <https://ticotimes.net/2022/04/17/an-interview-with-former-nicaragua-ambassador-arturo-mcfields>.

¹⁸⁷ Diego Oré, *Ortega and Murillo, The Presidential Couple With an Iron Grip on Power*, REUTERS, Nov. 5, 2021, available at <https://www.reuters.com/world/americas/ortega-murillo-presidential-couple-with-an-iron-grip-nicaragua-2021-11-05/>.

leaders, including seven potential challengers for the presidency, months before the November election. They have remained defiant under foreign pressure.”¹⁸⁸ The Washington Post spoke about how Ortega and Murillo “are trying to build a family dynasty.”¹⁸⁹ And the New York Times explained how “Mr. Ortega often consults his wife . . . before making major political decisions . . . a relationship so close, the couple is often referred to in Nicaragua as ‘OrMu,’ a mash-up of their names.”¹⁹⁰

b. The gravity of the conduct
was such that it was in
violation of fundamental
rules of international law.

Sections VI(A-D) of this report provide a highly-detailed analysis explaining how Nicaragua’s political prisoners have been detained in violation of the International Covenant on Civil and Political Rights, Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and American Convention on Human Rights, all treaties to which Nicaragua is a state party. In addition, Nicaragua signed on to Universal Declaration of Human Rights and American Declaration of the Rights and Duties of Man. Nicaragua also supported both the UN Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules) and Body of Principles for the Protection of Any Persons Under Any Form of Detention or Imprisonment, which were both adopted by consensus in the UN General Assembly. The validity of this legal analysis has been affirmed on a wide array of individual cases of political prisoners brought to the IACHR and the Inter-American Court as well as the UN Working Group on Arbitrary Detention, among others. A wide array of international bodies, such as the OAS Permanent Council, UN Human Rights Council, and European Parliament, to name a few,

¹⁸⁸ *Ortega Sworn in for 4th Straight Term as Nicaragua’s Leader*, ASSOCIATED PRESS, Jan. 10, 2022, available at <https://apnews.com/article/elections-caribbean-army-election-2020-inaugurations-257ad4c59c09e879aff0fd3253bd7893>.

¹⁸⁹ Editorial Board, *The Ortega Regime Shows Contempt for Human Rights and the International Community*, WASHINGTON POST, Oct. 29, 2021, available at <https://www.washingtonpost.com/opinions/2021/10/29/daniel-ortega-rosario-murillo-nicaragua-contempt-human-rights/>.

¹⁹⁰ Maria Abi-Habib, *Nicaragua’s Secretive Ruling Family Reaches Out Quietly to the U.S.*, NEW YORK TIMES, May 5, 2022, available at <https://www.nytimes.com/2022/05/05/world/americas/nicaragua-ruling-family-us.html>.

have condemned the Ortega regime's imprisonment of political prisoners as violations of international law.

c. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

Both Ortega and Murillo designed and oversaw implementation of the system imprisoning political prisoners and both was aware of the factual circumstances that established the gravity of the conduct. Given widespread media coverage of these detentions, it is also impossible that Ortega and Murillo did not understand that they were being condemned around the world for illegally imprisoning political prisoners. In addition, there was wide reporting in Spanish-language Nicaraguan media and international media about condemnations coming from the OAS (Permanent Council, General Assembly, IACHR, Inter-American Court on Human Rights, and Secretary General), UN Human Rights Council, UN High Commissioner for Human Rights, EU, among many others. For example, the IACHR “has granted 129 precautionary measures to directly protect the lives and integrity of more than 280 people, and it has requested from the Inter-American Court three temporary measures and eight extensions.”¹⁹¹ Additionally, 76 former and current political prisoners are beneficiaries of measures by the Inter-American Court.¹⁹² Since the State of Nicaragua did not comply with the order to release any of the prisoners, in November 2022 the Court declared that Nicaragua is in contempt.¹⁹³

It is also worth recalling that in his address to the nation shortly after his stolen “election” in November 2021, for example, he referred to the political prisoners as a full group and said: “They should take them to

¹⁹¹ Press Release, *Four Years On, IACHR Presents an Assessment of the Activities Held by Its Special Monitoring Mechanism for Nicaragua and the Results They Attained*, OAS, Aug. 29, 2022, available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/189.asp.

¹⁹² *Resolución sobre el asunto Juan Sebastián Chamorro y otros y 45 personas privadas de su libertad en 8 centros de detención respecto de Nicaragua*, INTER-AM. CT. H.R., adopted Nov. 22, 2022, at 16, available at https://www.corteidh.or.cr/docs/medidas/45personas_se_02.pdf [in Spanish].

¹⁹³ *Id.*

the United States, they are not Nicaraguans, they stopped being Nicaraguans long ago.”¹⁹⁴ But if there was any doubt as to Ortega and Murillo’s awareness that they had imprisoned hundreds of political prisoners, that was resolved on February 9, 2023, when Ortega expelled 222 political prisoners to the United States, which he described as a push to expel criminal provocateurs who sought to undermine Nicaragua.¹⁹⁵ Most every news story reporting these events referred to the group expelled as political prisoners.

d. The conduct was committed
as part of a widespread or
systematic attack directed
against a civilian population.

Under the Rome Statute, an “attack against any civilian population” means “a course of conduct involving multiple commission of acts referred to [...] against any civilian population, pursuant to or in furtherance of a State or organization policy to commit such an attack.”¹⁹⁶ An attack is widespread if, as noted by one ICC Pre-Trial Chamber, it was “massive, frequent, carried out collectively with considerable seriousness, and directed against a large number of civilians.”¹⁹⁷ And while not defined in the Rome Statute, an attack has been described as “systematic” when it refers to “the organized nature of the acts of violence and the improbability of random occurrence.”¹⁹⁸

In this case, it is reasonable and appropriate to describe this attack as systematic and not only widespread. Ortega and Murillo systematically identified, sought to discredit, and then arrested and detained these political prisoners. This is most evident when looking at the 10 opposition

¹⁹⁴ Daniel Ortega, *Address to the Nation*, Nov. 9, 2021, available at <https://www.youtube.com/watch?v=Pcr9PN-6kf4>.

¹⁹⁵ Ismael Lopez and Julio-Cesar Chavez, *Defiant Ortega Frees Political Prisoners in Nicaragua, Expels Them to U.S.*, REUTERS, Feb. 9, 2023, available at <https://www.reuters.com/world/americas/nicaragua-government-frees-more-than-200-political-prisoners-local-media-2023-02-09/>.

¹⁹⁶ *Id.*, at Art. 7(2)(a).

¹⁹⁷ Prosecutor v. Ruto, Koshey and Sang, “Decision on the Confirmation of Charges,” INTERNATIONAL CRIMINAL COURT, ICC-01/09-01/11, Jan. 23, 2012, at ¶¶ 176-177.

¹⁹⁸ Prosecutor v. Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, Case No. ICTR-00-56-A, Judgement (AC), Feb. 11, 2014, at ¶¶ 260, 262.

presidential candidates where he was able to force three into exile and then he imprisoned the other seven, leaving no credible opposition candidate to run against him. He also imprisoned the editor of the leading opposition newspaper, the highest-profile television journalist, the most outspoken and critical Catholic Bishop, top human rights lawyers, prominent former Sandinistas who had turned against him, and a college student who humiliated him publicly by calling for him to step down, among others. In short, this was a targeted and focused attack on the most critical people in Nicaraguan society across sectors who could do the most damage to his reelection campaign if they were allowed to remain free to mobilize democratic opposition against him. Beyond the focused imprisonment of these political prisoners, it is important to recall he first began this effort by having the National Assembly adopt the *Foreign Agents Regulation Law* and then shut down thousands of NGOs across Nicaragua, including many that engaged in legitimate activities like anti-corruption work, good governance, free and independent information, and election monitoring and reporting, which Ortega also saw as dangerous to his reelection prospects.

With this system having been organized by Ortega and Murillo and focused on any serious regime opponents, they oversaw a state policy implemented by the executive, legislative, and judicial branches of the regime to commit hundreds of acts of imprisonment or other severe deprivation of liberty.

It was not just that these prisoners were targeted for detention, but the way in which they were treated showed the regime's awareness of what it was doing. Despite clear requirements on how prisoners should be treated under the Nicaraguan Constitution, Criminal Law, and Criminal Procedure Law, these prisoners were instead gathered together in two locations subjected to torture and other severe violations of their rights that were designed to break the prisoners and silence their family. First, many were held *incommunicado* for months at a time, making it difficult to tell their families what was happening. Second, they were slowing starved and lost enormous amounts of weight, not allowed to speak with each other, and subjected to other harsh conditions like being in the dark or light 24/7, which together weakened their bodies and spirits. Third, family members in Nicaragua who spoke out in any way were themselves investigated or detained, thereby scaring the families into silence too. Fourth, their trials were all held in secret and with comprehensive and

egregious due process abuses, thereby limiting public expose and rapidly sentencing them to extended sentences. And finally, access to family was highly controlled or even blocked entirely, as a way to control the behavior of the prisoners.

There is a further key point to be addressed, which relates to whether the imprisonment of hundreds of political prisoners who were subjected to imprisonment or other severe deprivation of their liberty is sufficient to qualify as crimes against humanity under international law. In short, there is no minimum number that is prescribed as required either under the Rome Statute or customary international law. At the same time, focusing only on the 222 who were sent to the US alone on February 9, 2023, would be at the low end of the kinds of numbers where crimes against humanity are typically investigated. But according to the IACHR, at least 1,614 people have been deprived of liberty by the Ortega regime since April 18, 2018.¹⁹⁹ It is also worth noting that making these cases more severe is that in many of these cases of imprisonment, there could also be credible allegations made that the prisoners were also subjected to the crimes against humanity of torture and of persecution on political grounds.

e. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Given they designed the system and state policy to imprison their major opponents, both Ortega and Murillo knew their conduct was part of a systematic attack directed against a civilian population, with a focus on those opposed to them politically. Such a conclusion is supported by the Group of Human Rights Experts on Nicaragua, which was created by the UN Human Rights Council. In its report, it concludes that among many crimes against humanity committed in Nicaragua, they included the crime of imprisonment. And it further explains that “these crimes against

¹⁹⁹ ANNUAL REPORT 2021, CHAPTER IV. B. NICARAGUA, INTER-AM. COMM’N OF HUMAN RIGHTS, May 26, 2022, at ¶ 3, *available at* <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Nicaragua-en.pdf>.

humanity were committed in the context of a discriminatory policy, intentionally orchestrated by the highest echelons of the Government of Daniel Ortega and Rosario Murillo, against part of the population of Nicaragua, for political reasons”²⁰⁰

4. Potential Paths to Justice and Accountability for Perpetrators

There are three avenues to explore that might result in the potential prosecution of perpetrators in Nicaragua for crimes against humanity in the future.

First, as noted earlier, under the Rome Statute of ICC: “The Court may exercise its jurisdiction with respect to a crime [...] in accordance with the provisions of this Statute if: [...] (b) A situation in which one or more crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under its Chapter VII of the Charter of the UN.”²⁰¹ This appears quite unlikely in the near term, given that two members of the Security Council—China and the Russian Federation—are aligned in support of the Ortega regime and could veto any effort to make such a referral. That said, over time, situations change, tradeoffs are made, and at the Security Council the impossible can sometimes become possible.

Alternatively, if the Ortega regime was replaced through democratic means, a new Government of Nicaragua could issue an “*ad hoc* declaration,” where this new Government could file a declaration with the ICC Registrar under Article 12(3) of the Rome Statute that the ICC has been “granted jurisdiction over a situation that took place when the state had not accepted the application of the Rome Statute.”²⁰² Such *ad hoc* declarations have been previously made by Uganda, Côte d’Ivoire, Ukraine, and Palestine.²⁰³ That said both *ad hoc* declarations and Security Council referrals appear to violate the Rome Statute’s principle of non-retroactivity or *nullem crimen sine lege* found in Article 21(3) of the Rome

²⁰⁰ *Report of the Group of Human Rights Experts*, UN HUMAN RIGHTS COUNCIL, A/HRC/52/63, Mar. 2, 2023, at ¶ 110.

²⁰¹ *Rome Statute*, *supra* note 172, at Art. 13(b).

²⁰² Talita de Souza Dias, 16:1 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE, 65-89, Mar. 2018 (Oxford University Press).

²⁰³ *Id.*

Statute, which says “a person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.”²⁰⁴ Nonetheless, the ICC has accepted both retroactive *ad hoc* declarations and Security Council referrals and one clear path forward would be for the ICC in such cases to not apply the Rome Statute, as such, but instead to look to other substantive laws in place at the time under sources of international law including treaties, customary international law, or general principles of law.²⁰⁵

Second, on March 31, 2022, the UN Human Rights Council adopted Resolution 49/3 on the promotion and protection of human rights in Nicaragua, where it established for a period of one year a group of three human rights experts on Nicaragua (GHREN), to be appointed by the President of the Human Rights Council.²⁰⁶ It published its first report in March 2023 and its mandate has been renewed for two years. The GHREN could recommend in a future report the creation of a Special Tribunal on Nicaragua. While the creation of the ICC has seriously dampened international interest in special tribunals set up on a country-by-country basis, such institutions can be created with political will and resources. While this is a much harder way forward, working together, these efforts at the UN could be combined with the important work of the IACHR and Inter-American Court on Nicaragua to try and develop a coordinated international proposal for justice and accountability for perpetrators in the Ortega regime.

And third, in November 2022, the Sixth Committee of the UN General Assembly adopted a draft Convention on Crimes Against Humanity, co-sponsored by 86 states, which had originally been proposed by the International Law Commission (ILC).²⁰⁷ While ultimately such a treaty might be adopted by the UN General Assembly and opened for signature, it is highly unlikely that its application would be retroactive.

²⁰⁴ *Rome Statute*, *supra* note 172, at Art. 22(1).

²⁰⁵ Talita de Souza Dias, *supra* note 202.

²⁰⁶ Resolution 49/3, *Promotion and Protection of Human Rights in Nicaragua*, UN HUMAN RIGHTS COUNCIL, A/HRC/RES/49/3, adopted Mar. 31, 2022, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/303/66/PDF/G2230366.pdf?OpenElement>.

²⁰⁷ Priya Pillai, *Draft Convention on Crimes Against Humanity*, OPINIO JURIS, Nov. 22, 2022, available at <http://opiniojuris.org/2022/11/22/draft-convention-on-crimes-against-humanity-a-window-of-opportunity/>.

Nonetheless, Nicaragua is a state party to the ICCPR and ACHR and although it could not be used to hold individuals accountable but only the regime, there are numerous provisions of these treaties that have been violated by the state that together could be applied to show a wide array of violations of international law committed against the political prisoners.

F. Nicaragua's Political Prisoners Were Illegally Deprived of their Right to Nationality

On February 9, 2023, Judge Octavio Roths Schuh Andino, President of the First Chamber of the Managua Appeals Tribunal, announced the release of 222 political prisoners into the jurisdiction of the US, declaring them “traitors to the motherland.”²⁰⁸ Based on the *Special Law Regulating the Loss of Nicaraguan Nationality*, adopted that same day, this meant that they would now surrender their rights to property and have any property they owned subject to immediate expropriation by the State.²⁰⁹

Article 20 of the American Convention protects the right to nationality,²¹⁰ and further notes that “[n]o one shall be arbitrarily deprived of his nationality [...]”.²¹¹ According to the IACHR, which interprets the American Convention, “[a]rbitrary deprivation of citizenship, particularly as a politically motivated punishment, is a violation of international human rights law.”²¹² Similarly, freedom from the arbitrary deprivation of

²⁰⁸ Tom Phillips & Chris Stein, ‘*This is Huge*’: Nicaragua Frees 222 Political Prisoners and Flies Them to US, THE GUARDIAN, Feb. 9, 2023, available at <https://www.theguardian.com/world/2023/feb/09/nicaragua-frees-222-political-prisoners-flies-to-us>; accord, Stefano Pozzebon et al., *Nicaragua Releases Over 200 Political Prisoners and Sends Them to the US*, CNN, Feb. 9, 2023, available at <https://www.cnn.com/2023/02/09/americas/nicaragua-political-prisoners-intl-latam/index.html>.

²⁰⁹ Carlos Maldonado, *Ortega despoja la nacionalidad a otros 94 nicaragüenses, entre ellos los escritores Sergio Ramírez y Gioconda Belli*, EL PAÍS, Feb. 16, 2023, available at <https://elpais.com/internacional/2023-02-15/ortega-despoja-de-su-nacionalidad-a-otros-94-nicaraguenses-entre-ellos-los-escritores-sergio-ramirez-y-gioconda-belli.html?outputType=amp>.

²¹⁰ American Convention, *supra* note 11, at Art. 20(1).

²¹¹ *Id.*, at Art. 20(3).

²¹² *IACHR Welcomes Release of Political Prisoners in Nicaragua but Rejects Arbitrary Deprivation of Nationality*, INTER-AM. HUMAN RIGHTS COMM’N, Feb. 13, 2023, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/021.asp [hereinafter “IACHR Press Release”].

nationality is protected by both Article 12 of the ICCPR, which protects freedom of movement and has been interpreted to protect nationals of a country who “have been stripped of their nationality in violation of international law,”²¹³ and Article 15 of the UDHR.²¹⁴

That said there are narrow circumstances, which do not apply here, where the deprivation of nationality may occur to serve very limited protective purposes and must be the least intrusive means available.²¹⁵ Such purposes must be “provided by law” and must be necessary to protect “national security, public order, public health or morals or the rights and freedoms of others.”²¹⁶ Yet, the deprivation of nationality must be “consistent with the other rights recognized in the [ICCPR].”²¹⁷ For example, States must avoid applying provisions of law which “explicitly allow for the deprivation of nationality for a show of disloyalty “by act or speech” in a manner which would infringe other human rights norms and standards, such as freedom of expression.”²¹⁸ The Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking go even further, holding that the right to nationality is utterly non-derogable.²¹⁹

First, Nicaragua’s political prisoners have been arbitrarily deprived of their right to nationality as a politically motivated punishment. On February 9, 2023, the National Assembly passed a law causing those labeled as “traitors” to lose their status as Nicaraguan citizens, which included individuals convicted of violating *Sovereignty Law 1055*.²²⁰ Many of the 222 ex-Nicaraguan political prisoners were labeled as

²¹³ *General Comment No. 37 on Article 12: Freedom of Movement*, U.N. COMM. ON HUMAN RIGHTS, U.N. Doc. No. C/CCPR/GC/37, *adopted* Nov. 2, 1999, at ¶ 20, available at <https://www.refworld.org/pdfid/45139c394.pdf> [hereinafter “General Comment No. 37”].

²¹⁴ UDHR, *supra* note 11, at Art. 15.

²¹⁵ ICCPR, *supra* note 11, at Art. 12(3); REPORT OF THE SECRETARY-GENERAL ON HUMAN RIGHTS AND ARBITRARY DEPRIVATION OF NATIONALITY, U.N. HUMAN RIGHTS COUNCIL, U.N. Doc. A/HRC/25/28, Dec. 19, 2013, at ¶ 4 [hereinafter “Report of the Secretary-General”].

²¹⁶ ICCPR, *supra* note 11, at Art. 12(3).

²¹⁷ Report of the Secretary-General, *supra* note 215, at ¶ 13.

²¹⁸ *Id.*

²¹⁹ Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking, INTER-AM. HUMAN RIGHTS COMM’N, *approved* Dec. 7, 2019, at Principle 22.

²²⁰ IACHR Press Release, *supra* note 212.

“traitors” under this law, and all were targeted for criticizing the regime. They have now been deprived of their nationality as retaliation for their dissent.

Second, this new denaturalization law has been applied in a way that violates the ex-political prisoners’ freedom of opinion and expression, freedom of political participation, and their rights to due process. *Sovereignty Law 1055* labels as a traitor anyone who expresses opposition to the Ortega regime. By applying the denaturalization law solely to outspoken critics of Ortega, the regime has sought to expel indefinitely his highest-profile opposition. Moreover, Nicaraguan nationality is required to run for public office. The Ortega regime has also made the 222 political prisoners ineligible to run on grounds of nationality, without justification.

And, finally, the 222 political prisoners were deported and later summarily stripped of their nationality without notice and an opportunity to be heard. They only learned after arriving in the US about their denaturalization and that their properties in Nicaragua would now also be subject to expropriation. But they have no legal remedy to challenge either decision.

