

Nicaragua: Concentration of power and the undermining of the Rule of Law



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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. This aim of this report of the Inter-American Commission on Human Rights (“Commission,” “Inter-American Commission, or “IACHR”) is to analyze the power concentration process and the consequent undermining of the rule of law in Nicaragua and to offer recommendations to the State and the international community from a human rights perspective.
2. To understand the serious human rights situation in Nicaragua, the IACHR analyzes the concentration of power in the executive branch that began in 1999, with the so-called “Aleman-Ortega Pact”, which instituted a hybrid system in order to enable the co-optation of the top government posts, a process that is still under way. A series of constitutional and legal reforms and political collaborative actions were gradually made possible through modifications to the Nicaraguan State’s institutional structure to ensure control of power by the Sandinista National Liberation Front (*Frente Sandinista de Liberación Nacional* - FSLN) and the Liberal Constitutionalist Party (*Partido Liberal Constitucionalista* – PLC), undermining the principal of separation of powers in the country.
3. The implementation of this pact has had dire consequences for the exercise, protection, and guarantee of human rights and the undermining of the rule of law. This is the context for the violent state response to the social protests that began on April 18, 2018, the human rights violations perpetrated, and the impunity surrounding these events.
4. As the IACHR has extensively documented, the protests that began in April 2018 were repressed through the use of lethal force by police and parapolice groups under the rule of the President as their Commander in Chief. A police state was also established to quell dissidence and close democratic forums through of arbitrary arrest and deprivation of liberty of those deemed dissidents, making public demonstrations illegal, and raiding and seizing the facilities of human rights organizations and independent media outlets, among others.
5. This state response was made possible through the subjugation of the judiciary and the Office of the Attorney General to the government’s will, as well as any other public power that may have controlled or denounced the government actions, clearly undermining the rule of law and democracy, highlighted by the disregard for the mandate of judicial independence and separation of powers, primarily through violence and criminalization of dissidence, manipulation of criminal law, lack of guarantees of judiciary independence and impartiality, and the impunity surrounding human rights violations. Moreover, the National Assembly, in full alignment with the executive branch, enacted a group of laws whose aim would be to close democratic forums and restrict the freedom of expression of dissenting voices.

6. The Inter-American Commission had earlier pointed out that the Nicaraguan State does not have an independent judiciary owing to its hybrid composition and the legal reforms dating from 2010, which allowed appointment retention of based on factors such as nepotism and official party influence and manipulation. By 2014, the FSLN and magistrates close to the President held three of the four judiciary chambers. In addition to these factors, the IACHR notes a judicial career service wherein impartiality was not guaranteed.
7. Regarding the Attorney General's Office, the appointment of party affiliates close to the President has led to the progressive loss of the institution's independence and autonomy, also leading to the reassignment of those public prosecutors not affiliated with the governing party. More recently, in the context of the current crisis, the lack of affinity with the national government has led to the political persecution of prosecutors, who finally resigned from their public functions.
8. The Commission notes with concern how State security entities and institutions have played a major part in the process of concentrating and maintaining power through control by the National Police and the Army, and the creation of apparatus for the control and surveillance of the public, especially political dissidents.
9. This report mentions a group of electoral reforms that facilitated the concentration of power. The 2000 constitutional reform lowered from 45% to 40% the percentage of valid votes required for election to the presidency and vice presidency of the Republic, even establishing the possibility of assuming the presidency with a minimum of 35% of the valid votes when a candidate exceeds the votes for the candidate coming in second by a minimum of five percentage points.
10. Moreover, the constitutional reelection prohibition notwithstanding, in 2010, the plenary of the Supreme Court declared inapplicable *erga omnes* these constitutional provisions and therefore it, together with the Supreme Electoral Council, allowed Daniel Ortega to run for President in the November 2011 elections. Subsequently, through a 2014 constitutional reform, the National Assembly – controlled by the executive branch party – repealed Article 147 of the Constitution, which prohibited immediate reelection to the presidency of the Republic, and authorized presidential reelection without term limits, which has enabled Daniel Ortega's presidential tenure to continue. In this regard, the Inter-American Court on Human Rights (hereinafter "Inter-American Court", "the Court" or the "IA Court HR") has recently held that authorization of candidates to run for an unlimited number of terms is incompatible with the principles of representative democracy and, therefore, the obligations set forth in the American Convention and the American Declaration of the Rights and Duties of Man.
11. In addition, the "Alemán-Ortega Pact" made possible the enactment in 2000 of Electoral Law No. 331 and the subsequent amendments thereto until 2021, which together incorporated rules restricting electoral competition and the exercise of political rights. In that regard, the IACHR notes that the 2000 text eliminated the legal definition of "public associations for candidate nomination" [*asociaciones de suscripción popular*] for participation in elections, restricting political participation

