

NEW LAWS OF REPRESSION IN NICARAGUA

Executive Summary

In 2018, one of the worst human rights crises on the Latin American continent erupted in Nicaragua. In the first year alone, 325 people were killed,¹ 700 were detained and 62,000 were forced to flee the country to protect their lives and physical integrity.² As of July 31st, 2021, 139 people remained in detention and more than 103,000 Nicaraguans were in exile.³

From October 2020, repression entered a new phase with the implementation of the laws described in this report, which form part of the Government's repertoire of repression, in addition to physical violence, and which restrict the democratic space for human rights defenders and organisations and political opponents. In particular, laws that unduly control the activities of civil society organisations were enacted. This casted suspicion on their international funding, viewing it as an instrument of foreign intervention or a mechanism of organised crime and terrorism, turning the right to freedom of association to defend human rights and the exercise of civil and political rights into crimes or cybercrimes that can lead to life imprisonment for purportedly promoting national hatred.

Since May 2021, 39 social, political and business leaders have been detained under these new laws, contrary to international human rights law, for exercising their civil and political rights, their freedom of expression and for their participation in public demonstrations in favour of democracy, the rule of law and respect for human rights guarantees in Nicaragua. These detentions add to the list of more than 100 people detained for being considered opponents of the regime.

This report lists 39 individuals who have been detained under these laws, including seven potential presidential candidates. As of November 2021, most of the detainees are being held incommunicado and the courts are refusing to provide information about proceedings. It is known that some hearings are being conducted in secret, without the presence of detainees' lawyers or family members. Those detained do not enjoy due process or the independence of the judicial actors prosecuting them, so there is no possibility of them obtaining a fair trial. These detentions have turned the November 2021 presidential and legislative elections into a charade, as there are no opposition candidates.

¹ FIDH and CENIDH, Report, *¡Basta ya de impunidad! Ejecuciones extrajudiciales y represión en Nicaragua, ¿hasta cuándo?* (Accountability now! Extrajudicial executions and repression in Nicaragua, 2018-2020), February 2021, analysed 113 extrajudicial executions committed between April and September 2018, demonstrating their systematic nature and the coordination between state and parastatal agents in their commission. Available at: <https://www.fidh.org/IMG/pdf/rappornicaragua764es.pdf>. Executive summary available in English: <https://www.fidh.org/en/region/americas/nicaragua/nicaragua-report-as-impunity-for-crimes-against-humanity-reigns>

² IACHR Special Follow-up Mechanism for Nicaragua (MESENI), Bulletin, April 2019, available (in Spanish) at: https://www.oas.org/es/cidh/MESENI/Boletines/Boletin-MESENI-2019_04.pdf

³ MESENI, Bulletin, July 2021, available (in Spanish) at: https://www.oas.org/es/cidh/MESENI/Boletines/BOLETIN-MESENI-2021_07.html

The Observatory's report recounts the process of developing this repressive regulatory framework, which began in 2008, with the harassment of non-governmental organisations and international cooperation organisations by announcing procedures to audit their resources and activities and initiating administrative proceedings against them.⁴ At the same time, opposition parties were stripped of their legal status. In 2009, the Supreme Court allowed the president to run for re-election. In 2010, the mandates of judges, prosecutors and senior government officials were extended illegally and indefinitely. And the 2014 constitutional reform centralised power in the president: *"This made it possible to create a model of government in which all the branches of the State (Executive, Legislative, Judicial, Electoral), the public forces (National Police and Army), the Prosecutor's Office, the Office of the Human Rights Ombudsperson (Procuraduría para la Defensa de los Derechos Humanos) and even public universities, act in concert according to the political project driven by the Ortega Murillo regime."*⁵

The repressive response of the State, particularly since the April 2018 protests, has been justified on the grounds that a coup d'état was being prepared and that human rights defenders and organisations, who actively denounced the escalation of repression, were responsible for financing it. Attempts were made to cover up the arbitrary nature of these measures with the justification that they are permitted under current regulations. As a mechanism of reinforcement and protection, other more restrictive laws have been introduced targeting anyone considered to be an opponent, creating an official discourse that portrays human rights defenders, journalists and opponents as the internal enemy, which clearly represents *"a blatant attempt to discourage people from defending human rights, to frighten those who speak out against the Government into silent submission."*⁶