VII. THE RESPONSE TO NICARAGUA’S POLITICAL PRISONERS

The international community has spoken out consistently and forcefully regarding Nicaragua’s political prisoners, demanding the immediate release of all prisoners and other condemnations. After the mass release and subsequent arbitrary deprivation of prisoners and other Nicaraguans’ nationality and confiscation of property, many countries have shown their support, condemned these actions, and even offered their nationality to them.

A. International Response

1. Select Public Statements and Condemnations

A wide array of UN bodies and experts, regional agencies and organizations, individual countries, and international human rights organizations have reported on Nicaragua’s political prisoners and highlighted both collective and individual cases. Below is a brief description of such statements.

a. UN Bodies and Experts

Human Rights Council: On March 31, 2022, the Human Rights Council issued a landmark resolution on Nicaragua in which it called upon the Nicaraguan authorities “to cease immediately the use of arbitrary arrests and detentions, as well as of threats and other forms of intimidation or alternative measures of detention, as a means to repress dissent, to release immediately and unconditionally all those who have been arbitrarily or unjustly detained [...]”¹ Notably, the Resolution established the creation of the GHREN for the period of one year with the mandate to “conduct thorough and independent investigations into all alleged human rights violations and abuses committed in Nicaragua since April 2018,” to “establish the facts and circumstances surrounding the alleged violations and abuses,” and “make recommendations with a view to improving the situation of human rights,” among others.² The GHREN presented its first

¹ Resolution 49/3, *Promotion and Protection of Human Rights in Nicaragua*, UN HUMAN RIGHTS COUNCIL, A/HRC/RES/49/3, adopted Mar. 31, 2022, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/303/66/PDF/G2230366.pdf?OpenElement>.

² *Id.*, at ¶ 14.

report on the 52nd session of the Human Rights Council on March 2, 2023 and concluded that “crimes against humanity are being committed against civilians for political reasons.” Particularly, the group found that the Ortega regime “has used arbitrary detention as a tool to silence critics. Many arrests were characterized by excessive use of force by the police and violence at the hands of pro-government armed groups; many people were detained without warrants and held incommunicado.”³

On April 3, 2023, the Human Rights Council adopted a Resolution on the promotion and protection of human rights in Nicaragua with 27 votes in favor, 27 abstentions and only five against (Algeria, China, Cuba, Eritrea, and Viet Nam). Building upon the four previous resolutions about Nicaragua, the Human Rights Council decided to renew the mandate of the GHREN for two more years and requested it to submit a report at its fifty-fifth and fifty-eighth sessions during an interactive dialogue and to present oral updates at its fifty-fourth and fifty-seventh sessions.⁴ Moreover, the Council requested the OHCHR to strengthen monitoring and engagement on the human rights situation in Nicaragua.⁵

Office of the UN High Commissioner for Human Rights (OHCHR):

In December 2022, in an oral update before the Human Rights Council, High Commissioner Volker Türk expressed that the climate of oppression in Nicaragua “has only intensified.” He highlighted that the “number of people arbitrarily detained for expressing their political views or for being perceived as critics of the Government went up.” In addition, Commissioner Türk recalled that the conditions of detention for political prisoners are precarious, building on previous reports of his predecessor Michelle Bachelet. Türk urged the release of all those who had been arbitrarily detained and asked for access to the country for his staff.⁶ In the

³ Press Release, *Nicaragua: Crimes Against Humanity Being Committed Against Civilians for Political Reasons*, Investigation Says, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, Mar. 2, 2023, available at <https://www.ohchr.org/en/press-releases/2023/03/nicaragua-crimes-against-humanity-being-committed-against-civilians>.

⁴ Resolution 49/3, *Promotion and Protection of Human Rights in Nicaragua*, UN HUMAN RIGHTS COUNCIL, A/HRC/52/L.38, adopted Apr. 3, 2023, at ¶ 15-16, available at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G23/058/63/PDF/G2305863.pdf?OpenElement>.

⁵ Id., at ¶ 18.

⁶ *UN Human Rights Chief Reports on Intensified “Climate of Oppression in Nicaragua*, UN NEWS, Dec. 15, 2022, available at <https://news.un.org/en/story/2022/12/1131757>.

first oral update after the mass release, on March 3, 2023, the UN Assistant Secretary-General for Human Rights declared that the regime's measures after the release (stripping former prisoners and other 94 individuals of their nationality and assets) as disproportionate and arbitrary measures, which violated Nicaragua's international human rights commitments. "They had a chilling effect on many Nicaraguans both within the country and in exile, he said."⁷

Every year, OHCHR has issued an annual report about Nicaragua. In the 2022 report, it concluded that "the human rights situation in Nicaragua has progressively deteriorated since 2018 without the Government showing the political will to address the crisis through dialogue and the implementation of recommendations made by human rights bodies and mechanisms."⁸ In particular, in its reports, the OHCHR "has consistently recommended that the State refrain from arbitrarily detaining persons critical of the Government or perceived as opponents of it, and release them immediately, dropping criminal charges against them."⁹ Nicaragua has not followed these recommendations and has not allowed the OHCHR delegation to return to the country after expelling it in 2018.

Human Rights Committee: In its 2022 Concluding Observations, the Human Rights Committee—the treaty body overseeing state compliance with the International Covenant on Civil and Political Rights (ICCPR)—expressed concern about the ongoing allegations of torture and ill-treatment occurring at the time of arrest and at police detention centers such as *La Modelo*, *La Esperanza*, and *El Chipote*.¹⁰ The Committee said it was worried about reports regarding the suspension of family visits,

⁷ *The Human Rights Situation in Nicaragua Continues to Erode*, United Nations Assistant Secretary-General for Human Rights Tells the Human Rights Council, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, Mar. 3, 2023, available at <https://www.ohchr.org/en/news/2023/03/human-rights-situation-nicaragua-continues-erode-united-nations-assistant-secretary>.

⁸ REPORT OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, *Human Rights Situation in Nicaragua*, U.N. Doc. A/HRC/51/42, Sept. 2, 2022, at ¶ 79, available at <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session51/list-reports> [hereinafter "UN High Commissioner 2022 Report"].

⁹ *Id.*, at ¶ 43.

¹⁰ *Concluding Observations on the Fourth Periodic Report of Nicaragua*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/NIC/CO/4, Nov. 30, 2022, at ¶ 21, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CPR%2FC%2FNIC%2FCO%2F4&Lang=en.

especially for minors, food rationing, routinary body searches without clothing, as well as the imposition of solitary confinement as a disciplinary measure.¹¹ It further noted deficiencies in the application of *habeas corpus* as a remedy for persons arbitrarily detained since April 2018 and expressed its concern with the adoption of *Law 1060 of 2021*, which extends the time that a person can be detained without charge from 48 hours to 90 days.¹² Moreover, the Committee noted allegations of the State's excessive use of pre-trial detention, particularly against human rights defenders, journalists, and members/sympathizers of the opposition.¹³ In addition, it highlighted the lack of separation between individuals in pre-trial detention and convicted ones and between adults and minors.¹⁴ It is worth noting that Nicaragua presented its fourth periodic report to the Committee under its obligations of the ICCPR seven years late and did not participate in the interactive dialogue with the Committee, in contravention of its obligations under the Covenant.¹⁵

Committee Against Torture (CAT): In December 2022, the CAT—the treaty body overseeing state compliance with the Convention Against Torture—denounced the severe conditions of political prisoners. It highlighted special concerns for the situation of women, in detention centers such as *La Modelo*, *La Esperanza*, and *El Chipote*, where there have been reports of overcrowding, unsanitary conditions, lack of ventilation and access to natural light, malnutrition, and limited access to clean water and medication.¹⁶ The CAT also noted allegations of sexual aggression and violence in detention centers, particularly against women, including transgender women in male prisons,¹⁷ as well as the denial of the authorities to allow OHCHR staff and other international humanitarian and human rights organizations to access detention centers.¹⁸ In that sense, the CAT urged the State of Nicaragua to guarantee that detention conditions comply fully with the UN Standard Minimum Rules for the

¹¹ *Id.*, at ¶ 23.

¹² *Id.*, at ¶ 25.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*, at ¶ 2.

¹⁶ *Concluding Observations on the Second Periodic Report of Nicaragua*, U.N. COMM. AGAINST TORTURE, U.N. Doc. CAT/C/NIC/CO/2, Dec. 7, 2022, at ¶ 13, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FNIC%2FCO%2F2&Lang=en.

¹⁷ *Id.*, at ¶ 13(c).

¹⁸ *Id.*, at ¶ 13(e).

Treatment of Prisoners (Nelson Mandela Rules) and the Bangkok Rules for the Treatment of Women Prisoners, ensuring adequate medical care for people deprived of liberty.¹⁹ The CAT reported that Nicaragua has refused to cooperate with UN bodies in tackling and preventing torture in the country.²⁰

UN Working Group on Arbitrary Detention: The UN Working Group on Arbitrary Detention has issued several opinions²¹ between June 2019 and May 2022 in respect of 37 individuals in Nicaragua. In all these opinions, the Working Group concluded that the detentions of these individuals “were arbitrary, including on the grounds that they lacked a legal basis or were carried out in response to the legitimate exercise of rights and freedoms.”²² Said opinions include the cases of presidential

¹⁹ Press Release, *UN Committee Against Torture Publishes Findings on Botswana, Nicaragua, State of Palestine, and the United Arab Emirates*, UN HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, Jul. 29, 2022, available at <https://www.ohchr.org/en/press-releases/2022/07/un-committee-against-torture-publishes-findings-botswana-nicaragua-state>.

²⁰ Statement, *Nicaragua: Two UN Rights Committees Deplore Refusal to Cooperate and Lack of Information*, UN HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, Nov. 29, 2022, available at <https://www.ohchr.org/en/statements/2022/11/nicaragua-two-un-rights-committees-deplore-refusal-cooperate-and-lack>.

²¹ See *Carlos Ramón Brenes Sánchez v. Nicaragua*, Opinion No. 16/2019, U.N. Doc. A/HRC/WGAD/2019/16, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Apr. 29, 2019; *Tomás Ramón Maldonado Pérez v. Nicaragua*, Opinion No. 19/2019, U.N. Doc. A/HRC/WGAD/2019/19, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 1, 2019; *Amaya Eva Coppens Zamora v. Nicaragua*, Opinion No. 43/2019, U.N. Doc. A/HRC/WGAD/2019/43, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Aug. 14, 2019; *Miguel Mora & Lucía Pineda v. Nicaragua*, Opinion No. 17/2020, U.N. Doc. A/HRC/WGAD/2020/17, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 1, 2020; *16 persons v. Nicaragua*, Opinion No. 21/2020, U.N. Doc. A/HRC/WGAD/2020/21, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted 1 May 2020; *Kevin Roberto Solís v. Nicaragua*, Opinion No. 39/2020, U.N. Doc. A/HRC/WGAD/2020/39, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Aug. 24, 2020; *Celia Cruz & Amílcar José Cerda Cruz v. Nicaragua*, Opinion No. 12/2021, U.N. Doc. A/HRC/WGAD/2021/12, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 6, 2021; *Arturo Cruz Sequeira & Others v. Nicaragua*, Opinion No. 10/2022, U.N. Doc. A/HRC/WGAD/2022/10, U.N. GROUP ON ARBITRARY DETENTION, adopted Mar. 31, 2022.

²² *UN High Commissioner 2022 Report*, *supra* note 8, at ¶ 43.

candidate Arturo Cruz,²³ university student and social activist Kevin Roberto Solís,²⁴ and journalist Miguel Mora,²⁵ among others.

Multiple UN Special Procedures: A variety of Special Procedures—thematic experts appointed by the UN Human Rights Council—have issued numerous joint statements, urgent appeals, and allegation letters concerning Nicaragua’s political prisoners and the human rights situation more broadly. In October 2022, UN and IACHR experts asked Nicaragua to “immediately cease the judicial persecution of all dissenting voices, release those imprisoned for political reasons, and ensure prompt, impartial and thorough investigations into allegations of human rights violations.”²⁶ They also underscored that the “number of political prisoners stands at more than 200, many of whom are held in unhealthy conditions, without access to adequate medical care, subjected to solitary confinement regimes, and prevented from receiving visits from their families, among other cruel, inhuman, and degrading treatment.”²⁷

In August 2022, 10 Special Procedures called on Nicaraguan authorities about the arbitrary detention and lack of adequate medical care of Nidia Lorena Barbosa Castillo, Rusia Evelyn Pinto Centeno, and María Esperanza Sánchez García.²⁸ The UN experts noted that the cases of these three women were not isolated, instead were part of a context of detention conditions in Nicaragua that includes systematic episodes of torture and

²³ *Arturo Cruz Sequeira & Others v. Nicaragua*, Opinion No. 10/2022, U.N. Doc. A/HRC/WGAD/2022/10, U.N. GROUP ON ARBITRARY DETENTION, *adopted* Mar. 31, 2022.

²⁴ *Kevin Roberto Solís v. Nicaragua*, Opinion No. 39/2020, U.N. Doc. A/HRC/WGAD/2020/39, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Aug. 24, 2020.

²⁵ *Miguel Mora & Lucía Pineda v. Nicaragua*, Opinion No. 17/2020, U.N. Doc. A/HRC/WGAD/2020/17, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* May 1, 2020.

²⁶ Press Release, *Nicaragua Must Restore Full Enjoyment of Civil and Political Rights, Particularly Freedom of Expression, Peaceful Assembly and Association, Media and Civic Assembly: UN and IACHR Experts*, UN HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, Oct. 3, 2022, *available at* <https://www.ohchr.org/en/press-releases/2022/10/nicaragua-must-restore-full-enjoyment-civil-and-political-rights>.

²⁷ *Id.*

²⁸ Urgent Appeal from Working Group on Arbitrary Detention et al. to Nicaragua, UA NIC 3/2022, Aug. 12, 2022, at 1, *available at* <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27463>.

ill-treatment, insufficient food, and negligence in medical attention, all of which has affected the health of an increasing number of prisoners.²⁹ Particularly, they highlighted that detention centers do not enjoy a sufficient water supply with some of them only having water twice a day for 1-hour periods and that prisoners have been subjected to “white torture,” a type of psychological torture consisting of extreme sensory deprivation and isolation.³⁰

In August 2021, five UN experts sent an allegation letter regarding the arbitrary detention and subsequent disappearance of a human rights defender and coordinator of the *campesino* movement, who was arrested for a second time.³¹ They noted with concern the fact that crimes related to terrorism and national security were being used against human rights defenders that publicly protest against the government in the context of the elections scheduled for November that year.³² They explained that using those criminal offenses in order to silence or harass people defending human rights is incompatible with international human rights law.³³

In July 2021, eight UN Special Procedures addressed an Allegation Letter to the State of Nicaragua expressing concern over the allegations of persecution and detention of Marco Antonio Fletes and Walter Antonio Gómez Silva, members of the Violeta Barrios de Chamorro Foundation.³⁴ In particular, they alluded to the possibility that these arrests were actually connected with the political activities of Cristiana Chamorro, leader of the organization. Additionally, they expressed concern over the detention and disappearance of Juan Sebastián Chamorro and Félix Maradiaga for their political activities in opposition to the government.³⁵

²⁹ *Id.*, at 7.

³⁰ *Id.*

³¹ Allegation Letter from Special Rapporteur on Human Rights Defenders et al. to Nicaragua, AL NIC 6/2021, Aug. 25, 2021, at 3, *available at* <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26602>.

³² *Id.*

³³ *Id.*

³⁴ Allegation Letter from Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression et al. to Nicaragua, AL NIC 5/2021, Jul. 19, 2021, at 8, *available at* <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26520>.

³⁵ *Id.*

In June 2021, seven UN experts drew attention to reports regarding the arbitrary detention of Francys Valdivia Machado and other members of the April Mothers Association, as well as the persecution and detention of members of the CENIDH.³⁶ The experts regretted that these events could be part of a pattern of repression against civil society and persons who dissent the government as an exercise of their right to freedom of expression.³⁷ Also, the UN Special Rapporteur on Human Rights Defenders drew attention to two arbitrarily detained human rights defenders, Celia Cruz and John Cristopher Cerna Zuñiga, who reportedly suffered ill-treatment in prison. The UN expert noted that she received reports indicated that they were denied medical care, attacked, and sexually assaulted.³⁸ She denounced that “people who protest against the Government are put into maximum security cells with increased surveillance, searches, and isolation.”³⁹ She recalled that Nicaragua “must not criminalize legitimate practices such as participation in peaceful protests.”⁴⁰

UN Security Council: On September 5, 2018, US Permanent Representative to the UN Ambassador Nikki Haley convened a meeting of the UN Security Council to discuss the situation in Nicaragua, after having secured the votes to place it on the Council’s permanent agenda.⁴¹ The Council was then briefed by Gonzalo Koncke, Chief of Staff to the Secretary General of the OAS, Nicaraguan Minister of Foreign Affairs Denis Moncada, and Félix Maradiaga, a civil society leader. In Maradiaga’s words back then: “Nicaragua has become a huge prison that pretends to be under control” in which an atmosphere of terror and indiscriminate persecution reigns every day.⁴² Later, after announcing his

³⁶ Allegation Letter from Special Rapporteur on Human Rights Defenders et al. to Nicaragua, AL NIC 4/2021, Jun. 25, 2021, at 1, *available at* <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26412>.

³⁷ *Id.*, at 3.

³⁸ Press Release, *Nicaragua, UN Expert Deplores Spate of Attacks and Arrests of Human Rights Defenders*, OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, Jun. 3, 2021, *available at* <https://www.ohchr.org/en/press-releases/2021/06/nicaragua-un-expert-deplores-spate-attacks-and-arrests-human-rights?LangID=E&NewsID=27135>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Transcript, *The Situation in Nicaragua*, UN SECURITY COUNCIL, 8340th Meeting, Sept. 5, 2018, S/PV.8340, *available at* <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N18/276/58/PDF/N1827658.pdf?OpenElement>.

⁴² *Id.*

candidacy to run for President, Maradiaga was detained as a political prisoner in June 2021. He was later sentenced to 13 years in prison for “conspiracy to undermine national integrity.”⁴³ He was only released on February 9, 2023, as part of a group of 222 political prisoners deported to the US and denaturalized by the Ortega regime.⁴⁴

b. Regional
Bodies/Organizations

Organization of American States (OAS): The OAS has consistently condemned and taken actions to address the human rights situation in Nicaragua and has urged the State to immediately release all political prisoners. Different bodies within the organization have issued resolutions, reports, and statements to that effect.

The General Assembly of the OAS, which comprises the delegations of all member states, has adopted three resolutions and one declaration about the human rights situation in Nicaragua since 2018.⁴⁵ On October 5, 2022, during its meeting in Lima, Peru, it adopted a resolution by consensus condemning the continued deterioration of the human rights situation in the country.⁴⁶ The resolution urged the “Government of Nicaragua to guarantee the physical, mental and moral integrity, liberty and right to life of all those who have been arbitrarily detained, and to immediately release all political prisoners.”⁴⁷ In addition, it invited member states to create a high-level commission for dialogue with the Nicaraguan government.⁴⁸ Similarly, in November 2021, after the sham presidential elections in which Ortega won a fourth term, the General

⁴³ Judgement, *Sentencia No. 08-2022*, Mar. 3, 2022, at 57 (Fifth Managua Criminal Hearings District Court) (Nicar.) (on file with author) [in Spanish].

⁴⁴ Tom Phillips & Chris Stein, ‘*This is huge*’: *Nicaragua frees 222 political prisoners and flies them to US*, THE GUARDIAN, Feb. 9, 2023, available at <https://www.theguardian.com/world/2023/feb/09/nicaragua-frees-222-political-prisoners-flies-to-us>.

⁴⁵ INFORME DE BALANCE MECANISMO ESPECIAL DE SEGUIMIENTO PARA NICARAGUA, INTER-AM. COMM’N ON HUMAN RIGHTS, Aug. 29, 2022, at ¶ 28, available at https://www.oas.org/es/cidh/MESANI/pdf/2022_MESANI_InformeBalance.pdf [in Spanish] [hereinafter “MESANI Report 2022”].