in electoral processes to political parties. It also limited the formation of political parties and their form of affiliation and of obtaining legal status, and added grounds for suspension and cancellation of their legal status. As a result of these reforms, indigenous and ethnic communities were excluded from participation in the 2000 municipal elections, for which reason the indigenous organization Yapti Tasba Masraka Nanih Asla Takanka (YATAMA) lodged a complaint with the IACHR, which declared it admissible and, having analyzed its merits, referred the case to the Inter-American Court of Human Rights (IA Court HR). For its part, the Inter-American Court, in its 2005 judgment, declared the international responsibility of the Republic of Nicaragua, among others, for violation of the political right of the candidates nominated by YATAMA to be elected. The Court ordered the State of Nicaragua of make a set of legislative modifications, which thus far have not been made.

12. Additionally, in application of Electoral Law No. 331, on June 11, 2008, the Supreme Electoral Council (CSE-its Spanish acronym) rescinded the legal status of the Sandinista Renovation Movement (*Movimiento Renovador Sandinista* - MRS), so that it was excluded from independent participation in the municipal and national elections. It is important to note that the General Assembly of the Organization of American State (OAS) has indicated that it is essential for measures to be taken to promote free and fair elections in Nicaragua. As of the date of adoption of this report, none of the measures proposed by the OAS General Assembly have been implemented.
13. In the current scenario for the exercise of political rights, the Commission has condemned the systematic set of state actions undertaken in recent months to prevent the participation of the opposition in the general elections to be held in Nicaragua on November 8 of this year, as well as the persistent violations of human rights in this context. The IACHR has noted the intensification of the repression of the political opposition, social leaders, human rights defenders, and journalists, especially through arbitrary arrests and criminalization on baseless charges.
14. This year, over 30 persons have been arbitrarily detained and criminalized on baseless charges and without due judicial guarantees, including seven nominee candidates for the presidency, who remain deprived of liberty, some of whom have obtained provisional measures from the Inter-American Court. The CSE also canceled the legal status of the Democratic Restoration Party (*Partido Restauración Democrática* - PRD) and decided to cancel ex officio the legal status of the Conservative Party (*Partido Conservador*) and of the Citizens for Liberty Party (*Partido Ciudadano por la Libertad*). By these means, it eliminated the candidacy of the only opposition candidate who had succeeded in formally registering for the upcoming presidential election. The aim of this set of actions was to prevent the participation of the opposition in the general elections to be held in November of this year, leaving Daniel Ortega and Rosario Murillo without competition in the electoral round.
15. As shown by the facts described in the present report, the different State functions are not being fulfilled by separate, balanced and independent branches of the government. All branches are aligned with the executive branch, so that they do not limit the exercise of power or prevent arbitrary actions. The general elections

scheduled for November 2021 are being held in this context of repression and closure of democratic forums in the country. The intent is indefinite perpetuation in power and maintenance of privileges and immunities, in a context of repression, corruption, electoral fraud, and structural impunity. The major challenge is to search for formulas, with the participation of civil society, that enable democratic guarantees and freedoms characteristic of the democratic rule of law to be restored through the separation of powers, and to guarantee the conditions for the holding of fair, free, and transparent elections. In this context, the IACHR makes a series of recommendations to the State of Nicaragua.