The Inter-American Commission on Human Rights (IACHR), through the Special Follow-up Mechanism for Nicaragua (MESENI), on the State's response to the April 2018 protests, concluded that the escalation of attacks against the population corresponded to stages of repression, from an unusually high level of street violence to planned violence that included the creation of a legal framework that gives the appearance of legality to the arbitrary measures that have been adopted in order to *"unjustifiably [constrain] opportunities for open, plural debate on human rights in the country."*⁷

In July 2018, the first of the laws that consolidated the repressive model aimed at providing a legal basis for rounding up defenders and their organisations was passed: **Law 976 of the "Financial Analysis Unit"**, on collecting information on national or international transactions of natural or legal persons involved in

⁴ Observatory for the Protection of Human Rights Defenders (FIDH-OMCT), Press Release, "Gobierno anuncia medidas drásticas contra las ONG", October 2008, available at: <https://www.fidh.org/es/region/americas/nicaragua/Gobierno-anuncia-medidas-drasticas>

⁵ FIDH and CENIDH, Report, *¡Basta ya de impunidad!*

⁶ As noted by the United Nations Special Procedures: Press Release, "Nicaragua must stop repression of human rights", 22 November 2018, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23919&LangID=E>

⁷ Press release No. 187/17, "IACHR Regrets Nicaragua's Decision Not to Allow a Promotional Visit to the Country", 20 November 2017, available at: http://www.oas.org/en/iachr/media_center/PReleases/2017/187.asp

“terrorist activities”. Then in August 2019, **Law 977 of August 2019 “against money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction”** was adopted which expressly regulates non-profit organisations,⁸ with overly broad definitions, which could arbitrarily categorise conduct such as social protest, the defence of human rights, and other activities, as terrorist acts, defining them as those likely to physically or psychologically injure any person in order to intimidate or force the government to carry out or refrain from carrying out an act.⁹

In June 2019, **Law 996 of June 2019**, otherwise known as the **Amnesty Law**¹⁰ was passed, without consultation, with the aim of allowing impunity for the crimes committed by State agents in the context of the 2018 repression, and by private individuals who acted with their acquiescence, as well as ensuring that criminalised individuals “may be liable to further arrest for exercising their political rights”,¹¹ warning that such persons “must refrain from perpetrating further acts that involve repeated behaviours that result in the crimes referred to herein.”¹²

In February 2021, **Law 1060 of 2021** was enacted, which modified the Code of Criminal Procedure to expand the term of detention from 48 hours to 90 days, during which a “supplementary investigation” would be carried out, without prior charge or connection to a formal judicial process, depriving individuals of due process by applying extra-procedural “judicial detention”, in secret, without the presence of defence lawyers, in other words arbitrary detention prohibited by international human rights law (IHRL).

Between October 15, 2020 and January 2021, four additional pieces of legislation targeting civil society were adopted:

1. Law 1040 of 2020 on “Foreign Agents”: This law applies to any assets or funds held by anyone, including governments, parties, natural or legal persons or “organised under the laws of, or having its principal place of business in, a foreign country”. Regulated entities are required to enter their information in a register, guarantee that their funds will not be used for illicit activities (such as promoting political activities, proselytising, or affecting public order) and that they come from donors of “good reputation”, although this characteristic is not defined. It also establishes absolute control over the movement of resources and surveillance of their activities through periodic reports and ongoing requirements.

The law and its implementing regulation are blatantly contrary to international human rights law, since restrictions on access to funding from abroad characterise environments that are not conducive to the defence of human

⁸ Art. 14 and 37 et seq.

⁹ Art. 2.

¹⁰ Law 996 of 8 June 2019, available (in Spanish) at: <https://www.refworld.org/es/pdfid/5d2cb2eb4.pdf>

¹¹ IACHR, Press Release No. 45/19, “IACHR Expresses Concern Over the Passing of the Amnesty Law in Nicaragua”, available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/145.asp

¹² Art. 3 of Law 996 of 8 J 8, 2019.

rights,¹³ while blocking access to resources can itself be seen as a form of repression.¹⁴

Furthermore, it is unclear in the legislation whether any of the sanctions specified can be effectively and promptly challenged before a judicial authority, confirming the arbitrary nature of the provision within the framework of the prevailing police state. Although it is an administrative law, it operates *de facto* as a criminal law devoid of the requirement of intent, containing dangerous aspects, including threatening or undermining indeterminate assets such as independence and self-determination or the stability of the country.