⁴⁶ The Political and Human Rights Crisis in Nicaragua, OAS G.A. Res. AG/doc.5780/22 rev. 1, adopted Oct. 5, 2022, available at <https://www.oas.org/en/council/AG/regular/52RGA/documents.asp>.

⁴⁷ *Id.*, at Art. 2.

⁴⁸ *Id.*, at Art. 9.

Assembly called for the “release of all political candidates and political prisoners, the restoration of their democratic rights, and an immediate end to the arrest and harassment of independent media and members of civil society.”⁴⁹

The Permanent Council of the OAS likewise adopted repeated statements supporting the restoration of democratic institutions and respect for human rights in Nicaragua. Notably, it has adopted eight resolutions denouncing human rights abuses in the Central American country.⁵⁰ Particularly, on August 12, 2022, the Council adopted a resolution with 27 votes in favor, two abstentions, one against, and two absences reiterating the need for “the Government of Nicaragua [to] immediately release all political prisoners and cease harassment and intimidation of the independent press and to guarantee the exercise of the right to freedom of expression.”⁵¹

In August 2018, the Permanent Council created a Working Group on Nicaragua with the mandate to “contribute to the search for peaceful and sustainable solutions to the evolving situation in Nicaragua, including through consultations with the Government of Nicaragua.”⁵² The Group comprises 12 member states: Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, Guyana, Mexico, Panama, Peru, and the US. Canada and Chile serve as Co-Chairs and the Working Group has held numerous meetings over the years to discuss various aspects of the situation, including having heard on several occasions from family members of political prisoners and relevant civil society groups. On February 15, 2023, the Working Group was briefed by four former political prisoners including Félix Maradiaga, Juan Sebastián Chamorro, Medardo Mairena, and Pedro Mena.

On May 30, 2018, the General Secretariat of the OAS, the IACHR, and the Government of Nicaragua, amid the social and political crisis started in April that year, signed an agreement creating the GIEI to

⁴⁹ The Situation in Nicaragua, OAS G.A. Res. AG/RES. 2978 (LI-O/21), *adopted* Nov. 12, 2021, at Art. 4, *available at* <https://www.oas.org/en/council/AG/ResDec/>.

⁵⁰ *MESENI Report 2022*, *supra* note 45, at ¶ 26.

⁵¹ Press Release, *OAS Resolution Condemns Ortega Regime in Nicaragua*, US MISSION TO THE ORGANIZATION OF AMERICAN STATES, Aug. 12, 2022, *available at* <https://usoas.usmission.gov/oas-resolution-condemns-ortega-regime-in-nicaragua-2/>.

⁵² *Permanent Council Working Group on Nicaragua*, OAS, *available at* <https://www.oas.org/en/council/GT/NIC/about.asp>.

investigate the violent events that took place in Nicaragua between April 18-May 30, 2018.⁵³ After six months of work and no government cooperation, the GIEI presented a landmark report in which it established “that the State detained hundreds of persons during police raids during the protests. The detained persons were left under the exclusive authority of the National [P]olice and suffered various forms of mistreatment and abuses. Some complaints raise to the level of torture [...]”⁵⁴ The day before the presentation of the report in Managua, December 19, 2018, the regime “temporarily suspended” the visit and presence of the GIEI in the country and expelled all its members.⁵⁵

On June 24, 2018, the IACHR installed, at the invitation of Nicaragua, a Special Follow-Up Mechanism (“MESENI”) with the objective of monitoring the human rights situation in Nicaragua.⁵⁶ The MESENI has continued to work tirelessly despite also being expelled by the regime on December 19, 2018. Between April 18, 2018, that marked the beginning of the crisis, and August 29, 2022, “the IACHR has granted 129 precautionary measures to directly protect the lives and integrity of more than 280 people, and it has requested from the Inter-American Court three temporary measures and eight extensions.”⁵⁷ Precautionary measures are protection mechanisms of the IACHR through which it “requests a State to protect one or more persons who are in serious and urgent situation from suffering irreparable harm.”⁵⁸

⁵³ GIEI NICARAGUA REPORT ON THE VIOLENT EVENTS THAT TOOK PLACE BETWEEN APRIL 18TH AND MAY 30TH, 2018, INTERDISCIPLINARY GROUP OF INDEPENDENT EXPERTS, Dec. 20, 2018, at 17, available at https://gieinicaragua.org/giei-content/uploads/2019/05/GIEI_REPORT_ENGLISH_simplepage.pdf [hereinafter “GIEI Report”].

⁵⁴ *Id.*, at 356.

⁵⁵ *Id.*, at 17.

⁵⁶ *Special Monitoring Mechanism for Nicaragua*, OAS.ORG, accessed Jan. 29, 2023, available at <https://www.oas.org/en/iachr/jsform/?File=/en/iachr/MESENI/default.asp>.

⁵⁷ Press Release, *Four Years On, IACHR Presents an Assessment of the Activities Held by Its Special Monitoring Mechanism for Nicaragua and the Results They Attained*, OAS, Aug. 29, 2022, available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/189.asp.

⁵⁸ *About Precautionary Measures*, OAS.ORG, accessed Jan. 29, 2023, available at <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/decisions/mc/about-precautionary.asp#:~:text=A%20precautionary%20measure%20is%20a,situation%20from%20suffering%20irreparable%20harm.>

The IACHR has granted numerous precautionary measures to protect the life and liberty of political prisoners, all arbitrarily detained by the regime who faced or are still facing serious and urgent risk of suffering harm to their human rights due to their arbitrary detention.⁵⁹ To date, the regime has not complied with the precautionary measures ordered by the IACHR in all cases. The IACHR consistently urged Nicaragua to release all people held in arbitrary detention and denounced the deplorable conditions of detention⁶⁰ and has issued relevant reports concerning persons deprived of liberty in Nicaragua and the regime's concentration of power and undermining of the rule of law.⁶¹

Similarly, the Inter-American Court has granted provisional measures to Nicaragua's political prisoners. These measures are dictated in cases of extreme gravity and urgency and when they are necessary to avoid irreparable damage to people.⁶² On June 24, 2021, the Inter-American Court granted provisional measures to opposition leaders Juan Sebastián Chamorro, José Adán Aguerri, Félix Maradiaga, and Violeta

⁵⁹ For instance, over the course of 2022, it granted measures to a large number of critical voices José Manuel Urbina, Benjamín Gutiérrez, Edgar Francisco Parrales, Martha del Socorro Ubilla, Marlon Antonio Castellón, Marvin Antonio Castellón, Lázaro Ernesto Rivas, Yoel Ibazán Sandino, José Peraza Collado, Roger Reyes, Irving Larios, Edder Muñoz, Nidia Lorena Barbosa, José Santos Sánchez, Cynthia Jirón, Ana Carolina Álvarez, Jeannine Horvilleur, Harry Bayardo, Rodrigo José Navarrete, and Oscar René Vargas.

⁶⁰ *E.g.*, Press Release, *IACHR Urges State of Nicaragua to Release All People Held in Arbitrary Detention*, OAS, Jan. 31, 2022, available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/023.asp and Press Release, *IACHR and Its SRESCER Call For Immediate Release of Political Prisoners Being Held in Appalling Conditions in Nicaragua*, OAS, Sept. 5, 2022, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/197.asp.

⁶¹ *See* PERSONS DEPRIVED OF LIBERTY IN NICARAGUA IN CONNECTION WITH THE HUMAN RIGHTS CRISIS THAT BEGAN ON APRIL 18, 2018, INTER-AM. COMM'N OF HUMAN RIGHTS, Oct. 5, 2020, available at <http://www.oas.org/en/iachr/reports/pdfs/Nicaragua-PPL-en.pdf> and NICARAGUA: CONCENTRATION OF POWER AND THE UNDERMINING OF THE RULE OF LAW, INTER-AM. COMM'N OF HUMAN RIGHTS, Oct. 25, 2021, at ¶ 37, available at https://www.oas.org/en/iachr/reports/pdfs/2021_nicaragua-en.pdf.

⁶² *What Are Provisional Measures?*, CORTEIDH.ORG, accessed Jan. 30, 2023, available at https://www.corteidh.or.cr/que_son_medidas_provisionales.cfm?lang=en#:~:text=of%20the%20Court%3F-,What%20are%20the%20provisional%20measures%20of%20the%20Court%3F,avoid%20irreparable%20damage%20to%20people.

Granera.⁶³ The Inter-American Court found that these prisoners were in a situation of extreme gravity so it was necessary to adopt measures to prevent irreparable harm to their life and integrity.⁶⁴ As such, it ordered Nicaragua to immediately release them and to adopt measures to protect their life, integrity, and personal liberty.⁶⁵ These provisional measures were subsequently extended to other political prisoners in repeated occasions.⁶⁶ As of the end of February 2023, 76 former and current political prisoners were beneficiaries of measures granted by the Inter-American Court.⁶⁷ The State did not comply at the time with the order to release any of the prisoners, so in November 2022 the Inter-American Court declared that Nicaragua was in contempt.⁶⁸

Secretary General of the OAS Luis Almagro has repeatedly demanded the release of Nicaraguan political prisoners and asked the Nicaraguan regime to “dismantle this system of repression and torture.”⁶⁹ In addition, he called on the international community to increase

⁶³ *Resolución sobre el asunto Juan Sebastián Chamorro y otros respecto de Nicaragua*, INTER-AM. CT. H.R., adopted Jun. 24, 2021, at 17, available at https://www.corteidh.or.cr/docs/medidas/chamorro_se_01.pdf.

⁶⁴ *Id.*, at ¶ 39.

⁶⁵ *Id.*, at 17.

⁶⁶ *Ratificación, ampliación y seguimiento de medidas provisionales asunto Juan Sebastián Chamorro y otros respecto de Nicaragua*, INTER-AM. CT. H.R., adopted Sept. 9, 2021, at 26, available at https://www.corteidh.or.cr/docs/medidas/chamorro_se_03.pdf [in Spanish]; *Ampliación de medidas provisionales asunto Juan Sebastián Chamorro y otros respecto de Nicaragua*, Nicaragua, INTER-AM. CT. H.R., adopted Nov. 4, 2021, at 17-18, available at https://www.corteidh.or.cr/docs/medidas/chamorro_se_04.pdf [in Spanish]; *Medidas provisionales asunto Juan Sebastián Chamorro*, INTER-AM. CT. H.R., Nov. 22, 2021, at 18, available at https://www.corteidh.or.cr/docs/medidas/chamorro_se_05.pdf [in Spanish]; *Ampliación de medidas provisionales asunto Juan Sebastián Chamorro y otros respecto de Nicaragua*, INTER-AM. CT. H.R., adopted May 25, 2022, at 17, available at https://www.corteidh.or.cr/docs/medidas/chamorro_se_06.pdf [in Spanish]; *Medidas provisionales, asunto 45 Personas Privadas de su Libertad en 8 Centros de Detención Respecto de Nicaragua*, INTER-AM. CT. H.R., adopted Oct. 4, 2022, at 50, available at https://www.corteidh.or.cr/docs/medidas/45personas_se_01.pdf [in Spanish].

⁶⁷ *Resolución sobre el asunto Juan Sebastián Chamorro y otros y 45 personas privadas de su libertad en 8 centros de detención respecto de Nicaragua*, INTER-AM. CT. H.R., adopted Nov. 22, 2022, at 16, available at https://www.corteidh.or.cr/docs/medidas/45personas_se_02.pdf [in Spanish].

⁶⁸ *Id.*

⁶⁹ See, e.g., Press Release, *Statement by the OAS Secretary General on the Situation of Political Prisoners in Nicaragua*, OAS, Apr. 5, 2022, available at https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-018/22;

diplomatic pressure on Managua and repeatedly showed his solidarity with the political prisoners and their families, including meeting with them, sending out pictures of the meetings, and continuing to issue public statements to various OAS organs and agencies and in tweets.⁷⁰

On November 19, 2021, Nicaragua denounced the Charter of the OAS, withdrawing from the Organization.⁷¹ This would be effective two years after that date, in November 2023, however Nicaragua still must pay off its outstanding debt to the OAS. Until then, Nicaragua's international obligations under the Charter remain in force, as well as other international obligations deriving from the universal system of human rights and customary international law, which also remain in place.

European Union (EU): The EU has been outspoken in its criticism of the Ortega regime and has undertaken a wide array of actions in response to gross human rights abuses in the country. For example, in September 2021, EU High Representative on Foreign Affairs and Security Policy Josep Borrell said that Ortega and Murillo “want to win the elections without competition,” that “the opposition has been eliminated,” and they must “stop this autocratic spiral and change course.”⁷² Later, not being subtle, Borrell branded Ortega as a “dictator” organizing “fake” elections and “one of the worst dictatorships in the world.”⁷³ In addition,

⁷⁰ See, e.g., Tweet by Secretary General Luis Almagro (@Almagro_OEA2015), TWITTER, Feb. 10, 2023, available at https://twitter.com/Almagro_OEA2015/status/1624128502084653056?s=20; Tweet by Secretary General Luis Almagro (@Almagro_OEA2015), TWITTER, Nov. 8, 2021, available at https://twitter.com/Almagro_OEA2015/status/1457781682631692294?s=20; Tweet by Secretary General Luis Almagro (@Almagro_OEA2015), TWITTER, Jul. 19, 2021, available at https://twitter.com/Almagro_OEA2015/status/1417146242963017741.

⁷¹ Press Release, *The IACHR Stresses Its Competent Jurisdiction Concerning Nicaragua and Laments Nicaragua's Decision to Denounce the Charter of OAS in a Context of Serious Human Rights Violations*, OAS, Nov. 20, 2021, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/312.asp and Denis Rolando Moncada Colindres, Nicaraguan Minister of Foreign Affairs, Letter to the Secretary General of the Organization of American States, MRE/DM/00284/11/21, Nov. 18, 2021, available at <http://scm.oas.org/pdfs/2021/CP45252sCP.pdf> [in Spanish].

⁷² *Nicaragua: Statement by the High Representative Joseph Borrell on Developments Ahead of the November Elections*, EUROPEAN UNION EXTERNAL ACTION SERVICE, Sept. 8, 2021, available at https://www.eeas.europa.eu/eeas/nicaragua-statement-high-representative-josep-borrell-developments-ahead-november-elections_en.

⁷³ *EU Foreign Policy Chief Slams 'Fake' Nicaragua Vote*, EURACTIV.COM, Nov. 3, 2021, available at <https://www.euractiv.com/section/global-europe/news/eu-foreign-policy-chief-slams-fake-nicaragua-vote/>.

on March 14, 2022, right after the announcements of unjust sentences to many prisoners, including Félix Maradiaga, Juan Sebastián Chamorro, Cristiana Chamorro, and others, the EU Spokesperson issued a statement demanding Nicaragua to “immediately and unconditionally release all political prisoners and to annul all legal proceedings against them, including their sentences.”⁷⁴ The Spokesperson also declared that since 2018 Nicaragua has carried a “systematic incarceration, harassment, and intimidation of presidential pre-candidates, opposition leaders, student and rural leaders, journalists, human rights defenders and business representatives.”⁷⁵ Since 2020, the European Council has adopted restrictive measures (sanctions) against 21 persons and three entities, who are subjected to an asset freeze, travel ban, and are prohibited from doing business with EU citizens.⁷⁶

On September 15, 2022, the European Parliament adopted a resolution condemning the arrest of Bishop Rolando Álvarez, the escalation in the repression against the Catholic Church, and the worsening situation of the political prisoners detained in Nicaragua since April 2018.⁷⁷ The Resolution also called to trigger the democratic clause of the Association Agreement between Central America and the EU and for more sanctions against judges and prosecutors.⁷⁸ In response, Ortega expelled the EU Ambassador in Managua on September 28, 2022.⁷⁹ Similar resolutions on the situation in Nicaragua were previously adopted in December 2021 and June 2022.⁸⁰

⁷⁴ Statement, *Nicaragua: Statement by the Spokesperson on the Sentencing of Political Prisoners*, DIPLOMATIC SERVICE OF THE EUROPEAN UNION, Mar. 14, 2022, available at https://www.eeas.europa.eu/eeas/nicaragua-statement-spokesperson-sentencing-political-prisoners_en.

⁷⁵ *Id.*

⁷⁶ Press Release, *Nicaragua: EU Sanctions Regime Prolonged for a Further Year*, EUROPEAN COUNCIL, Oct. 13, 2022, available at <https://www.consilium.europa.eu/en/press/press-releases/2022/10/13/nicaragua-eu-sanctions-regime-prolonged-for-a-further-year/>.

⁷⁷ *EP Resolution of 15 September 2022 on Nicaragua and the Arrest of the Bishop Rolando Álvarez*, EUROPEAN PARLIAMENT, Sept. 15, 2022, available at <https://www.europarl.europa.eu/delegations/en/ep-resolution-of-15-september-2022-on-ni/product-details/20220915DPU33781>.

⁷⁸ *Id.*

⁷⁹ *Nicaragua Expels EU Ambassador*, DW, Sept. 29, 2022, available at <https://www.dw.com/en/nicaragua-expels-eu-ambassador/a-63278625>.

⁸⁰ *EP Resolution of 15 September 2022*, *supra* note 77.

c. Individual Countries

A number of individual countries acknowledged that Ortega keeps political prisoners and publicly demanded their release. Moreover, some countries showed their support to the former prisoners and other 94 Nicaraguans after being stripped of their nationality and assets by offering them their country's nationality. Below are examples of select statements from individual countries and high-level government officials (presidents, ministers of foreign affairs, ambassadors) who have engaged in this issue.

United States (US): The US Department of State's annual reports on human rights have specifically discussed political prisoners in Nicaragua by outlining their arbitrary arrests, detention conditions, and the denial of a fair public trial. According to the 2022, 2021, 2020, and 2019 reports, lengthy pre-trial detention continued to be a problem in Nicaragua.⁸¹ In the 2021 report, it highlighted that the regime arrested government opponents without obtaining a warrant from a judicial authority, did not allow them to choose their own legal counsel and "were arbitrarily assigned a public defender for their initial trial hearings."⁸² The State Department informed that "[p]olitical prisoners did not receive appropriate health care, including while suffering COVID-19 symptoms. Several political prisoners were severely undernourished, with no access to sunlight or appropriate health-care services. Some political prisoners were denied access to medicine and medical treatment for chronic illnesses."⁸³ Moreover, the US designated Nicaragua as a Country of Particular Concern for engaging or tolerating systematic, ongoing, and

⁸¹ NICARAGUA 2019 HUMAN RIGHTS REPORT, US DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, Mar. 11, 2020, at 7, *available at* <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/nicaragua/>; NICARAGUA 2020 HUMAN RIGHTS REPORT, US DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, Mar. 30, 2021, at 9, *available at* <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/nicaragua/>; NICARAGUA 2021 HUMAN RIGHTS REPORT, US DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, Apr. 12, 2022, at 10, *available at* <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/> and NICARAGUA 2022 HUMAN RIGHTS REPORT, US DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, Mar. 20, 2023, at 9, *available at* https://www.state.gov/wp-content/uploads/2023/03/415610_NICARAGUA-2022-HUMAN-RIGHTS-REPORT.pdf.

⁸² *Id.*, 2021 US State Department Nicaragua Human Rights Report, at 9.

⁸³ *Id.*, at 14.

egregious violations of religious freedom, among which the arbitrary imprisonment of Catholics priests is included.⁸⁴

On January, 10, 2022, when announcing the imposition of a set of financial sanctions and visa restrictions on regime officials for undermining democracy, the US publicly declared that political prisoners in Nicaragua continued to suffer from a lack of adequate food and proper medical care, and that some of them are held in solitary confinement.⁸⁵ Secretary of State Antony J. Blinken also said “Ortega’s corrupt security and judicial system arrested these individuals for practicing independent journalism, working for civil society organizations, seeking to compete in elections, and publicly expressing an opinion contrary to government orthodoxy, among other activities considered normal in a free society.”⁸⁶ Furthermore, on October 24, 2022, the White House affirmed in a public statement that political prisoners in Nicaragua were being subjected to extremely hard conditions.⁸⁷

In his Twitter account, Secretary Blinken has likewise spoken out against Ortega holding political prisoners. In June 2021, the month in which the regime detained the presidential candidates, he urged the “government of Nicaragua to immediately release all political prisoners and to hold free and fair elections so Nicaraguans can choose their leaders democratically.”⁸⁸ Eight months later, in the context of the sham trials that convicted the detained presidential candidates to years in prison, Blinken tweeted “Nicaraguan judges convicted the presidential candidates Ortega and Murillo didn’t want to face at the poll. Now, along with journalists,

⁸⁴ Press Release, Religious Freedom Designations, US DEPARTMENT OF STATE, Dec. 2, 2022, *available at* <https://www.state.gov/religious-freedom-designations-2/>.