CHAPTER 1

INTRODUCTION

INTRODUCTION

16. This aim of this report of the Inter-American Commission on Human Rights (“Commission,” “Inter-American Commission, or “IACHR”) is to analyze the process of concentration of power and the resulting undermining of the rule of law in Nicaragua.
17. The IACHR has followed with particular attention the progressive deterioration of the human rights situation in Nicaragua since the start of state repression of the social protests in the country in 2018. The crisis began three years ago and human rights violations in the country have persisted, with different levels of intensity. Impunity continues surrounding the serious violent events that occurred.
18. In particular, in 2021, the Commission has documented persecutions, threats, aggression, arbitrary arrests, and attacks on human rights defenders, members of the opposition, journalists, and Atlantic Coast communities, and the ongoing closure of democratic forums. By the same token, actions intensified against any expression deemed contrary to or opposing the government, through the arrest and accusation, based on unfounded or disproportionate charges, without due judicial guarantees of nominee candidates and social leaders, months prior to the presidential election. All this in a context that has made evident the concentration of absolute power in Nicaragua in the executive branch.
19. The Commission notes that this concentration of power in the executive branch began years ago, in 1999, with the so-called “Alemán-Ortega Pact”, which instituted a two-party structure with the aim of taking over the highest government posts, a process that continues today.¹ Gradually, other State institutions were co-opted and the principle of separation of powers in the country was undermined. The implementation of this pact has had serious consequences for the exercise, protection, and guarantee of human rights and the undermining of the rule of law.
20. In its 2018 Annual Report, the Inter-American Commission addressed in general terms the factors that led to the undermining of democratic institutions in Nicaragua, such as the concentration of power in the executive branch and the appointment of government party affiliates to different public organs, such as the Supreme Court of Justice (CSJ-its Spanish acronym), the Supreme Electoral Council (CSE-its Spanish acronym), and the Office of the Public Prosecutor of the Republic. Additionally, the IACHR reaffirmed that the scale and patterns of state violence that repressed the social protests that began in April 2018 were made possible by the control that the executive branch held for several years in relation to the other

¹ IACHR. 169/21 – The IACHR refers case on Nicaragua to the Inter-American Court. Washington, D.C., July 8, 2021.

branches of government.² A situation that has been reported by civil society to the IACHR on many occasions.³

21. Since the dire human rights crisis began in Nicaragua, the Commission has monitored the situation in conformity with its mandate and through its various mechanisms, especially through the following actions:
 - On May 3, 2018, the IACHR created a Rapid and Integrated Response Coordination Unit (SACROI in Spanish) in order to pay special attention to the situation in Nicaragua.
 - From May 17 to 21, 2018, the IACHR conducted a working visit to Nicaragua to make preliminary onsite observations of the human rights situation in the country, in connection with the violent events occurred from April 18, 2018. Upon completion of the visit, the IACHR issued its preliminary observations along with 15 initial recommendations to the State.
 - On June 21, 2018, having analyzed the information received on its working visit, the IACHR published its report "Gross Human Rights Violations in the Context of Social Protests in Nicaragua," which reiterated its 15 recommendations and issued others.
 - On June 24, 2018, following the invitation of the State of Nicaragua, the IACHR deployed in Managua the Special Monitoring Mechanism for Nicaragua (MESENI – its Spanish acronym), with the main objective of monitoring the implementation of the IACHR's recommendations based on its country visit and its corresponding Report. Although on December 19, 2018, the State of Nicaragua decided to "temporarily suspend" the IACHR's presence in the country, the MESENI has continued to operate from the Commission's headquarters in Washington D.C.
 - Following-up on Recommendation 3 of the preliminary observations of its working visit and in view of the invitation of the State of Nicaragua, the IACHR announced the creation of the Interdisciplinary Group of Independent Experts (GIEI-its Spanish acronym) for Nicaragua with the aim of assisting and supporting the investigations of the violent events that took place in the country from April 18 to May 30, 2018, in the context of the

² IACHR. 2019 Annual Report. Chapter IV.B, Nicaragua, par. 45.

³ IACHR. *Hearings*: Human Rights Situation in Nicaragua (1998); Human Rights Situation in Nicaragua (2000); General Human Rights Situation in Nicaragua (2003); Situation of the administration of justice in Nicaragua (2005); Situation of the rule of law and human rights in Nicaragua (2005); Human Rights Situation in Nicaragua (2005); Situation of Justice in Nicaragua (2006); Human Rights Situation in Nicaragua (2007); Administration of Justice in Nicaragua (2008); Democratic Institutions in Nicaragua (2009); Human Rights Situation and Rule of Law in Nicaragua (private hearing) (2010); Situation of political rights in Nicaragua (2011); Situation of civil and political rights in Nicaragua (private hearing) (2011); General Human Rights Situation in Nicaragua (2012); Human Rights Situation in Nicaragua (2014); General Situation of Human Rights in Nicaragua (2016); Situation of Political Rights in Nicaragua (2016).

social protests. The GIEI began its work on July 2, 2018, and submitted its report on December 21, 2018, at the IACHR's headquarters in light of the fact that on December 19, 2018, the State of Nicaragua requested the GIEI to leave the country, after communicating the State's decision to suspend the IACHR presence in Nicaragua.