2. Law on Defending the People’s Right to Independence (1055 of 2020): With just one article, this law disqualifies its targets from running for elected office. Since May 2021, the authorities have begun to use Law 1055 to arrest recognised members of Nicaraguan civil society, belonging to the political opposition or identified as opponents of the current government, in all cases invoking the same vague and unfounded argument, largely ignoring the principle of legality: *“for carrying out acts that undermine independence, sovereignty and self-determination, inciting foreign interference in internal affairs, calling for military interventions, organising with funding from foreign powers to carry out acts of terrorism and destabilisation, proposing and managing economic, commercial and financial blockades against the country and its institutions, demanding, praising and welcoming the imposition of sanctions against the State of Nicaragua and its citizens, and harming the supreme interests of the nation.”*¹⁵

3. Law on Cybercrime (Law 1042 of 2020): This law includes four types of offences that legislators sought to group together in relation to damage to systems and data and conduct committed via the internet or electronic media. As with the other laws, it seeks to criminalise conduct affecting freedom of expression. In September 2021, an indigenous rights defender was prosecuted for the crime of “spreading false reports by means of information and communication technologies”. The defender had denounced on social networks the inaction of the authorities in response to the massacre of September 3, 2021 in the Mayangna Territory of Sauni As in the Bosawás Biosphere Reserve. The Public Prosecutor’s Office accuses him of providing false information and that, through his claims, “he sought to create a climate of instability and insecurity that endangers national sovereignty”.

4. Constitutional Amendment to Article 37: This allows the maximum sentence of 30 years to be increased to life imprisonment if there are “hateful, cruel, degrading, humiliating and inhuman circumstances, which by their impact cause commotion, rejection, indignation and repugnance in the national community”. The condition of hateful circumstances is intrinsically linked to that prescribed by President Ortega in his public speeches about defenders,

¹³ Special Rapporteur on the situation of human rights defenders, Report A/HRC/25/55, 2013, para. 69 and Report A/67/292, 2012, para. 42 and 49.

¹⁴ Special Rapporteur on the situation of human rights defenders, Report A/70/217, 2015, para. 48.

¹⁵ See statements by the Nicaraguan National Police and Public Prosecutor’s Office, for example, https://twitter.com/confidencial_ni/status/1408652608114409472/photo/1; <https://ministeriopublico.gob.ni/comunicado-24-2021/>; <https://ministeriopublico.gob.ni/comunicado-08-2021/>.

demonstrators and opponents: *“they have no soul, they have no heart, they are not Nicaraguans, they are children of demons, they are children of the devil and they are full of hate, loaded with hate, they are loaded with hate, they resonate hate, they are criminals, cowards (...).”*

This normative framework forms a tiered system of punishment for opinions, criticism and defence of human rights, which starts by preventing civil society organisations and defenders from receiving international support, controls their financial movements and activities, punishes them publicly for carrying out their work, and finally reprimands civil society more broadly, with the threat or actual use of criminal law.

Since November 2018, 50 non-governmental organisations have been stripped of their legal status, 39 of them since July 2021, and the registration of six cooperation agencies has been cancelled (list included in the report). This has consolidated the strategy aimed at exterminating organisations capable of mapping human rights violations, assisting victims, proposing mechanisms for the respect and protection of human rights, and activating mechanisms to guarantee them.

The Observatory and CENIDH conclude that a robust legal apparatus has been constructed to control the activities of these organisations - characterised as enemies - obstructing their activities, depriving them of their funding, interfering in their internal affairs, cancelling their legal status and confiscating their headquarters and equipment.

This same legal apparatus in the context of the general elections of November 7, 2021, is also being used to prevent free and transparent elections, as it has been used to prevent the participation of any opposition candidate in the elections, marking Nicaragua's move into a dictatorial regime.

All indicators that make it possible to determine whether an enabling environment for the defence of human rights exists, based on those drawn up by the United Nations Special Rapporteur on the situation of human rights defenders in 2014, are measured in entirely negative terms in Nicaragua. The legal framework is contrary to the defence of human rights, there is no evidence of fighting impunity of the perpetrators of attacks, there is no independence in enforcement bodies, state actors operate to harass and attack human rights defenders, and defenders cannot submit complaints to international bodies without being subjected to reprisals.

The recommendations call for the release of the 145 human rights defenders and political opponents arbitrarily detained in Nicaragua and an end to their criminalisation. In addition to calling for the repeal of the above-mentioned legislation, the report specifically calls on the Nicaraguan judiciary to recover and give primacy to the principle of the independence of the judiciary.

It is also recommended that international organisations be granted authorisation to enter the country in order to monitor the human rights situation in Nicaragua. Finally, the report calls on the international community

to establish an independent international fact-finding mission and to insist on open channels of communication with the national government, despite the latter's reluctance.