⁸⁵ Press Statement, *Holding Accountable Nicaraguan Agents of Repression*, ANTONY J. BLINKEN, SECRETARY OF STATE, Jan. 10, 2022, *available at* <https://www.state.gov/holding-accountable-nicaraguan-agents-of-repression/>.

⁸⁶ *Id.*

⁸⁷ Statement, *Fact-Sheet: Biden-Harris Administration Expands Efforts to Hold Nicaraguan Government Accountable*, THE WHITE HOUSE, Oct. 24, 2022, *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/24/fact-sheet-biden-harris-administration-expands-efforts-to-hold-nicaraguan-government-accountable/>.

⁸⁸ Tweet by US Secretary of State Antony J. Blinken (@SecBlinken), TWITTER, Jun. 17, 2021, *available at* <https://twitter.com/secblinken/status/1405686771023814656>.

civil society, and activists, they are being sentenced to years in prison, jailed by a regime that doesn't respect rule of law or human rights.”⁸⁹

Most recently, on January 11, 2023, State Department launched the #WithoutJustCause political prisoners' campaign which aims to advocate for the release of political prisoners in different places around the globe through public diplomacy, bilateral engagement, outreach in international organizations, and meetings with other governments, NGOs, and political prisoners' families.⁹⁰ The campaign highlights the stories of 18 political prisoners from different countries; two of them are now former Nicaraguan prisoners Juan Sebastián Chamorro, economist, businessman, politician, and presidential candidate and Violeta Granera, prominent opposition leader and member of the Blue and White National Unity Group, whose profiles can also be found in the Illustrative Cases (Section III) of this report.⁹¹

It is also worth noting that many members of the US Congress are exceptionally active, individually and collectively, in a non-partisan way, in holding hearings, making statements, meeting families of political prisoners, and developing and adopting major legislation relating to Nicaragua. As one example of a recent public hearing, Rep. Chris Smith of New Jersey chaired a bipartisan Congressional hearing before the Tom Lantos Human Rights Commission in December 2022, entitled “The Perilous State of Religious Freedom in Nicaragua.” The hearing covered a wide array of topics, including the imprisonment of Bishop Álvarez and other clergy. It included testimony from Smith, Rep. James P. McGovern, Bianca Jagger, and Eddy Acevedo, who is Chief of Staff and Senior Advisor to the President of the Woodrow Wilson International Center for Scholars.⁹² Also, on March 22, 2023, the House Subcommittees of Global Health, Global Human Rights and International Organizations and Western Hemisphere held a joint hearing about the Ortega regime's war against the catholic church and civil society in Nicaragua. The witnesses

⁸⁹ Tweet by US Secretary of State Antony J. Blinken (@SecBlinken), TWITTER, Feb. 25, 2022, available at <https://twitter.com/secblinken/status/1497333249877626881?lang=es>.

⁹⁰ #WithoutJustCause Political Prisoners Campaign, STATE.GOV, accessed Feb. 3, 2023, available at <https://www.state.gov/withoutjustcause/>.

⁹¹ *Id.*

⁹² Press Release, *Smith Calls on Vatican and White House to Take Immediate Action in Response to Brutal Crackdown on Catholic Church in Nicaragua*, OFFICE OF CONGRESSMAN CHRIS SMITH, Dec. 15, 2022, available at <https://chrissmith.house.gov/news/documentsingle.aspx?DocumentID=410165>.

in this hearing were former political prisoners Félix Maradiaga and Juan Sebastian Chamorro, as well as Deborah Ullmer from the National Democratic Institute and Bianca Jagger, prominent Nicaraguan human rights activist.⁹³

Spain: In June 2021, upon the arbitrary detentions of several presidential candidates and opposition leaders, the President of Spain, Pedro Sánchez, called on Ortega to “play fair, to release the opponents, and to participate, in a clean game and fair fight, on this electoral process.”⁹⁴ Then-Foreign Minister Arancha González Laya reiterated this call and indicated that Spain had sought a “discreet” dialogue to discuss reversing the regime’s attacks on its citizens – to no avail.⁹⁵

Diplomatic relations between Spain and Nicaragua have since soured, especially after the current Foreign Minister José Manuel Albares, criticized the lack of “free, fair, or competitive” elections in November 2021.⁹⁶ He dubbed them a “mockery” and called on the regime to release all presidential candidates, political opponents, and journalists who had been incarcerated in the run up to the elections.⁹⁷ He also urged the EU “to begin the process of applying new individual sanctions [on those responsible for electoral farce] and that the EU demand the immediate

⁹³ *The Ortega-Murillo Regime’s War Against the Catholic Church and Civil Society in Nicaragua: Bishop Alvarez, Political Prisoners and Prisoners of Conscience*, HOUSE FOREIGN AFFAIRS COMMITTEE, accessed Mar. 5, 2023, available at <https://foreignaffairs.house.gov/hearing/the-ortega-murillo-regimes-war-against-the-catholic-church-and-civil-society-in-nicaragua-bishop-alvarez-political-prisoners-and-prisoners-of-conscience/>.

⁹⁴ Uriel Velásquez, *El presidente de España le dice a Ortega que «juegue limpio» y libere a los opositores en Nicaragua*, DEPACHO 505, June 11, 2021, available at <https://www.despacho505.com/el-presidente-de-espana-le-dice-a-ortega-que-juegue-limpio-y-libere-a-los-opositores-en-nicaragua/> [in Spanish].

⁹⁵ *España niega injerencias en Nicaragua y pide a Ortega “no utilizar excusas”*, CONFIDENCIAL, June 25, 2021, available at <https://www.confidencial.digital/politica/espana-niega-injerencias-en-nicaragua-y-pide-a-ortega-no-utilizar-excusas/> [in Spanish].

⁹⁶ *España: Retiro del embajador es una “huida hacia adelante” de Ortega*, CONFIDENCIAL, Mar. 11, 2022, available at <https://www.confidencial.digital/politica/espana-retiro-del-embajador-es-una-huida-hacia-adelante-de-ortega/> [in Spanish].

⁹⁷ *Id.*

release of political prisoners.”⁹⁸ When Ortega withdrew Nicaragua’s ambassador to Spain in retaliation to the its mounting political pressure, Albares responded: “if anyone believes that this measure is going to prevent Spain from demanding democracy and the release of political prisoners in Nicaragua, they are gravely mistaken.”⁹⁹

Upon their release on February 9, 2023, the Government of Spain offered a path to citizenship for all 222 former political prisoners.¹⁰⁰ Albares made the announcement the next day, offering them Spanish nationality “given the news that [the Nicaraguan regime] has initiated a process to declare them stateless.” He promised a speedy immigration process.¹⁰¹

Chile: President of Chile Gabriel Boric has been very clear and outspoken in calling out human rights abuses in Nicaragua and in repeatedly demanding the release of all political prisoners. For example, in November 2022 in a speech in the Mexican Senate, he stated: “We cannot look the other way in the face of political prisoners in Nicaragua”¹⁰² Also, Boric denounced the situation of Nicaragua’s political prisoners in his speech before the UN General Assembly last September 2022 and called on member states to work together for their freedom.¹⁰³

Chile’s former Foreign Affairs Minister, human rights lawyer Antonia Urrejola, also took a lead in strongly denouncing the situation of

⁹⁸ *España solicita a la UE sancionar a más orteguistas por farsa electoral*, CONFIDENCIAL, Nov. 15, 2021, available at

<https://www.confidencial.digital/politica/espana-solicita-a-la-ue-sancionar-a-mas-orteguistas-por-farsa-electoral/> [in Spanish].

⁹⁹ *España: Retiro del embajador*, *supra* note 96.

¹⁰⁰ *Spain Offers Freed Nicaraguans Citizenship After Move to Make Them Stateless*, REUTERS, Feb. 10, 2023, available at <https://www.reuters.com/world/europe/spain-offers-citizenship-222-freed-nicaraguan-political-prisoners-2023-02-10/>.

¹⁰¹ *El Gobierno ofrece la nacionalidad española a los presos políticos expulsados por Nicaragua*, SERVIMEDIA, Feb. 10, 2023, available at <https://www.servimedia.es/noticias/gobierno-ofrece-nacionalidad-espanola-presos-politicos-expulsados-nicaragua/3563790> [in Spanish].

¹⁰² *Boric: “You Can’t be Silent” About Nicaragua’s Prisoners*, CONFIDENCIAL, Nov. 27, 2022, available at <https://www.confidencial.digital/english/boric-you-cant-be-silent-about-nicaraguas-prisoners/>.

¹⁰³ *Boric Calls for Release of Political Prisoners in Nicaragua*, HAVANA TIMES, Sept. 21, 2022, available at <https://havanatimes.org/news/boric-calls-for-release-of-political-prisoners-in-nicaragua/>.

Nicaragua's political prisoners and the human rights situation more broadly. Urrejola proposed scenarios of dialogue with the regime and offered Chile's support in that matter. As such, during the OAS General Assembly in October 2022, she led a discussion with 14 OAS Member States to address the political crisis in Nicaragua.¹⁰⁴ In her opening remarks, she mentioned the urgency of doubling efforts to create a way out of the crisis. Urrejola said: "We will continue working to restore the rule of law and democracy in Nicaragua through comprehensive dialogue without exclusions and with participation of all sectors of society."¹⁰⁵ In addition, she expressed Chile is "resolved in condemning repression, violence, limitations to fundamental liberties, and human rights in Nicaragua" and that she recognizes that doing that implies costs, but they will continue doing that because it is a matter of conviction.¹⁰⁶ On October 21, 2022, she met with Berta Valle, human rights defender and wife of presidential candidate and former political prisoner Félix Maradiaga and assured her that she was following the situation in Nicaragua very closely.¹⁰⁷ And on February 21, 2023, the Government of Chile offered the Chilean Nationality to the 317 Nicaraguans who suffered an arbitrary deprivation of their nationality and assets.¹⁰⁸

Chile has also been very active at the OAS, including co-chairing the OAS Working Group on Nicaragua.

Costa Rica: Costa Rica has received more Nicaraguans fleeing persecution than any other country, particularly since the April 2018

¹⁰⁴ Press Release, *Canciller Antonia Urrejola lidera diálogo por la situación de derechos humanos en Nicaragua*, CHILEAN MINISTRY OF FOREIGN AFFAIRS, Oct. 7, 2022, available at <https://www.minrel.gob.cl/noticias-antiores/canciller-antonia-urrejola-lidera-reunion-por-la-situacion-de-derechos> [in Spanish].

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Tweet by Berta Valle (@bertavalle), TWITTER, Oct. 21, 2022, available at https://twitter.com/bertavalle/status/1583546760516943873?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1583546760516943873%7Ctwgr%5Ec7a8ca775dbefa6ba2d78ea40f99a7fa18ca8d53%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.lamesaredonda.net%2Fchile-esta-dando-siguiendo-a-la-situacion-de-nicaragua-dice-berta-valle-tras-reunion-con-la-canciller-antonia-urrejola%2F.

¹⁰⁸ *Chile Offers Nationality to All "Stateless" Nicaraguans*, CONFIDENCIAL, Feb. 22, 2023, available at <https://www.confidencial.digital/english/chile-offers-nationality-to-all-stateless-nicaraguans/>.

crisis.¹⁰⁹ In 2020, to accommodate the influx of asylum seekers, it created a special asylum category for people fleeing Nicaragua, as well as Cuba and Venezuela.¹¹⁰ It has since become a place of refuge for many Nicaraguans, offering protection and support networks for exiled human rights defenders.¹¹¹

In July 2018, Costa Rica withdrew its ambassador from Nicaragua in the midst of heightening tensions between the two countries. Three years later, then-President Alvarado halted plans to reinstate formal diplomatic representation in the country in light of arbitrary arrests being made on opposition candidates.¹¹² The only viable path forward, he indicated, would be conditioned on the release of the political prisoners.¹¹³ Then, in November 2021, Costa Rica became the first country to condemn the election results, and reiterated its call on Nicaragua to immediately release the political prisoners and restore their rights.¹¹⁴

¹⁰⁹ *Costa Rica pide en la ONU liberación de presos políticos de Nicaragua*, EXPEDIENTE PÚBLICO, Sept. 21, 2022, available at <https://www.expedientepublico.org/costa-rica-pide-en-la-onu-liberacion-de-presos-politicos-de-nicaragua/> [in Spanish]; Moises Castillo & Christopher Sherman, *Fleeing Nicaraguans Strain Costa Rica's Asylum System*, Sept. 2, 2022, available at <https://apnews.com/article/covid-health-elections-presidential-caribbean-52044748d15dbbb6ca706c66cc7459a5/>.

¹¹⁰ *Costa Rica Creates Special Asylum Category for Venezuelans, Nicaraguans and Cubans*, TICO TIMES, Nov. 13, 2020, available at <https://ticotimes.net/2020/11/13/costa-rica-creates-special-asylum-category-for-venezuelans-nicaraguans-and-cubans>.

¹¹¹ CASE STUDY: EXILED NICARAGUAN HUMAN RIGHTS DEFENDERS IN COSTA RICA, FREEDOM HOUSE, Jan. 26, 2022, at 4, available at https://freedomhouse.org/sites/default/files/2022-01/Special_Report_LAC_HRDs_Case_Study_Nicaragua_PDF_ENGLISH_Final_01262022.pdf.

¹¹² Velásquez, *supra* note 94.

¹¹³ *Id.*

¹¹⁴ Press Release, *Ante la Ausencia de Condiciones y Garantías Requeridas en Democracia, Costa Rica No Reconoce las Elecciones en Nicaragua*, PRESIDENCY OF THE REPUBLIC OF COSTA RICA, Nov. 7, 2021, available at <https://www.presidencia.go.cr/comunicados/2021/11/ante-la-ausencia-de-condiciones-y-garantias-requeridas-en-democracia-costa-rica-no-reconoce-las-elecciones-en-nicaragua/> [in Spanish] and Cindy Regidor, *Presidente de Costa Rica desea hablar con Ortega sobre presos políticos de Nicaragua*, CONFIDENCIAL, June 10, 2022, available at <https://www.confidencial.digital/politica/presidente-de-costa-rica-desea-hablar-con-ortega-sobre-presos-politicos-de-nicaragua/> [in Spanish].

Costa Rica went on to condemn the Ortega regime's practice of incarcerating political prisoners before the OAS¹¹⁵ and the UN.¹¹⁶ Specifically, Costa Rican Foreign Minister Arnoldo André Tinoco has declared before the UN General Assembly that "[t]he situation in Nicaragua demands the urgent attention of the international community for the release of hundreds of political prisoners ... and the return of democracy."¹¹⁷

Even upon the release of the more than 200 political prisoners in February 2023, the Government of Costa Rica did not adjust its diplomatic posture toward Nicaragua.¹¹⁸ According to current President Rodrigo Chaves Robles, by stripping the exiled former political prisoners of their nationality, Nicaragua has condemned them to "civil death."¹¹⁹

United Kingdom (UK): The UK has repeatedly called for the immediate and unconditional release of all opposition leaders and other political prisoners in Nicaragua. Following the November 7, 2021, presidential election, the UK imposed travel bans and asset freezes on individuals "particularly responsible for undermining Nicaragua's democratic principles and institutions, commissioning serious human rights violations, and the repression of civil society."¹²⁰ Wendy Morton, the Minister for Europe and Americas said "[t]he Ortega regime is denying the Nicaraguan people their fundamental human rights. The recent Presidential election was rigged, and opposition politicians and peaceful

¹¹⁵ Ileana Fernandez, *Costa Rica Votes in Favor of the OAS Resolution Condemning Nicaragua*, TICO TIMES, Oct. 11, 2022, available at <https://ticotimes.net/2022/10/11/costa-rica-votes-in-favor-of-the-oas-resolution-condemning-nicaragua/>.

¹¹⁶ *Costa Rica clama en la ONU por liberación de personas presas políticas en Nicaragua*, NICARAGUA ACTUAL, Sept. 21, 2022, available at <https://nicaraguaactual.tv/costa-rica-onu-liberacion-personas-presas-politicas-nicaragua/> [in Spanish].

¹¹⁷ *Id.*

¹¹⁸ Carlos Mora, *Gobierno de Chaves no cambiará postura con Nicaragua pese a liberación de reos*, CRHOY 505, Feb. 10, 2023, available at <https://www.crhoy.com/nacionales/gobierno-de-chaves-no-cambiara-postura-con-nicaragua-pese-a-liberacion-de-reos/> [in Spanish].

¹¹⁹ *Id.*

¹²⁰ Press Release, *UK Imposes Sanctions on Senior Nicaraguan Individuals Following Rigged Elections*, FOREIGN, COMMONWEALTH AND DEVELOPMENT OFFICE, Nov. 15, 2021, available at <https://www.gov.uk/government/news/uk-imposes-sanctions-on-senior-nicaraguan-individuals-following-rigged-elections>.

protestors have consistently been imprisoned for political purposes.”¹²¹ Moreover, on June 16, 2022, the UK’s Human Rights Ambassador, Rita French, delivered a statement during the Interactive Dialogue on the UN High Commissioner for Human Rights 2022 Report on Nicaragua. In her statement, the Ambassador expressed the UK is deeply concerned for the lack of democracy, human rights, and the rule of law in Nicaragua and called for the unconditional and immediate release of all political prisoners.¹²²

France: Since the start of the human rights crisis in 2018, France has repeatedly condemned the violence taking place in Nicaragua and the poor treatment received by people that were arrested in the context of the regime’s crackdown on the exercise of human rights.¹²³ On June 4, 2021, France strongly condemned the arbitrary detention of Cristiana Chamorro, one of the presidential candidates, and urged Nicaragua to immediately release her and “to abide by its international commitments on human rights and fundamental liberties.”¹²⁴ On January 27, 2023, France deplored the regime’s conviction and sentencing of two Nicaraguan-French citizens, Jeannine and Ana Carolina Horvilleur, to eight years in prison for “conspiracy to undermine national integrity and propagation of false news.”¹²⁵ Particularly, the Ministry for Europe and Foreign Affairs expressed concern for the conditions in which their compatriots were being held and the state of their health as the consular authorities were not

¹²¹ *Id.*

¹²² Speech, *UN Human Rights Council 50: UK Statement During the Interactive Dialogue on Nicaragua*, FOREIGN, COMMONWEALTH AND DEVELOPMENT OFFICE, Jun. 16, 2022, available at <https://www.gov.uk/government/speeches/un-human-rights-council-50-uk-statement-during-the-interactive-dialogue-on-nicaragua>.

¹²³ Press Release, *Nicaragua*, FRENCH MINISTRY FOR EUROPE AND FOREIGN AFFAIRS, May 9, 2018, available at <https://www.diplomatie.gouv.fr/en/country-files/nicaragua/news/article/nicaragua-09-05-18> and Press Release, *Situation in Nicaragua*, FRENCH MINISTRY FOR EUROPE AND FOREIGN AFFAIRS, Jul. 16, 2018, available at <https://www.diplomatie.gouv.fr/en/country-files/nicaragua/news/article/situation-in-nicaragua-16-07-18>.

¹²⁴ Press Release, *Nicaragua, Q&A From the Press Briefing*, FRENCH MINISTRY FOR EUROPE AND FOREIGN AFFAIRS, Jun. 4, 2021, available at <https://www.diplomatie.gouv.fr/en/country-files/nicaragua/news/article/nicaragua-q-a-from-the-press-briefing-4-jun-2021>.

¹²⁵ Press Release, *Nicaragua, Q&A From the Press Briefing*, FRENCH MINISTRY FOR EUROPE AND FOREIGN AFFAIRS, Jan. 27, 2023, available at <https://www.diplomatie.gouv.fr/en/country-files/nicaragua/news/article/nicaragua-q-a-27-01-23>

been granted access to them, in contravention of international law.¹²⁶ The Ministry also reported that despite several requests, the Ambassador had not been granted access to the trial, which took place behind closed doors.¹²⁷

Canada: Canada has widely condemned the Ortega regime's political prisoners policy and imposed sanctions selected officials working for Ortega. On June 11, 2021, former Minister of Foreign Affairs Marc Garneau, issued a statement condemning "the arbitrary arrest of political candidates in Nicaragua" and urging the regime to "guarantee the human rights and fundamental freedoms of all its people in accordance with international law and its own constitution."¹²⁸ He also called for the return of human rights bodies to the country to monitor the situation and ensure government scrutiny.¹²⁹ Particularly, he demanded the "immediate release of the arbitrarily arrested, imprisoned or detained political candidates, as well as the release of all political prisoners, and an end to the arrest and harassment of the independent media and civil society actors."¹³⁰ Canada has also been very active at the OAS, including co-chairing the OAS Working Group on Nicaragua. In this regard, it has held many meetings to either hold general discussions or to host Nicaraguans who could speak to the situation in the country.

Colombia: Colombia's first ever leftist government in recent history under Gustavo Petro did not support an OAS resolution in August 2022 condemning human rights violations in Nicaragua and demanding the immediate release of all political prisoners.¹³¹ The Foreign Affairs Minister, Álvaro Leyva, later explained that this decision was part of a humanitarian effort to seek a negotiated release of 21 prisoners, including Bishop Rolando Álvarez, four presidential candidates, and Dora María

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Statement, *Canada Condemns Arrest of Political Candidates and Civil Society Leaders in Nicaragua*, GLOBAL AFFAIRS CANADA, Jun. 11, 2021, available at <https://www.canada.ca/en/global-affairs/news/2021/06/canada-condemns-arrest-of-political-candidates-and-civil-society-leaders-in-nicaragua.html>.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ WORLD REPORT 2023: COLOMBIA, HUMAN RIGHTS WATCH, accessed Feb. 6, 2023 at 170, available at <https://www.hrw.org/world-report/2023/country-chapters/colombia#:~:text=More%20than%201.000%20human%20rights,and%20protect%20former%20FARC%20fighters.>

Tellez, a former revolutionary leader, nonetheless, Ortega rejected this idea.¹³² After wide criticism for this decision, Leyva labeled Ortega as a “quintessential abuser of human rights.”¹³³ On February 23, 2023, the Colombian Government issued a press releasing offering the Colombian nationality for those “who have been abused by Ortega’s intolerant power.”¹³⁴

The Vatican: Despite the Ortega regime’s fierce crackdown on the Catholic Church, Pope Francis remained largely silent on this matter.¹³⁵ While there were some brief declarations from his part, some demanded that he speaks out more forcefully.¹³⁶ In August, 2022, following the regime’s arrest of Bishop Rolando Álvarez on August 19, 2022, the Pope explained “I am following closely, with concern and sorrow, the situation in Nicaragua, which involves both people and institutions” and declared “I would like to express my conviction and my hope that, through open and sincere dialogue, the basis for a respectful and peaceful coexistence can still be found.”¹³⁷ After Bishop Álvarez’s conviction and sentence to 26 years in prison, Pope Francis said he was “pained” by the news coming from Nicaragua. He said he had prayed for Mary’s intercession to open the hearts of the “responsible politicians and all citizens” to the pursuit of

¹³² “Daniel Ortega es uno de los violadores por excelencia de los derechos humanos”: Álvaro Leyva, CAMBIO, Sept. 9, 2022, available at <https://cambiocolombia.com/articulo/poder/daniel-ortega-es-uno-de-los-violadores-por-excelencia-de-los-derechos-humanos-alvaro> [in Spanish] and Gustavo Petro: “La petición que hice para liberar a los presos (políticos), no fue atendida por Ortega,” CONFIDENCIAL, Dec. 20, 2022, available at <https://www.confidencial.digital/politica/gustavo-petro-la-peticion-que-hice-para-liberar-a-los-presos-politicos-no-fue-atendida-por-ortega/> [in Spanish].

¹³³ *Id.*, Daniel Ortega es uno de los violadores por excelencia de los derechos humanos.

¹³⁴ *Comunicado de Prensa*, MINISTERIO DE RELACIONES EXTERIORES COLOMBIA, Feb. 23, 2023, available at <https://www.cancilleria.gov.co/newsroom/publicques/comunicado-prensa-60> [in Spanish].

¹³⁵ Kendall Tietz, *Pope Largely Silent on Nicaragua’s detainment of Catholic Bishop Ahead of Upcoming Hearing*, FOX NEWS, Jan. 9, 2023, available at <https://www.foxnews.com/media/pope-largely-silent-nicaraguas-detainment-catholic-bishop-ahead-upcoming-hearing>.

¹³⁶ Ryan Berg, *Crackdown on Religious Freedom in Nicaragua*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, Nov. 15, 2022, at 7, available at <https://www.uscirtf.gov/sites/default/files/Ryan%20Berg%20Testimony.pdf>.

¹³⁷ Gabriella Cerasso, *Pope Expresses Sorrow for Nicaragua, Says Dialogue Should be Basis for a Respectful Coexistence*, VATICAN NEWS, Aug. 21, 2022, available at <https://www.vaticannews.va/en/pope/news/2022-08/pope-expresses-sorrow-for-nicaragua.html>.

peace, which he said is achieved through the “patient exercise of dialogue.”¹³⁸ Finally, on March 10, 2023, in an interview speaking about the imprisonment of Bishop Álvarez, Pope Francis expressed that the Ortega regime resembles Hitler’s dictatorship.¹³⁹ He also labeled Ortega as someone who is “unstable.”¹⁴⁰ In response to these declarations, Ortega severed diplomatic ties with the Vatican.¹⁴¹

d. Civil Society

International human rights organizations and think tanks have played a leading role in raising awareness about the political prisoners of the Ortega regime. A select number of organizations and their work on this issue is described below.

Freedom House: In its annual reports on Nicaragua, Freedom House has highlighted the issue of political prisoners. In its 2019,¹⁴² 2020,¹⁴³ 2021,¹⁴⁴ 2022,¹⁴⁵ and 2023¹⁴⁶ reports it has designated Nicaragua as “Not Free.” Particularly, the 2019 report explained that Nicaragua declined from “Partly Free” to “Not Free” due to the regime’s brutal repression of the social movement, which included the arrest and imprisonment of opposition figures.¹⁴⁷

¹³⁸ Justin McLellan, *Pope “Pained” by Nicaraguan Bishop’s 26-Year Prison Sentence*, CATHOLIC NEWS SERVICE, Feb. 13, 2023, available at <https://www.usccb.org/news/2023/pope-pained-nicaraguan-bishops-26-year-prison-sentence>.

¹³⁹ Courtney Mares, *Pope Francis Says Imprisonment of Nicaraguan Bishop Reminds Him of Hitler’s Dictatorship*, CATHOLIC NEWS AGENCY, Mar. 10, 2023, available at <https://www.catholicnewsagency.com/news/253835/pope-francis-says-imprisonment-of-nicaraguan-bishop-reminds-him-of-hitler-s-dictatorship>.

¹⁴⁰ *Id.*

¹⁴¹ *Nicaragua Breaks Up with the Holy See*, MERCOPRESS, Mar. 13, 2023, available at <https://en.mercopress.com/2023/03/13/nicaragua-breaks-up-with-the-holy-see>.

¹⁴² *Freedom in the World 2019: Nicaragua*, FREEDOM HOUSE, available at <https://freedomhouse.org/country/nicaragua/freedom-world/2019>.

¹⁴³ *Freedom in the World 2020: Nicaragua*, FREEDOM HOUSE, available at <https://freedomhouse.org/country/nicaragua/freedom-world/2020>.

¹⁴⁴ *Freedom in the World 2021: Nicaragua*, FREEDOM HOUSE, available at <https://freedomhouse.org/country/nicaragua/freedom-world/2021>.

¹⁴⁵ *Freedom in the World 2022: Nicaragua*, FREEDOM HOUSE, available at <https://freedomhouse.org/country/nicaragua/freedom-world/2022>.

¹⁴⁶ *Freedom in the World 2023: Nicaragua*, FREEDOM HOUSE, available at <https://freedomhouse.org/country/nicaragua/freedom-world/2023>.

¹⁴⁷ *Freedom in the World 2019: Nicaragua*, *supra* note 142.

Human Rights Watch: Human Rights Watch has widely documented human rights abuses in Nicaragua and has raised the situation of political prisoners in its annual reports. The 2022 report specifically highlights that Ortega “arbitrarily arrested and prosecuted government critics and political opponents, including presidential candidates, journalists, lawyers, and leaders of community, business, and student groups” to pave the way for his re-election.¹⁴⁸ Additionally, Human Rights Watch reported on prisoner’s conditions, which include being held *incommunicado*, subjected to repeated interrogations, and abusive conditions—prolonged solitary confinement and insufficient food.¹⁴⁹ According to Human Rights Watch “solitary confinement that lasts 15 consecutive days or more amounts to torture and is prohibited by international law.”¹⁵⁰

Amnesty International: Amnesty International issues annual reports on the human rights situation in Nicaragua. In the 2021/2022 report, Amnesty International indicated that “arbitrary detentions remained part of the state strategy of repression.”¹⁵¹ This report highlighted the arrest of two journalists, Miguel Mora and Miguel Mendoza, and of the General Manager of *La Prensa*, a newspaper.¹⁵² Moreover, Amnesty International issued a landmark report concluding that Nicaraguan authorities forcefully disappeared Daysi Tamara Dávila, Miguel Mendoza, José Pallais, Suyen Barahona, Victor Hugo Tinoco, Félix Maradiaga, Ana Margarita Vijil, Violeta Granera, Jorge Hugo Torres, and Dora María Tellez, given that the regime did not disclose their whereabouts after their arrest.¹⁵³

¹⁴⁸ WORLD REPORT 2022: NICARAGUA, HUMAN RIGHTS WATCH, accessed Dec. 16, 2022 at 489, available at https://www.hrw.org/sites/default/files/media_2022/01/World%20Report%202022%20web%20pdf_0.pdf.

¹⁴⁹ NICARAGUA: TRUMPED-UP CHARGES AGAINST CRITICS, HUMAN RIGHTS WATCH, Sept. 20, 2021, available at <https://www.hrw.org/news/2021/09/20/nicaragua-trumped-charges-against-critics>.

¹⁵⁰ *Id.*

¹⁵¹ *Nicaragua 2021*, AMNESTY INTERNATIONAL, accessed Feb. 17, 2023, available at <https://www.amnesty.org/en/location/americas/central-america-and-the-caribbean/nicaragua/report-nicaragua/>.

¹⁵² *Id.*

¹⁵³ ¡¿DONDE ESTÁN?! DESAPARICIÓN FORZADA COMO ESTRATEGIA DE REPRESIÓN EN NICARAGUA, AMNESTY INTERNATIONAL, Aug. 25, 2021, at 27, available at <https://www.amnesty.org/es/documents/amr43/4631/2021/es/> [in Spanish].

Center for Justice and International Law (“CEJIL”): CEJIL has closely monitored the human rights crisis in Nicaragua, repeatedly spoken in favor of the political prisoners, and called out human rights abuses. Notably, in November 2022, CEJIL published a report on the criminalization of women human rights defenders, where it noted that their arbitrary detention was frequently done with extreme physical and psychological violence.¹⁵⁴ This was the case of the first detentions of Violeta Granera, Dora María Tellez, and Tamara Dávila.¹⁵⁵ Moreover, CEJIL represents political prisoners before the Inter-American system of human rights, submitting petitions for precautionary measures.¹⁵⁶

Think Tanks: Washington-based think tanks and non-profit organizations, such as the Center for Strategic and International Studies, the Woodrow Wilson International Center for Scholars, the Inter-American Dialogue, the International Republic Institute, the National Democratic Institute, and the National Endowment for Democracy, among many others, have done an exceptional job in focusing attention to Nicaragua’s political prisoners. Whether it is by issuing thoughtful and well-researched commentaries, hosting panels, and participating in congressional hearings and other types of conferences, or even funding initiatives to promote democracy and human rights in Nicaragua, these organizations have played a leading role in highlighting the plight of these prisoners and of the political situation in the country more broadly.¹⁵⁷

¹⁵⁴ PERSEGUIDAS POR DEFENDER Y RESISTIR. CAPÍTULO NICARAGUA, CEJIL, Nov. 3, 2022, at 47, *available at* <https://cejil.org/wp-content/uploads/2022/11/IMD-Perseguidas-Ni-3rd.pdf>.

¹⁵⁵ *Id.*

¹⁵⁶ See Press Release, *Nicaragua: CIDH da medidas de protección a Félix Maradiaga en respuesta a creciente violencia en su contra*, CEJIL, Jul. 12, 2018, *available at* <https://cejil.org/comunicado-de-prensa/nicaragua-cidh-da-medidas-de-proteccion-a-felix-maradiaga-en-respuesta-a-creciente-violencia-en-su-contra/> [in Spanish].

¹⁵⁷ See, e.g., Daniel Runde et. al, *Mapping the Escalation Ladder Against the Ortega-Murillo Regime in Nicaragua*, CSIS, Oct. 3, 2022, *available at* <https://www.csis.org/analysis/mapping-escalation-ladder-against-ortega-murillo-regime-nicaragua>; *Nicaragua’s Simmering Crisis and the US Policy Response*, WILSONCENTER.ORG, accessed Feb. 17, 2023, *available at* <https://www.wilsoncenter.org/event/nicaraguas-simmering-crisis-and-us-policy-response>; *The Perilous State of Religious Freedom in Nicaragua*, HUMANRIGHTSCOMMISSION.HOUSE.GOV, accessed Feb. 17, 2023, *available at* <https://humanrightscommission.house.gov/events/hearings/perilous-state-religious->

2. Specific Actions: Legislation and Sanctions

Beyond statements and condemnation, the international response to Ortega's political prisoners has consisted primarily in legislation and sanctions. Financial sanctions, which consist of the blocking of property and assets and restrictions on international trade and loans, are imposed to increase international pressure on the regime by directly affecting its sources of funding and by going after specific individuals closely related to Ortega and who execute his authoritarian policies. They are not meant to be permanent but rather they are meant to be used as an instrument to compel him to release political prisoners, or at the very least, improve their detention conditions in the meantime. They are also not intended to target or affect the Nicaraguan population.

US: In addition to the sanctions available under the Global Magnitsky Human Rights Accountability Act¹⁵⁸ and Executive Order 13818¹⁵⁹ to block the property of persons involved in serious human rights abuse or corruption, the US has adopted two laws and several Executive Orders specifically to address sanctions to Nicaragua.

On December 20, 2018, the US enacted the Nicaragua Human Rights and Anticorruption Act of 2018 ("NICA Act"), which allows for the imposition of targeted sanctions to individuals or entities who are responsible or complicit in "a serious abuse or violation of human rights against persons associated with the protests in Nicaragua that began on April 18, 2018," "actions or policies that undermine democratic processes or institutions," "significant corruption," and the "arrest or prosecution of a person, including an individual or media outlet disseminating information to the public, primarily because of the legitimate exercise by such person of the freedom of speech, assembly, or the press."¹⁶⁰

freedom-nicaragua-0; *Nicaragua*, IRI.ORG, accessed Feb. 17, 2023, available at <https://www.iri.org/iri-around-the-world/latin-america-and-caribbean/nicaragua/>; *Nicaragua*, NDI.ORG, accessed Feb. 17, 2023, available at <https://www.ndi.org/latin-america-and-caribbean/nicaragua>; *Nicaragua 2021*, NED.ORG, accessed Feb. 17, 2023, available at <https://www.ned.org/region/latin-america-and-caribbean/nicaragua-2021/>.

¹⁵⁸ Global Magnitsky Human Rights Accountability Act, Public Law 114-328, Dec. 23, 2016.

¹⁵⁹ Exec. Order No. 13,818, 82 Fed. Reg. 60,839, Dec. 20, 2017.

¹⁶⁰ Nicaragua Human Rights and Anticorruption Act of 2018, Public Law 115-335, § 5(b), Dec. 20, 2018.

Additionally, the NICA Act provides that the US should use its vote, voice, and influence in international financial institutions such as the World Bank, Inter-American Development Bank, and International Monetary Fund to oppose the extension of loans or financial or technical assistance to the regime.¹⁶¹ According to the former Americas Director of Human Rights Watch, José Miguel Vivanco, “[t]his bi-partisan legislation can play a very important role in pressing the Ortega-Murillo government to stop its brutal repression of opponents.”¹⁶²

As a response to the crack down on the political opposition, the detention of all presidential candidates, and the lack of free and fair elections, on November 10, 2021, the US enacted the RENACER Act.¹⁶³ The RENACER Act “directs US leadership at international financial institutions to advocate for increased oversight with respect to any loan or financial or technical assistance for projects in Nicaragua.”¹⁶⁴ Moreover, it instructs the Department of State and Department of Treasury to establish a “coordinated strategy to align diplomatic engagement with the implementation of targeted sanctions to facilitate free, fair, and transparent elections in Nicaragua.”¹⁶⁵

Furthermore, on November 27, 2018, President Donald Trump issued Executive Order 13851 (Blocking Property of Certain Persons Contributing to the Situation in Nicaragua), which declared that the situation in Nicaragua constituted an unusual and extraordinary threat to the national security and foreign policy of the US.¹⁶⁶ It allowed for targeted pressure on the regime by blocking the property and assets of persons responsible or complicit for human rights abuses in Nicaragua,

¹⁶¹ *Id.*, at § 4(a).

¹⁶² *Nicaragua: US Legislation Key for Accountability*, HUMAN RIGHTS WATCH, Dec. 12, 2018, available at <https://www.hrw.org/news/2018/12/12/nicaragua-us-legislation-key-accountability>.

¹⁶³ Reinforcing Nicaragua’s Adherence to Conditions for Electoral Reform Act of 2021, Public Law 117-54, Nov. 10, 2021.

¹⁶⁴ *S.1064 – RENACER Act*, CONGRESS.GOV., accessed Feb. 18, 2023, available at <https://www.congress.gov/bill/117th-congress/senate-bill/1064>.

¹⁶⁵ *Id.*

¹⁶⁶ Blocking of Certain Persons Contributing to the Situation in Nicaragua, Executive Order 12851, Nov. 27, 2019, available at <https://www.federalregister.gov/documents/2018/11/29/2018-26156/blocking-property-of-certain-persons-contributing-to-the-situation-in-nicaragua>.

undermining democratic processes or institutions, or threatening the peace, stability and security of Nicaragua, among others.¹⁶⁷

On October 24, 2022, the Biden Administration announced the amendment of Executive Order 13851 to expand the Nicaragua sanctions program to be able to sanction identified sectors of the economy.¹⁶⁸ In particular, the US government sanctioned the gold sector of the Nicaraguan economy, which the regime uses to fund its authoritarian and destabilizing activities.¹⁶⁹ Also, the amended Executive Order allows for future restrictions on trade between the US and Nicaragua and of other investment sectors.¹⁷⁰ Additionally, along with the expansion of sanctions, the US imposed visa restrictions on more than 500 Nicaraguan individuals and family members working for the regime or conducting actions that injure democratic institutions and impede the restoration of democracy in the country.¹⁷¹ These measures are in addition to previous ones including the designation of Nicaragua's state mining company ENIMINAS¹⁷² and the reallocation of the country's sugar quota.¹⁷³ According to Eddy Acevedo, from the Woodrow Wilson International Center for Scholars, this new policy, supported widely across both parties, was a very strong

¹⁶⁷ *Id.*

¹⁶⁸ Statement, *FACT SHEET: Biden-Harris Administration Expands Efforts to Hold Nicaraguan Government Accountable*, THE WHITE HOUSE, Oct. 24, 2022, available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/24/fact-sheet-biden-harris-administration-expands-efforts-to-hold-nicaraguan-government-accountable/> and *La orden ejecutiva 13851 de EE.UU.: De sancionar a Murillo a castigar el oro nicaragüense*, CONFIDENCIAL, Oct. 25, 2022, available at <https://www.confidencial.digital/politica/la-orden-ejecutiva-13851-de-ee-uu-de-sancionar-a-murillo-a-castigar-el-oro-nicaraguense/> [in Spanish].

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Press Release, *Treasury Sanctions Nicaraguan State Mining Company*, US DEPARTMENT OF THE TREASURY, Jun. 17, 2022, available at <https://home.treasury.gov/news/press-releases/jy0822>.

¹⁷³ Paul Wiseman and Gabriela Selser, *Turning Up Heat, US Targets Nicaraguan Sugar Imports*, AP NEWS, Jul. 21, 2022, available at <https://apnews.com/article/united-states-global-trade-nicaragua-daniel-ortega-ff975a5e33b2ebf44c84b5d00417d636> and Press Release, *USTR Announces Fiscal Year 2022 Allocation of Additional Tariff-Rate Quota Volume for Raw Cane Sugar*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, Jul. 20, 2022, available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/ustr-announces-fiscal-year-2022-allocation-additional-tariff-rate-quota-volume-raw-cane-sugar>.

message from Biden to Daniel Ortega demanding the immediate release of all political prisoners.¹⁷⁴

These new sanctions were important and occurred just as the families of a number of political prisoners, launched a campaign to publish artist renditions of what their loved ones looked like with the extreme weight loss. Overnight, the regime put out videos of Maradiaga and then others. And in short order, the prisoner conditions began improving in many ways, including increasing the food provided to them. In early December, children were allowed to visit for the first time and authorities organized holiday celebrations, as well as finally prisoners with families abroad were able to have phone calls for the New Year.

Notably, the US had previously sanctioned dozens of individuals for their involvement in the situation of political prisoners and the crack down that originated in 2018. Some sanctioned officials include the Vice President Rosario Murillo, General Francisco Díaz, the police chief, Fidel Moreno Briones, a political appointee in Managua mayor's office, and Nestor Moncada a top presidential aide.¹⁷⁵

On June 9, 2021, in response to the wave of repression, the Department of State announced sanctions on the Ortega regime due to the arbitrary detentions of presidential candidates Cristiana Chamorro, Arturo Cruz, Félix Maradiaga, Juan Sebastián Chamorro, and other civil society and opposition leaders arrested that week.¹⁷⁶ As such, the Department of Treasury sanctioned Camila Antonia Ortega Murillo, advisor and daughter of Ortega and coordinator of the National Commission for the Creative Economy, Leonardo Ovidio Reyes Ramirez, the President of the Central Bank of Nicaragua, Julio Modesto Rodriguez Balladares, a military

¹⁷⁴ Carlos Chamorro, *Eddy Acevedo: "El Tesoro va a hablar con las empresas mineras en Nicaragua,"* CONFIDENCIAL, Oct. 30, 2022, available at <https://www.confidencial.digital/politica/eddy-acevedo-el-tesoro-va-a-hablar-con-las-empresas-mineras-en-nicaragua/>.

¹⁷⁵ *Human Rights Watch, Nicaragua: US Legislation Key for Accountability*, *supra* note 162 and Press Release, *Treasury Sanctions Three Nicaraguan Individuals for Serious Human Rights Abuses and Corrupt Acts*, US DEPARTMENT OF TREASURY, Jul. 5, 2018, available at <https://home.treasury.gov/news/press-releases/sm422>.

¹⁷⁶ Press Statement, *Announcing Sanctions on the Ortega Regime in Response to Arbitrary Detentions and Other Undemocratic Moves*, US DEPARTMENT OF STATE, Jun. 9, 2021, available at <https://www.state.gov/announcing-sanctions-on-the-ortega-regime-in-response-to-arbitrary-detentions-and-other-undemocratic-moves/>.

general and executive director of the military's pension and investment fund, and Edwin Ramon Castro Rivera, a National Assembly Deputy.¹⁷⁷ In its press release announcing the sanctions, the State Department declared that "there are costs for those who support or carry out the Ortega regime's suppression" and called Ortega to immediately release the presidential candidates.¹⁷⁸

Months later, on November 15, 2021, the Department of Treasury announced the sanctioning of the Public Ministry of Nicaragua, the country's Attorney General's office, as well as nine Nicaraguan officials as a response to the sham elections conducted on November 7, 2021.¹⁷⁹ The Treasury explained that the Public Ministry "unjustly arrested and investigated presidential candidates and prevented them from running for office, thereby undermining democracy in Nicaragua" by relying on the *Sovereignty Law 1055*.¹⁸⁰ Also, the Treasury stated the Public Ministry was responsible for the arrest of nearly 40 individuals since late May 2021, including leaders from civil society, the private sector, students, and journalists.¹⁸¹

The Department of State included 23 Nicaraguan judges and prosecutors in the Section 353 Corrupt and Undemocratic Actors report to Congress for their involvement in bringing spurious charges in order to jail regime opponents or convicting and sentencing them on false charges.¹⁸² Persons identified in this report are ineligible for visas and admission to the US and any visa or entry documentation is revoked

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Press Release, *Treasury Sanctions Public Ministry of Nicaragua and Nine Government Officials Following Sham November Elections*, US DEPARTMENT OF THE TREASURY, Nov. 15, 2021, available at <https://home.treasury.gov/news/press-releases/jy0481#:~:text=Law%201055%20prohibits%20from%20public,to%20be%20undemining%20Nicaraguan%20sovereignty>.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² REPORT TO CONGRESS ON FOREIGN PERSONS WHO HAVE KNOWINGLY ENGAGED IN ACTIONS THAT UNDERMINE DEMOCRATIC PROCESSES OR INSTITUTIONS, SIGNIFICANT CORRUPTION, OR OBSTRUCTION OF INVESTIGATIONS INTO SUCH ACTS OF CORRUPTION IN EL SALVADOR, GUATEMALA, HONDURAS, AND NICARAGUA PURSUANT TO SECTION 353(B) OF THE DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2021, US DEP'T OF STATE, accessed Feb. 18, 2023, available at <https://www.state.gov/wp-content/uploads/2022/08/Tab-2-353-Names-June-2022-Report-Correction.pdf>.

immediately.¹⁸³ Among those included are the following judges that convicted and sentenced prisoners on false, vague charges of “undermining national integrity”:¹⁸⁴

- **Luden Martin Quiroz García**, judge that convicted and sentenced opposition leader Ana Margarita Vijil, journalist Miguel Mendoza, former Foreign Minister Mauricio Díaz, former presidential candidate Cristiana Chamorro, opposition member Pedro Joaquin Chamorro, employees of the Violeta Barrios de Chamorro Foundation, and former National Assembly member Maria Fernanda Flores.
- **Melvin Leopoldo Vargas García**, judge that convicted and sentenced opposition activist Samantha Jirón.
- **Angel Jancarlos Fernández González**, judge that convicted and sentenced private sector leaders Luis Rivas, Michael Healy, and Alvaro Vargas, former Sandinista leader Dora María Tellez, and opposition leaders Jose Antonio Peraza and Victor Hugo Tinoco.
- **Félix Ernesto Salmerón Moreno**, judge that convicted and sentenced presidential candidates Juan Sebastián Chamorro, Félix Maradiaga, Arturo Cruz, and Medardo Mairena, civic leaders Pedro Mena, José Pallais, Violeta Granera, Tamara Dávila, José Quintanilla, Roger Reyes, and business leader José Adán Aguerri.
- **Nadia Camila Tardencilla Rodríguez**, judge that convicted and sentenced student leaders Lesther Aleman and Max Jerez, former presidential candidate Miguel Mora, political analyst Edgar Parrales, Director of La Prensa newspaper, Juan Lorenzo Holmann, and electoral expert Harry Chávez.
- **Ulisa Yahoska Tapia Silva**, judge that convicted and sentenced opposition activists Yaser Vado and Yader Parajón, former Foreign Minister Francisco Aguirre Sacasa, opposition leader Suyen Barahona, civic leader Freddy Navas, human rights lawyer Maria Oviedo, former presidential candidate Noel Vidaurre, and political commentator Jaime Arellano.

¹⁸³ *Id.*, at 1.

¹⁸⁴ *Id.*, at 7-10.

In addition, on April 19, 2023, the US Department of Treasury announced targeted financial sanctions on three Nicaraguan judges which were directly involved with human rights abuses suffered by Nicaraguan political prisoners: Ernesto Leonel Rodríguez Mejía, presiding magistrate of the Managua District Court of Appeals, who announced the decision to strip 94 Nicaraguans of their nationality, Nadia Camila Tardencilla Rodríguez, judge in the Second District Trial Court, who issued the judicial order that convicted Bishop Álvarez of undermining national integrity and propagation of false news, and Octavio Ernesto Rothschuch Andino, president magistrate of the Court of Appeals of Managua, who announced the decision to deport the 222 political prisoners.¹⁸⁵

European Union (“EU”): In response to Ortega’s crack down on civil society and the political opposition, the EU first introduced a sanctions program in October 2019, after the European Council repeatedly expressed its concern about the deteriorating political and social situation and condemned the repression on the political opposition.¹⁸⁶ In May 2020, the Council adopted the first restrictive measures against six individuals.¹⁸⁷ Subsequently, on August 5, 2021, the Council announced such measures on eight other individuals¹⁸⁸—officials of the regime. These individuals are subject to an asset freeze and EU companies are forbidden from doing business with them.¹⁸⁹ Among those sanctioned by the EU are Vice President Rosario Murillo, her son Juan Carlos Ortega Murillo, presidential advisor for economic affairs Bayardo Arce, president of the National Assembly Gustavo Porras, Attorney General Ana Julia Guido, president of the Supreme Court Alba Luz Ramos, Chief of Police

¹⁸⁵ Press Release, *Treasury Sanctions Three Nicaraguan Judicial Officials Involved in Human Rights Abuses*, US DEPARTMENT OF THE TREASURY, Apr. 19, 2023, available at <https://home.treasury.gov/news/press-releases/jy1424#:~:text=WASHINGTON%20E2%80%94Today%2C%20the%20U.S.%20Department,citizens%20who%20oppose%20his%20government>.

¹⁸⁶ Press Release, *Nicaragua: EU Imposes Sanctions on Eight More Individuals*, COUNCIL OF THE EUROPEAN UNION, Aug. 2, 2021, available at <https://www.consilium.europa.eu/en/press/press-releases/2021/08/02/nicaragua-eu-imposes-sanctions-on-eight-more-individuals/>.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

in the Department of León Fidel Dominguez, and Chief of Surveillance and Patrol Juan Valle.¹⁹⁰

Canada: On June 21, 2019, the Government of Canada first imposed sanctions on nine Nicaraguan officials, including Rosario Murillo, the president of the National Assembly, Gustavo Porras, national security presidential adviser Nestor Moncada Lau, and Police Chief Francisco Javier Díaz.¹⁹¹ In July 2021, in response to Nicaragua's continued harassment of political opponents and crackdown on all forms of dissent and the enactment of the *Sovereignty Law 1055*, Canada added 15 more individuals to the sanctions list.¹⁹² Among those included are the Director of *El Chipote* Luis Alberto Pérez Olivas, Attorney General Ana Julio Guido, Police Deputy Director Ramón Antonio Avellán, and president of the Supreme Electoral Council Lumberto Campbell.¹⁹³

United Kingdom (UK): On December 31, 2020, the UK implemented the Nicaragua sanctions regime, which puts in place sanctions to encourage the regime to abide by the rule of law and comply with international human rights law. At least 14 individuals have been sanctioned under this program; those who are directly related to the situation of political prisoners also include Rosario Murillo, Francisco Javier Díaz, Luis Alberto Pérez Olivas, Ramón Antonio Avellán, Nestor Moncada Lau, Gustavo Porras, and Ana Julia Guido.¹⁹⁴

Switzerland: On June 24, 2020, Switzerland decided to impose coercive measures in response to the situation in Nicaragua.¹⁹⁵ As such, the Swiss Federal Council imposed financial and travel sanctions against six persons with ties to Daniel Ortega, their assets were frozen and they

¹⁹⁰ *EU Sanctions Rosario Murillo and Seven Senior Officials*, CONFIDENCIAL, Aug. 4, 2021, available at <https://www.confidencial.digital/english/eu-sanctions-rosario-murillo-and-seven-senior-officials/>.

¹⁹¹ *Nicaragua Sanctions*, GLOBAL AFFAIRS CANADA, Jun. 21, 2019, available at <https://www.canada.ca/en/global-affairs/news/2019/06/nicaragua-sanctions.html>.

¹⁹² *Regulations Amending the Special Economic Measures (Nicaragua) Regulations: SOR/2021-175*, CANADA GAZETTE, July 14, 2021, available at <https://gazette.gc.ca/rp-pr/p2/2021/2021-07-21/html/sor-dors175-eng.html>.

¹⁹³ *Id.*

¹⁹⁴ The UK Sanctions List Publication, GOV.UK, accessed Feb. 18, 2023, available at <https://www.gov.uk/government/publications/the-uk-sanctions-list>.

¹⁹⁵ Press Release, *Human Rights Violations in Nicaragua: Federal Council to Impose Targeted Sanctions*, THE FEDERAL COUNCIL, Jun. 24, 2020, available at <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-79575.html>.

were banned from entering or travelling through the country.¹⁹⁶ These individuals were two personal advisors to Ortega and four high-ranking representatives of the judicial system and police accused of serious human rights violations.¹⁹⁷ On August 12, 2021, eight more individuals were added to the list.¹⁹⁸

Argentina: Finally, another international action that is worth noting is that in October 2022, an Argentine judge launched a criminal investigation against Daniel Ortega and Rosario Murillo to determine whether they are responsible for crimes against humanity under the principle of universal jurisdiction.¹⁹⁹ This derived from a complaint filed by two lawyers after the arrest of Bishop Rolando Álvarez pointing that his detention takes place within the context of a systematic attack against the civilian population.²⁰⁰

B. Domestic Response

Despite a hostile and repressive environment, Nicaraguan activists, human rights defenders, civil society groups, media, and professionals have been resilient and under harsh circumstances have advocated tirelessly on behalf of Ortega's political prisoners. This task has been substantially challenging given that the regime has closed civic space in Nicaragua by cancelling the legal personality of more than 3,000 organizations, many of which were human rights organizations working for political prisoners. Local human rights groups have actively engaged

¹⁹⁶ *Id.*

¹⁹⁷ *Switzerland Sanctions Six of Daniel Ortega's Functionaries*, CONFIDENCIAL, Jun. 26, 2020, available at <https://www.confidencial.digital/english/switzerland-sanctions-six-daniel-ortegas-functionaries/>. The individuals were Francisco Javier Díaz, Nestor Moncada Lau, Sonia Castro, former Health Minister, Ramón Avellán, Luis Alberto Pérez Rivas, and Justo Urbina.

¹⁹⁸ Press Release, *Sanctions: Ordinance on Measures Against Nicaragua*, State Secretariat for Economic Affairs, Aug. 12, 2021, available at <https://www.seco.admin.ch/seco/en/home/seco/nsb-news.msg-id-84704.html>.

¹⁹⁹ Almudena Calatrava, *Argentine Judge Launches Probe into Nicaragua Abuse Claims*, AP NEWS, Oct. 6, 2022, available at <https://apnews.com/article/crime-caribbean-judiciary-argentina-criminal-investigations-25894f039e20680d511a40e809e3b127>. The principle of universal jurisdiction entails the possibility that a national court from a third country investigates individuals for serious international crimes—such as crimes against humanity—on the basis that such crimes harm the international community. For this to occur, the country investigating must have enacted specific legislation to that effect.

²⁰⁰ *Id.*

with international organizations to denounce globally the situation of Nicaragua's political prisoners and demanded the release of all of them.

VIII. RECOMMENDATIONS

This report is the first to comprehensively synthesize, summarize, and analyze the Ortega regime's approach to crushing real and imagined dissent through the arbitrary detention of political prisoners and related torture and egregious due process violations. There is no single proven pathway to securing the release of political prisoners in Nicaragua. But there are a wide variety of actions that have been undertaken to highlight the plight of Nicaragua's political prisoners and have collectively had a major impact on securing their release.

A. Targeted Financial Sanctions and Travel Bans on Perpetrators

Daniel Ortega's strong and emotional reaction to the global sanctions imposed on senior Nicaraguan officials and institutions, including members of his family, demonstrates unequivocally that Managua is especially sensitive to actions that impose real consequences for those involved in gross abuses of human rights. In a next phase of work, a much wider group of perpetrators, including those with command and line responsibility, needs to be developed and targeted.

Recommendation 1: Individual countries and multilateral institutions should impose targeted financial sanctions (e.g., asset freezes) and travel bans on individual perpetrators already sanctioned by one or more jurisdiction. In addition, these sanctions should be applied to Daniel Ortega and Rosario Murillo. It would be most effective if there was strong coordination between sanctions offices across relevant jurisdictions including the US, Canada, EU, and UK, to impose such sanctions at the same time or very close in time. In addition, other countries with targeted sanctions regimes but have yet to target Nicaragua, such as Australia, Latvia, Lithuania, and Estonia, should be approached to apply sanctions to all those already sanctioned internationally, as a start.

B. Joint Actions Across Multilateral Lenders

The most effective way to squeeze a dictatorship is to target its sources of financial support. According to the International Monetary Fund, Nicaragua has more than doubled its foreign reserves since end-2018 to over \$4 billion. Its GDP is projected to be \$17.2 billion in 2023.

And real GDP grew by 10.3% in 2021, 4% in 2022, and is expected to grow by 3% this year.¹

Unfortunately, Nicaragua continues to receive enormous funding from the Central American Bank for Economic Integration (CABEI). Nicaragua has the largest portfolio of financed initiatives in the region, with 33 projects funded at a level of \$2.476 billion through end of 2021, which is 26% of its total lending.² Former US Ambassador John Feeley, Executive Director of the Center for Media Integrity of the Americas urged the US Treasury Department to sanction Dante Mossi, Executive President of CABEI, who has “become the banker to dictators.”³ And Ryan Berg, Director of the Americas Program at the Center for Strategic and International Studies (CSIS), observed “dictator-friendly Executive President, Dante Mossi – remains an outlier, lending billions in recent years to Ortega.”⁴ In addition, votes in the Board of Governors of CABEI on Nicaragua projects have been close in recent years. But two longtime allies of the West, both the Republic of Korea (South Korea) and Taiwan have repeatedly voted in support of more money for Nicaragua. In addition, in 2021 alone, the IMF provided Nicaragua \$353.5 million, the World Bank provided \$128 million, and the Inter-American Development Bank (IADB) \$195.7 million.⁵ Despite the rhetoric of various governments around the world that they intended to use their voices and votes to restrict funding, this simply has not happened yet.

¹ Press Release, *IMF Executive Board Concludes 2022 Article IV Consultation With Nicaragua*, INTERNATIONAL MONETARY FUND, Jan. 27, 2023, available at <https://www.imf.org/en/News/Articles/2023/01/27/pr2322-imf-executive-board-concludes-2022-article-iv-consultation-with-nicaragua>.

² *We Are CABEI: Nicaragua*, CENTRAL AMERICAN BANK FOR ECONOMIC INTEGRATION, available at <https://www.bcie.org/en/member-countries/founders/republic-of-nicaragua/we-are-cabei-nicaragua>.

³ Ivan Olivares, *The Banker Who Funds Dictators Seeks Reelection*, CONFIDENCIAL, Sept. 14, 2022, available at <https://www.confidencial.digital/english/dante-mossi-the-banker-who-funds-dictators-seeks-reelection/>.

⁴ Testimony of Ryan C. Berg, Director of the Americas Program, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, *Crackdown on Religious Freedom in Nicaragua*, Before US Commission on International Religious Freedom, Nov. 15, 2022, available at <https://www.uscirf.gov/sites/default/files/Ryan%20Berg%20Testimony.pdf>.

⁵ *Ortega Has So Far Won the Battle Against the Nica Act*, LA PRENSA, Mar. 28, 2022, available at <https://havanatimes.org/features/ortega-has-so-far-won-the-battle-against-the-nica-act/>.

Recommendation 2: Governments worldwide should use their voices and votes to block additional lending to Nicaragua, until the Ortega regime both stops committing gross human rights abuses and ensures justice and accountability for victims. Specific actions that can be undertaken with regards to major lenders on Nicaragua include:

- *Central American Bank for Economic Integration* – Members of the Board of Governors should oppose further lending to Nicaragua and countries aligned with South Korea and Taiwan should urge them to stop supporting projects in Nicaragua.
- *International Monetary Fund* – Members of the Board of Governors should use their voice and vote to oppose further lending to Nicaragua.
- *World Bank* – Members of the Board of Directors should use their voice and vote to oppose further lending to Nicaragua.
- *Inter-American Development Bank* – Members of the Board of Governors should use their voice and vote to oppose further lending to Nicaragua.

C. Joint Actions Across Other Multilateral Institutions

While undoubtedly less effective than the imposition of sanctions, Nicaragua is also sensitive to criticism, especially when it is multilateral. There are a wide array of multilateral venues where resolutions and actions focused on the Nicaragua's political prisoners should be undertaken, if the political will can be generated to support these activities.

Recommendation 3: Like-minded governments around the world should work collaboratively through multilateral organizations to apply pressure on Ortega to free his political prisoners in all venues where action can be undertaken. Examples of such venues and potential approaches include:

- *UN Security Council* – As noted earlier, on September 5, 2018, the Security Council voted the situation of Nicaragua onto the Council's permanent agenda and was briefed by the OAS, the Nicaraguan Foreign Minister, and Félix Maradiaga, who after announcing his candidacy to run for President was later imprisoned as a political prisoner of the Ortega regime from June 2021 to February 2023. Under Article 27(2) of the UN Charter, a decision on a procedural matter, which includes adding or removing items from the Council's

permanent agenda, requires nine affirmative votes (voting on the agenda is not subject to the Permanent Five veto because the agenda is a procedural matter). Having never been voted off or otherwise removed without objection, the situation in Nicaragua remains on the Council's permanent agenda. To have the Council meet to discuss Nicaragua again, it would only take a country serving as its President (which rotates monthly) to schedule a briefing. In the coming months, Presidents of the Security Council include: Switzerland (May 2023), UK (July 2023), and the US (August 2023).⁶ At such a meeting, the Council could again be briefed by the OAS and might also want to be briefed by the GHREN. In addition, it should also invite back Félix Maradiaga, who offered what in hindsight were very accurate observations in 2018, who could offer firsthand testimony coming from his 20 months as a political prisoner in Nicaragua. In the meantime, any non-President of the Security Council could invite a group of former political prisoners to speak at an Arria formula briefing, which is an informal meeting of the Security Council.

- *UN Human Rights Council* – In March 2022, the Human Rights Council adopted Resolution 49/3, which both called on Nicaragua to end the use of arbitrary arrests and created a Group of Human Rights Experts on Nicaragua for a period of one year to investigate and report on serious human rights abuses in Nicaragua.⁷ The Human Rights Council in its 52nd session renewed the mandate of the Group of Experts for another two years. Logistical, administrative, and financial support and resources must be provided to the GHREN so that it can successfully execute its functions.
- *UN High Commissioner for Human Rights Volcker Türk* – On September 9, 2022, the UN General Assembly approved the appointment of Volcker Türk as the new UN High Commissioner, after his appointment to the position by UN Secretary-General Antonio

⁶ Security Council Presidency, UN SECURITY COUNCIL, *available at* <https://www.un.org/securitycouncil/content/presidency>.

⁷ Human Rights Council Res. U.N. Doc., A/HRC/RES/49/3 at ¶ 5 (Mar. 31, 2022), *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/303/66/PDF/G2230366.pdf?OpenElement>.

Guterres.⁸ In December 2022, Türk gave his first detailed remarks on the “climate of oppression” that was occurring in Nicaragua in an address to the UN Human Rights Council. At the time, he offered his support to Nicaraguan authorities and asked for access for his staff to visit. In light of recent events and serious ongoing challenges in Nicaragua, Türk should ask the Ortega regime to visit the country. While it is unlikely that Ortega will agree, a visit by the High Commissioner would provide an opportunity to engage the regime and report on what is happening there.

- *Organization of American States* – Numerous bodies of the OAS have engaged on the situation in Nicaragua, including Secretary General Luis Almagro, the Permanent Council, the General Assembly, the IACHR (which also created a Special Follow-Up Mechanism), and the Inter-American Court. Unfortunately, on November 19, 2021, Nicaragua denounced the OAS Charter and said it will withdraw from the Organization.⁹ While Nicaragua refuses to pay its debt to the OAS, it will be barred from withdrawing. As such, all relevant organs and agencies of the OAS should continue to engage as they have been doing. That said, there is one major action that is possible but has not been undertaken because of a lack of political will. Specifically, in 2001, the OAS General Assembly adopted the Inter-American Democratic Charter. It affirmed that democracy should be the common form of government for the region and in Article 1 states “The peoples of the Americas have a right to democracy, and their governments have an obligation to promote and defend it.”¹⁰ And in Article 21, it says: “When the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic

⁸ Edith Lederer & Frank Jordans, *UN Approves Volker Türk as New Human Rights Chief*, ASSOCIATED PRESS, Sept. 8, 2022, available at <https://apnews.com/article/united-nations-general-assembly-china-beijing-chile-37dc590ae822dc851e075d19571466ae>.

⁹ Press Release, *The IACHR Stresses Its Competent Jurisdiction Concerning Nicaragua and Laments Nicaragua’s Decision to Denounce the Charter of OAS in a Context of Serious Human Rights Violations*, OAS, Nov. 20, 2021, available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/312.asp and Denis Rolando Moncada Colindres, Nicaraguan Minister of Foreign Affairs, Letter to the Secretary General of the Organization of American States, MRE/DM/00284/11/21, Nov. 18, 2021, available at <http://scm.oas.org/pdfs/2021/CP45252sCP.pdf> [in Spanish].

¹⁰ *Inter-American Democratic Charter*, General Assembly, ORGANIZATION OF AMERICAN STATES, 2001, available at https://www.oas.org/en/democratic-charter/pdf/demcharter_en.pdf#page=10.

order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of the right to participate in the OAS by an affirmative vote of two thirds of the member states [...].”¹¹

- *European Union* – The EU and its Parliament have both spoken out strongly repeatedly about the ongoing human rights abuses. And since 2020, the European Council has adopted restrictive measures (sanctions) against 21 persons and three entities, who are subjected to an asset freeze, travel ban, and are prohibited from doing business with EU citizens.¹² It is critically important that the EU continue speaking out strongly and also widen its restrictive measures to other perpetrators committing gross human rights abuses and key people that are enabling Ortega to remain in power.

D. Highlighting the Plight of Nicaragua’s Political Prisoners

Although pressure from multilateral organizations is essential, it can only be applied at specific times during periodic meetings. Therefore, it is also important for individual governments to speak out repeatedly regarding the Nicaragua’s political prisoners to demonstrate a consistent and sustained concern.

Recommendation 4: National governments should frequently and consistently highlight Nicaragua’s political prisoners. Examples of potential actions include:

- Statements by high-level government officials (e.g., President, Prime Minister, Minister of Foreign Affairs, parliamentarians), including when a political prisoner is arrested, charged, convicted, sentenced, tortured, or released; when the Mechanism for the Recognition of Political Prisoners adds a new political prisoner to its list in Nicaragua; or when a repressive law is enacted or amended. In addition, high-level officials should meet some of the 222 recently released political

¹¹ *Id.*, at Art. 21.

¹² Press Release, *Nicaragua: EU Sanctions Regime Prolonged for a Further Year*, EUROPEAN COUNCIL, Oct. 13, 2022, available at <https://www.consilium.europa.eu/en/press/press-releases/2022/10/13/nicaragua-eu-sanctions-regime-prolonged-for-a-further-year/>.

prisoners not only to hear their stories but to be seen to offer solidarity to them and the 36 left behind.

- A Parliamentary resolution condemning the Nicaragua's detention of political prisoners, urging the application of targeted sanctions, and calling for their release.
- Hearings before Parliament or relevant Ministries providing a platform for former political prisoners, advocates, and family members of current political prisoners to give testimony.
- Making political prisoners a priority in bilateral relationships with Nicaragua and raising them in every meeting with relevant Nicaraguan officials. This should include not only calls for release, but also demands that detainees be afforded their due process rights (including access to counsel) and held in conditions meeting minimum standards required by international law.

E. Joint Civil Society Efforts

Many organizations document the plight of Nicaragua's political prisoners around the world; however, given concerns about people still in Nicaragua, there is great reluctance among many groups to publish information or to advocate publicly. In light of Nicaragua's resistance to such advocacy, a common and coordinated strategy on political prisoners is urgently needed.

Recommendation 5: All civil society groups that document the plight of Nicaragua's political prisoners and that engage in advocacy on their behalf should consider joining or supporting a common public platform to build a global network that can work collectively to secure their release.

F. Media Engagement

The media has great power to effect change and advance efforts to secure the release of Nicaragua's political prisoners. Indeed, it was only because of relentless public storytelling by families of political prisoners, human rights organizations, and independent media about the horrific conditions in both *El Chipote* and *La Modelo* that the Ortega regime was forced to show the prisoners publicly, to feed them more, to provide greater sunlight, to give greater family access, and ultimately to release them.

Recommendation 6: The newly released political prisoners should, to the extent they are comfortable and can do so in a way that does no further damage their physical or mental health, report on how they were treated, tell their stories to the media, and advocate to secure the release of the remaining 36 political prisoners. This should include press conferences with ex-political prisoners, families of remaining political prisoners, lawyers, or other advocates. In addition, media outlets should write about Nicaragua’s political prisoners (and related issues), and publish op-eds by former and current political prisoners, their family members, and their advocates.

The greatest fear of any political prisoner is to be forgotten. This report has sought to focus attention on the plight of the Nicaragua’s remaining political prisoners so that their names and their stories are known throughout the world. It will undoubtedly be difficult to secure the liberation of all of Nicaragua’s political prisoners. But for the prisoners, their families, and the Nicaraguan people, failure is not an option—and if there is one thing that has been shown by the release of the 222 political prisoners, pressure works. And, as Nelson Mandela said, “It always seems impossible until it is done.”

APPENDIX I – LIST OF NICARAGUA’ S CURRENT POLITICAL PRISONERS¹

No.	Name	Location
Political Prisoners Detained Since April 2018 to Date		
1	Rolando José Álvarez Lagos	La Modelo
2	Axel Javier Balladares Merlo	Granada
3	Victor Manuel Carranza Silva	La Modelo
4	Kevin Emilio Castillo Prado	León
5	Eliseo de Jesús Castro Baltodano	Hospital
6	Daniel Agustín Cerrato Garay	La Modelo
7	Wilmer Augusto Duarte Duarte	Juigalpa-Cuisalá
8	Wilmer Duarte Murillo	Juigalpa-Cuisalá
9	Misael de Jesús Escorcia Rugama	Matagalpa-Waswalí
10	Beyker Enrique Ferreti Hernández	La Modelo
11	Manuel Salvador García Rodríguez	Granada
12	Axel Manuel González Garay	La Modelo
13	Pedro José Gutiérrez González	La Modelo
14	Maycol John Herrera Gutiérrez	León
15	Jonathan Snayder López Guzmán	La Modelo
16	Eddy Danilo Melendez Lacayo	La Modelo
17	Juan Ramón Mena Galarza/Garza	La Modelo
18	Edder Oniel Muñoz Centeno	Granada
19	Jaime Enrique Navarrete Blandón	La Modelo
20	Jeffrey José Ortega Orozco	La Modelo
21	Fanor Alejandro Ramos	La Modelo
22	Martha Candelaria Rivas Hernández	Granada
23	Walner Antonio Ruiz Rivera	La Modelo
24	José Manuel Urbina Lara	La Modelo
25	José Leonardo Urbina Rodríguez	La Modelo

¹ LISTA PERSONAS PRESAS POLÍTICAS NICARAGUA, MARZO 2023, Mecanismo para el Reconocimiento de Personas Presas Políticas, Mar. 31, 2023, at 1, *available at* <https://presasypresopoliticosnicaragua.org/wp-content/uploads/2023/04/8aa6cb62-5802-4827-aea8-bd872ae4464f.pdf> [in Spanish]. This is the most recent list published by Mecanismo, as of May 3, 2023.

26	Carlos Alberto Vanegas Gómez	Granada
Political Prisoners Before 2018		
27	Wilfredo José Balmaceda Castrillo	La Modelo
28	Walter José Balmaceda Ruiz	La Modelo
39	Zacarias Isabel Cano Angulo	La Modelo
30	José Ricardo Cortez Dávila	La Modelo
31	Eddy Antonio Gutiérrez Delgadillo	La Modelo
32	Rosenido Antonio Huerta Gonzalez	La Modelo
33	José Olivar Meza Raudez	La Modelo
34	Jairo Alberto Obando Delgadillo	La Modelo
35	Leonel Antonio Poveda Palacios	La Modelo
36	Marvin Vargas Herrera	La Modelo

APPENDIX II – BACKGROUND ON CRIMES AGAINST HUMANITY

The definition of the international category of crimes known as crimes against humanity has undergone several revisions since the concept was first defined in the 1945 London Charter. Unlike with other international crimes such as genocide, no specialized convention exists for crimes against humanity that articulates a universally recognized definition of the crime. Instead, two definition choices may be used in assessing a claim: the definition under customary international law and the Rome Statute of the International Criminal Court definition.

The current definition of crimes against humanity must be understood and appreciated with reference to the definition's historical evolution from 1945 to the present.¹ A comprehensive definition of crimes against humanity emerges from customary international law and the Rome Statute, though its parameters remain imprecise and are determined by each statutory definition and each international tribunal. Notwithstanding this imprecision, this appendix identifies the elements that must be satisfied in any jurisdiction to elevate an ordinary crime to an international crime against humanity.

A. Customary International Law's Current Definition of Crimes Against Humanity

Customary international law's definition of crimes against humanity today is derived from the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), Extraordinary Chambers in the Courts of Cambodia (ECCC), Special Tribunal for Lebanon (STL), Special Court for Sierra Leone (SCSL), and Special Panels for Serious Crimes (East Timor Tribunal).

Beginning with the London Charter, each definition of crimes against humanity shares a common structure: enumerated prohibited *actus reus* ("guilty acts") of a domestic criminal nature that become international crimes when committed under certain circumstances. Each definition contains similar *actus reus*, but the circumstances that elevate the crime to an international status have evolved over time. The following

¹ Margaret McAuliffe deGuzman, *The Road from Rome: The Developing Law of Crimes Against Humanity*, 22 HUM. RTS. Q. 335 (2000).

discussion will center on the evolution of these circumstances (e.g., international or jurisdictional elements) contained in the *chapeau* of the statutes to demonstrate which circumstances elevate a domestic crime to an international status under today's customary international law.

Typically, the statutes of international tribunals which include crimes against humanity and their respective jurisprudence hold that the following five elements must typically exist for a crime to qualify as a crime against humanity:

- 1) There must be an attack;
- 2) The acts of the accused must be part of the attack;
- 3) The attack must be widespread or systematic;
- 4) The attack must be directed against any civilian population; and
- 5) The principal offender must know of the wider context in which his acts occur and know that his acts are part of the attack.²

Other than the five requisite elements above, the statutes from each Tribunal require additional elements that establish the jurisdictional boundaries unique to each Tribunal and do not reflect customary international law.³ In fact, statutory provisions defining the crimes within the Tribunal's jurisdiction always should be interpreted as reflecting customary international law, unless an intention to depart from customary international law is expressed in the terms of the statute or from other authoritative sources, e.g., armed conflict requirement.⁴ The ICTY requires that the crimes be "committed in armed conflicts, whether international or internal in character."⁵ The ICTR, on the other hand, requires all prohibited acts to be committed on discriminatory grounds, not

² *Prosecutor v. Kunarac, Kovac, and Vukovic* (Case No. IT-96-23-A & IT-96-23/1-A), Judgment, Jun. 12, 2002, ¶ 85; *Prosecutor v. Krnojelac* (Case No. IT-97-25-T), Judgment, Mar. 15, 2002, ¶ 53; *Prosecutor v. Bisengimana*, (Case No. ICTR-00-60-T), Judgment, Apr. 13, 2006, ¶ 41-57.

³ Phyllis Hwang, *Defining Crimes Against Humanity in the Rome Statute of the International Criminal Court*, 22 FORDHAM INT'L L. J. 457 (1998-1999).

⁴ *Prosecutor v. Tadic* (Case No. IT-94-1-A), Judgment, Jul. 15, 1999, at ¶ 296.

⁵ Article 3 of the ICTR Statute and Article 5 of the ICTY Statute.

just the prohibited act of persecution.⁶ These differences are discussed below in light of their place in today's customary international law.

To fully assess customary international law's definition of crimes against humanity, six separate international or jurisdictional elements must be discussed: 1) the ICTY's armed conflict requirement; 2) the ICTR's discriminatory grounds; 3) what constitutes an attack; 4) when is an attack directed against any civilian population; 5) what constitutes a widespread or systematic attack; and 6) the requisite *mens rea* ("guilty mind").

Armed Conflict Requirement

The ICTY's definition is closer to the London Charter's Article 6(c) than the ICTR's definition, but the ICTY's requisite connection to an armed conflict goes beyond customary international law as it stands today.⁷ As mentioned above, the ICTY requires that an armed conflict exist, whether international or internal in nature⁸, and much of the ICTY's jurisprudence has considered whether this constitutes a substantive or jurisdictional element for the crime. In *Tadic*, the ICTY Appeals Chamber held that "an armed conflict is not a condition for a crime against humanity, but [exists] for its punishment by the Tribunal."⁹ In other words, the armed conflict requirement is merely a jurisdictional element, and "in fact runs contrary to customary international law."¹⁰ Finally, under current customary international law, crimes against humanity may also be committed in times of peace; therefore, one need not prove that there was an armed conflict.¹¹

"An armed conflict exists whenever there is a resort to armed force between States or protracted violence between governmental authorities and organized armed groups or between such groups within a state."¹² The

⁶ M. CHERIF BASSIOUNI, *CRIMES AGAINST HUMANITY IN INTERNATIONAL LAW* (Kluwer Law International, 1999), at 194.

⁷ *Tadic*, *supra* note 4, at ¶ 251.

⁸ BASSIOUNI, *supra* note 6, at 194.

⁹ *Tadic*, *supra* note 4, at ¶ 251; *Prosecutor v. Blaskic* (Case No. IT-95-14-T), Judgment, Mar. 3, 2000, at ¶ 66.

¹⁰ *See id.*

¹¹ *See id.*

¹² *Prosecutor v. Tadic* (Case No. IT-94-1-A), Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, Oct. 2, 1995, at ¶ 70; *Prosecutor v. Kunarac*,

armed conflict requirement is satisfied by proof that there was an armed conflict at the relevant time and place,¹³ and that the accused's acts were closely related to that conflict.¹⁴ The recent *Stakic* decision held that "the nexus need not be a causal link, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit the crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed."¹⁵

In addition, the decision-maker should consider whether the accused is a combatant, the victim is a non-combatant, the victim is a member of the opposing party, the act may be said to serve the ultimate goal of a military campaign, and the crime is committed as part of or in the context of the accused's official duties.¹⁶ No one criterion is dispositive, but each may assist the determination. Thus, the ICTY jurisdictional prerequisite is satisfied by proof that there was an armed conflict and that objectively the accused's acts are linked both geographically and temporally with the armed conflict.¹⁷

Discriminatory Grounds

The ICTR Statute is the only international instrument explicitly to require discrimination for the commission of all crimes against humanity "on national, political, ethnic, racial, or religious grounds."¹⁸ This jurisdictional element limits the ICTR's jurisdiction to a narrower category of crimes, but it does not alter the definition of crimes against humanity in customary international law.¹⁹ In contrast and consistent with customary international law, the ICTY Statute limits the discriminatory

Kovac, and Vukovic (Case No. IT-96-23-T & IT-96-23/1-T), Judgment, Feb. 22, 2001, at ¶ 412.

¹³ *Tadic*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (AC), at ¶ 70; *Kunarac, Kovac, and Vukovic (TC)*, *supra* note 12, at ¶ 413.

¹⁴ *Prosecutor v. Stakic*, (Case No. IT-97-24-A), Judgment, Mar. 22, 2006, at ¶ 342.

¹⁵ *Id.*; see also *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 58.

¹⁶ *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 83.

¹⁷ See *id.*

¹⁸ McAuliffe deGuzman, *supra* note 1, at 364.

¹⁹ *Prosecutor v. Kajelijeli* (Case No. ICTR-98-44A-T), Judgment, Dec. 1, 2003, at ¶ 877.

intent requirement to the prohibited act of persecution, rather than extending it to cover the other prohibited acts—the “murder-type” acts.²⁰

Under the ICTR, the attack must be committed on one or more discriminatory grounds—namely national, political, ethnic, racial, or religious grounds.²¹ In *Akayesu*, the Appeals Chamber held that, except for persecution, a discriminatory intent is not required by customary international law as a legal ingredient for all crimes against humanity.²² This was also supported by the ICTY Appeals Chamber in *Tadic*.²³ In addition, “acts committed against persons outside the discriminatory categories need not necessarily fall out with the jurisdiction of the [ICTR], if the perpetrator’s intention in committing these acts is to support or further the attack on the group discriminated against on one or more of the enumerated grounds.”²⁴

An Attack

ICTY and ICTR jurisprudence have defined “attack” to be a course of conduct involving the commission of violence of the type enumerated as the *actus reus* of the crime.²⁵ The underlying offense need not constitute the attack, but must form part of the attack or comprise part of a widespread or systematic pattern of crimes directed against a civilian population.²⁶ The term is not limited to conducting hostilities, but “it may also include situations of mistreatment of persons taking no active part in hostilities, such as someone in detention.”²⁷

Directed Against Any Civilian Population

All codifications of the definition of crimes against humanity have included a requirement that these acts be “directed against any civilian

²⁰ BASSIOUNI, *supra* note 6, at 26; Mohamed Elewa Badar, *From the Nuremberg Charter to the Rome Statute: Defining The Elements of Crimes Against Humanity*, 5 SAN DIEGO INT’L L. J. 100 (2004).

²¹ *Bisengimana (TC)*, *supra* note 2, at ¶ 41-57.

²² *Prosecutor v. Akayesu* (Case No. ICTR-96-4-A), Judgment, Jun. 1, 2001, ¶ 464-465.

²³ *Tadic (AC)*, *supra* note 4, at ¶ 292.

²⁴ *Bisengimana (TC)*, *supra* note 2, at ¶ 41; *Kajelijeli (TC)*, *supra* note 19, at ¶ 878.

²⁵ *Krnjelac (TC)*, *supra* note 2, at ¶ 54; *Kajelijeli (TC)*, *supra* note 19, at ¶ 867.

²⁶ *Tadic (AC)*, *supra* note 4, at ¶ 248 and 251; *See Kunarac, Kovac, and Vukovic (TC)*, *supra* note 12, at ¶ 417.

²⁷ *Kunarac, Kovac, and Vukovic (TC)*, *supra* note 12, at ¶ 416.

population.”²⁸ To establish whether the attack was “directed against any civilian population,” “a sufficient number of individuals [must be] targeted in the attack, or . . . targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian population and not only against a limited number of individuals who were randomly selected.”²⁹

An attack is “directed against” a civilian population if the civilian population was the attack’s primary object.³⁰ In determining whether the civilian population was the primary object of the attack, “the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war” will be considered.³¹

The entire population of a geographical entity in which an attack is taking place need not be subjected to the attack—only a significant number needs to be involved.³² The civilian population includes “[p]eople who are not taking any active part in the hostilities, including members of the armed forces who laid down their arms and those persons *hors de combat* by sickness, wounds, detention, or any other cause.”³³ Finally, the presence of certain non-civilians in the area does not change the character of that population so long as the targeted population is predominantly civilian in nature.³⁴

Further, customary international law does not require the existence of an armed conflict. Therefore, the term “civilian” must be understood within the context of both war and relative peace; this is considered

²⁸ McAuliffe deGuzman, *supra* note 1, at 360.

²⁹ *Prosecutor v. Simic, Tadic, and Zaric* (Case No. IT-95-9-T), Oct. 17, 2003, at ¶ 42.

³⁰ *Prosecutor v. Naletilic and Martinovic* (Case No. IT-98-34-T), Judgment, Mar. 31, 2003, at ¶ 235; *Prosecutor v. Semanza* (Case No. ICTR-97-20-T), Judgment, May 15, 2003, at ¶ 330.

³¹ *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 91.

³² See *Naletilic and Martinovic (TC)*, *supra* note 30, at ¶ 235.

³³ *Kajelijeli (TC)*, *supra* note 19, at ¶ 873; *Prosecutor v. Akayesu* (Case No. ICTR-96-4-T), Judgment, Sept. 2, 1998, ¶ 582; *Blaskic (TC)*, *supra* note 9, at ¶ 214.

³⁴ *Kajelijeli (TC)*, *supra* note 19, at ¶ 873; *Prosecutor v. Kayishema and Ruzindana* (Case No. ICTR-95-1-T), Judgment, May 21, 1999, at ¶ 128.

customary international law.³⁵ When determining the victim's status as a civilian, the victim's specific situation at the moment the crimes were committed, rather than his status, must be considered.³⁶

Widespread or Systematic

“The ‘widespread or systematic’ requirement is fundamental in distinguishing crimes against humanity from common crimes,”³⁷ and has been implicit in every iteration of the definition since the London Charter.³⁸ In fact, the ICTY Statute does not explicitly include the requirement that the attack be “widespread or systematic.” However, the Appeals Chamber in *Tadic* recognized that crimes that are unrelated to widespread or systematic attacks on a civilian population should not be prosecuted as crimes against humanity.³⁹ Thus, the phrase “directed against any civilian population” should be interpreted to mean that the “acts must occur on a widespread or systematic basis.”⁴⁰ Importantly, only the attack—not the accused's individual acts—must be widespread or systematic.⁴¹

The term “widespread” has been interpreted to refer to the large-scale nature of the attacks and number of victims.⁴² “Systematic” refers to the organized nature of the violent acts and the improbability that the violence was random.⁴³

³⁵ *Kayishema and Ruzindana (TC)*, *supra* note 34, at ¶ 127.

³⁶ *Bisengimana (TC)*, *supra* note 2, at ¶ 49.

³⁷ Badar, *supra* note 20, at 109.

³⁸ McAuliffe deGuzman, *supra* note 1, at 376.

³⁹ *Tadic (AC)*, *supra* note 4, at ¶ 271.

⁴⁰ *Prosecutor v. Tadic*, (Case No. IT-94-1-T), at ¶ 644.

⁴¹ *Kunarac, Kovac, and Vukovic (TC)*, *supra* note 12, at ¶ 431.

⁴² *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 94; *Bisengimana (TC)*, *supra* note 2, at ¶ 44.

⁴³ *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 94; *Bisengimana (TC)*, *supra* note 2, at ¶ 45; *Prosecutor v. Kamuhanda* (Case No. ICTR-95-54A-T), Judgment, Jan. 22, 2004, ¶ 666.

There has been some debate in the jurisprudence of the ICTY and ICTR⁴⁴ and the literature⁴⁵ about whether the existence of a plan or policy is an independent legal element of crimes against humanity. In its most recent opinions, the Tribunals have held that “whilst the existence of a policy or plan may be evidentially relevant, the existence of such a plan is not a separate legal element of the crime.”⁴⁶ Such plan or policy may nevertheless be relevant to the requirement that the attack must be widespread or systematic and that the accused’s acts must be part of that attack.⁴⁷

Mens rea

Neither statute specifically includes the *mens rea* for the crime, but both the ICTY and ICTR jurisprudence has articulated the standard. In order to satisfy the requisite *mens rea* requirement for the commission of crimes against humanity, “the accused must have the intent to commit the underlying offense(s) with which he is charged, and he must have actual or constructive knowledge that there is an attack on the civilian population and that his acts comprise part of that attack,” or at least that he took the risk that they are part thereof.⁴⁸ This does not require knowledge of the attack’s details.⁴⁹ In addition, the accused must know or have considered

⁴⁴ *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 98; *Kamuhanda (TC)*, *supra* note 43, at ¶ 665; *Kajelijeli (TC)*, *supra* note 19, at ¶ 872; *Semanza (TC)*, *supra* note 30, at ¶ 329; *Krnojelac (TC)*, *supra* note 2, at ¶ 58; *Simic, Tadic, and Zaric (TC)*, *supra* note 29, at ¶ 44.

⁴⁵ BASSIOUNI, *supra* note 6, at 243 (stating that crimes against humanity occur as a result of state action or policy is consonant with the present state of international law); McAuliffe deGuzman, *supra* note 1, at 374

(discussing the confusion surrounding the significance of a policy element); Badar, *supra* note 20, at 114 (stating that under customary international law it is no longer required that the policy is the policy of a State).

⁴⁶ *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 98; *Kamuhanda (TC)*, *supra* note 43, at ¶ 665; *Kajelijeli*, *supra* note 19, at ¶ 872; *Semanza (TC)*, *supra* note 30, at ¶ 329; *Krnojelac (TC)*, *supra* note 2, at ¶ 58; *Simic, Tadic, and Zaric (TC)*, *supra* note 29, at ¶ 44.

⁴⁷ *Prosecutor v. Blaskic* (Case No. IT-95-14-A), Judgment, Jul. 29, 2004, ¶ 100; *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 98; *Krnojelac (TC)*, *supra* note 2, at ¶ 58; *Simic, Tadic, and Zaric (TC)*, *supra* note 29, at ¶ 44.

⁴⁸ *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 102; *Kajelijeli (TC)*, *supra* note 19, at ¶ 880; *Semanza*, Judgment (TC), ¶ 332; *Kayishema and Ruzindana (TC)*, *supra* note 34, at ¶ 134.

⁴⁹ *Krnojelac (TC)*, *supra* note 2, at ¶ 59.

that the victim of his crime was a civilian.⁵⁰ Finally, the accused does not need to share in the motive, intent, or purpose of those involved in the attack.⁵¹

There is no requirement of discriminatory intent for all crimes against humanity in customary international law.⁵² As stated above, the ICTY Statute, like the London and Tokyo Charters, distinguishes between “murder-type” prohibited acts and the crime of “persecution.”⁵³ “Murder-type” acts do not require discriminatory intent, while the prohibited act of “persecution” does require discriminatory intent.⁵⁴ Please see the discussion above for the discriminatory intent requirement under the ICTR.

Actus Reus: Enumerated Prohibited Acts

As mentioned above, only the jurisdictional or international elements are being discussed. For reference, the ICTY and the ICTR share the same prohibited acts: murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial, and religious grounds, and other inhumane acts. The jurisprudence from each Tribunal references the other Tribunal as well as domestic criminal law in determining what constitutes each of these crimes.⁵⁵

Conclusion

This historical evolution of the definition of crimes against humanity in special tribunals paved the way for the Rome Statute’s definition of crimes against humanity, which enlarges the specific content in the definition. Even though the customary international law definition is well supported in the jurisprudence and is already deemed part of *jus cogens* (“preemptory norm of international law”) and raises obligations *ergo omnes*⁵⁶ (“to international community as a whole”), the legal developments since 1945 of the definition of crimes against humanity

⁵⁰ *Kunarac, Kovac, and Vukovic (TC)*, *supra* note 12, at ¶ 435.

⁵¹ *Simic, Tadic, and Zaric (TC)*, *supra* note 29, at ¶ 45; *Semanza (TC)*, *supra* note 30, at ¶ 332.

⁵² *Tadic (AC)*, *supra* note 4, at ¶ 292.

⁵³ *Id.* at ¶ 275.

⁵⁴ *Id.* at ¶ 289.

⁵⁵ McAuliffe deGuzman, *supra* note 1, at 378.

⁵⁶ BASSIOUNI, *supra* note 6, at 199.

remains complex. That said, in November 2022, the Sixth Committee of the UN General Assembly adopted a draft Convention on Crimes Against Humanity, co-sponsored by 86 states, which had originally been proposed by the International Law Commission (ILC).⁵⁷

B. International Criminal Court Statute's Definition of Crimes Against Humanity

The Rome Statute establishes an ICC with jurisdiction over the state parties to a treaty. As a consequence, its provisions are applicable only to the contracting parties.⁵⁸ Therefore, though the Rome Statute's definition of crimes against humanity in Article 7 clearly derives from the customary international law definition articulated in the special tribunals, it does not adequately serve as a substitute for a specialized convention for crimes against humanity. Nevertheless, the 1998 Statute does codify existing customary international law, and adds additional elements agreed to by the state parties.

Article 7(1) of the Rome Statute is divided into two parts: the international or jurisdictional elements and the enumerated prohibited acts. The *chapeau* of Article 7(1) identifies the five international or jurisdictional elements that constitute the requisite circumstances that elevate a domestic crime to the international level:

- 1) there must be an attack;
- 2) the acts of the accused must be part of the attack;
- 3) the attack must be widespread or systematic;
- 4) the attack must be directed against any civilian population; and
- 5) the accused must have knowledge of the attack.⁵⁹

Article 7(2)(a) further explains that an “attack against any civilian population” means “a course of conduct involving multiple commission of

⁵⁷ Priya Pillai, *Draft Convention on Crimes Against Humanity*, OPINIO JURIS, Nov. 22, 2022, available at <http://opiniojuris.org/2022/11/22/draft-convention-on-crimes-against-humanity-a-window-of-opportunity/>.

⁵⁸ *Id.* at 202.

⁵⁹ *Rome Statute*, INTERNATIONAL CRIMINAL COURT, at Article 7(1), available at <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

acts referred to . . . against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an attack.”⁶⁰

There are a wide array of crimes which, if committed in the way described in the *chapeau* of Article 7(1), constitutes crimes against humanity. These include, murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced pregnancy, enforced sterilization, etc.; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, or other grounds; enforced disappearance of persons; the crime of apartheid; and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health enslavement.⁶¹

Under Article 7(1)(e), this includes the crime of “imprisonment or other severe deprivation of liberty in violation of the fundamental rules of international law.”⁶² According to the ICC’s Elements of Crimes:

Article 7 (1) (e)

Crime against humanity of imprisonment or other severe deprivation of physical liberty

Elements

1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.
2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

⁶⁰ *Id.*, at Art. 7(2)(a).

⁶¹ *Id.*, at Art. 7(1)(a)-(k) of the ICC Statute.

⁶² *Id.*, at Art. 7(1)(e) of the ICC Statute.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.⁶³

C. *Analysis of the Choice of Definitions for Crimes Against Humanity*

To bring a claim of crimes against humanity, the following elements must be satisfied under customary international law:

- 1) there must be an attack;
- 2) the acts of the accused must be part of the attack;
- 3) the attack must be directed against any civilian population;
- 4) the attack must be widespread or systematic; and
- 5) the accused must know that the acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population, know that the accused's acts fit into such a pattern, and intend to commit the underlying prohibited act.⁶⁴

Although the Rome Statute's definition binds only state parties and the ICC, it serves as a compelling statement of customary international law.⁶⁵ The Rome Statute's definition of crimes against humanity "reflects the development of customary international law requiring neither a nexus between crimes against humanity and armed conflict, nor a requirement of discriminatory intent."⁶⁶ In addition, the Rome Statute requires the same elements listed above to bring a claim of crimes against humanity under the Statute. However, it enumerates more prohibited acts and provides additional grounds for discrimination for the crime of persecution. Both of these additions expand the scope of the Rome Statute beyond the boundaries of customary international law. The one exception to the Rome Statute being broader than customary international law is the requisite

⁶³ *Elements of Crimes*, INTERNATIONAL CRIMINAL COURT, 2013, available at <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>.

⁶⁴ See *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 85; *Krnojelac (TC)*, *supra* note 2, at ¶ 53; *Bisengimana (TC)*, *supra* note 2, at ¶ 41-57.

⁶⁵ Beth Van Schaack, *The Definition of Crimes Against Humanity: Resolving the Incoherence*, 37 COLUM. J. TRANSNAT'L L. 795 (1998-1999).

⁶⁶ Badar, *supra* note 20, at 91.

policy element inserted in the definition of “attack directed against a civilian population.”⁶⁷ Each of these differences is discussed below.

Expansion of Prohibited Acts

The Rome Statute adds enforced disappearance of persons and the crime of apartheid to the list of enumerated prohibited acts that would constitute a crime against humanity if committed under the requisite circumstances. In addition, the Statute explicitly defines what constitutes each of the enumerated acts; conversely, the ICTY and the ICTR statutes had to reference international and domestic criminal law to define these acts.

Expansion of Discriminatory Grounds for Persecution

The discriminatory grounds for persecution under the Rome Statute are not limited to “political, racial, or religious grounds” as they are under customary international law.⁶⁸ The Rome Statute expands the scope of the definition beyond customary international law to include national, ethnic, cultural and gender-based grounds.⁶⁹

New Policy Element

The term “attack directed against a civilian population,” defined in Article 7(2)(a), is a “course of conduct involving the multiple commission of acts referred . . . against a civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an attack.”⁷⁰ Further, the Rome Statute restricts the definition of “attack” to “multiple commission of acts,” while in customary international law, committing single prohibited acts in the correct circumstances constitute an attack.⁷¹

Current customary international law does not require that a policy or plan exist as an element of crimes against humanity, though it may be

⁶⁷ *Rome Statute*, *supra* note 59, at Art. 7(2)(a).

⁶⁸ Payam Akhavan, *Contributions of the International Criminal Tribunals for the Former Yugoslavia and Rwanda to Development of Definitions of Crimes Against Humanity and Genocide*, 94 AM. SOC’Y INT’L L. PROC. 281 (2000).

⁶⁹ *Rome Statute*, *supra* note 59, at Art. 7(1).

⁷⁰ *Id.*, at Art. 7(2).

⁷¹ Badar, *supra* note 20, at 107.

relevant evidentially in demonstrating that the attack was widespread or systematic.⁷² Older jurisprudence indicates that customary international law when the Rome Statute was drafted did include a requisite policy element.⁷³ However, as demonstrated above, the definition of crimes against humanity has evolved since 1945, and it has continued to evolve since 1998. Initially, crimes against humanity in customary international law arguably required the existence of a State plan or policy.⁷⁴ Eventually, crimes against humanity evolved to require the existence of a policy or plan by either a State or a non-State entity.⁷⁵ Similarly, customary international law no longer requires a plan or policy element.⁷⁶ However, the recent jurisprudence does not consider the provisions of Article 7(2)(a) of the Rome Statute; therefore, it remains uncertain whether future tribunals will require the existence of a policy or plan in accordance with the Rome Statute.

Conclusion

Though no universally recognized definition of crimes against humanity exists, a comprehensive definition of crimes against humanity emerges from analyzing special tribunals, their jurisprudence, the Rome Statute, and the ICC's jurisprudence, with regard to the circumstantial elements of the crime, but with somewhat imprecise parameters. The 1998 Rome Statute codified international law's customary definition of crimes against humanity and added its own additional elements. These additional elements expand the scope of the crime to include additional prohibited acts and discriminatory grounds for persecution. Despite these differences between the Rome Statute's definition and customary international law's definition of crimes against humanity, the significant commonality

⁷² *Kunarac, Kovac, and Vukovic (AC)*, *supra* note 2, at ¶ 98; *Kamuhanda (TC)*, *supra* note 43, at ¶ 665; *Kajelijeli (TC)*, *supra* note 19, at ¶ 872; *Semanza (TC)*, *supra* note 30, at ¶ 329; *Krnjelac (TC)*, *supra* note 2, at ¶ 58; *Simic, Tadic, and Zaric (TC)*, *supra* note 29, at ¶ 44.

⁷³ *See, e.g., Akayesu (TC)*, *supra* note 33, at ¶ 580 (finding that “[t]here is no requirement that this policy must be adopted formally as the policy of a state . . . There must however be some kind of preconceived plan or policy.”); *Kayishema and Ruzindana (TC)*, *supra* note 34, at ¶ 124 (holding that “for an act of mass victimization to be a crime against humanity, it must include a policy” or plan developed by either State or non-State actors); *Prosecutor v. Musema* (Case No. ICTR-96-13-A), Judgment, Jan. 27, 2000, at ¶ 204 (following *Akayesu* and *Kayishema and Ruzindana*).

⁷⁴ *Kayishema and Ruzindana (TC)*, *supra* note 34, at ¶ 125.

⁷⁵ *Id.*, at ¶ 124.

⁷⁶ *Semanza (TC)*, *supra* note 30, at ¶ 329 (following the ICTY Appeals Chamber).

between them identifies the elements that must be satisfied to bring a claim of crimes against humanity against a state that is not a signatory to the Rome Statute.

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