22. The Commission has also monitored the human rights situation in Nicaragua through press releases, the granting of precautionary measures, the request for provisional measures from the Inter-American Court of Human Rights (IA Court HR) to address critical situations, and through communications, forums, and hearings, among other actions. Since 2018, the Commission has on three occasions included the State of Nicaragua in Chapter IV.B of its Annual Report.
23. The MESENI concluded that, as of October 2021, the death toll resulting from the repression that began in April 2018 was at least 328 deaths, with 1614 persons deprived of liberty; over 136 persons who remain deprived of liberty; 150 students expelled; over 405 health professionals dismissed; and over 103,600 Nicaraguan exiled.
24. The Commission has condemned, given the current scenario of restrictions on the exercise of political rights, "the systematic set of actions taken by the State in recent months to prevent opposition participation in the general election scheduled for November in Nicaragua, as well as the persistent human rights violations in this context."⁴
25. The IACHR notes that, owing to the intensification of repression in the country, in the first half of this year alone, it received more requests for precautionary measures than it received in 2020 as a whole. Moreover, thus far this year, the Commission has issued 25 resolutions for precautionary measures to protect persons at grave and urgent risk of irreparable harm to their human rights, as compared to the 11 resolutions granted the previous year. Additionally, taking into account the grave and urgent situation of some beneficiaries, the IACHR, in 2021, has referred four requests for provisional measure to the IA Court HR, three of which have been granted.⁵
26. In light of the foregoing, in order to continue its efforts to monitor the situation in Nicaragua and offer recommendations from a human rights perspective, the Commission has decided to prepare this report. To that end, it has systematized

⁴ IACHR. [209/21 - IACHR Condemns the State Actions Aimed at Ending Opposition Participation in Nicaragua's Upcoming Election](#). Washington, D.C., August 11, 2021.

⁵ On September 17, the Inter-American Commission on Human Rights (IACHR) asked the Inter-American Court of Human Rights (IA Court HR) to extend provisional measures to include inhabitants of Miskitu indigenous communities in Nicaragua's North Caribbean Coast Region in order to include among the beneficiaries members of the Miskitu Santa Fe indigenous community. As of the closing date of this report, that request for extension has yet to be granted. [242/21 - IACHR Asks Inter-American Court to extend provisional measures in favor of communities of Miskitu indigenous people in Nicaragua](#). Washington, D.C., September 17, 2021.

and analyzed the information received regarding the human rights situation in Nicaragua in recent years. In particular, the IACHR has made use of *ex officio* investigations, input from the different mechanisms through which it has monitored the situation in the country, such as public hearings, thematic visits, requests for information under Article 41 of the American Convention and for precautionary measures, press reports, and decisions and recommendations of specialized international organizations, among others.

27. On October 20, 2021, the IACHR transmitted to the State of Nicaragua a copy of the preliminary draft of this report and requested it to submit its observations by October 27, 2021. On October 22, 2021, the State presented its observations. In its response to the draft of this report, the State expressed its “non-acceptance and absolute rejection of the referred Draft Report, which is nothing but an insulting, offensive and absurd compilation of false, misrepresented and manipulated facts that do not reflect the reality of our country and whose sole purpose is to defame the State, in frank obedience and replication of the harmful and interfering designs of the North American Empire, in its attempt to injure our sovereignty and self-determination, in the face of its next electoral process”⁶. On October 25, the Commission approved the final version of this report.
28. This report is divided into five chapters. The first chapter is the Executive Summary. The second is the introduction to the events. The third discusses the progressive undermining of the rule of law, followed by chapter four, which describes political rights and the right to participate in public affairs. Lastly, conclusions and recommendations are offered.

A. Background

29. For much of the 20th century (1936-1979), Nicaragua was governed by dictators who were members of the Somoza family. At that time, the top military personnel and political posts were reserved for immediate family members, other relatives, and the governing family’s inner circle. For its part, the opposition was repressed by the police and National Guard by means of persecution, murders, kidnappings, and torture.
30. From October 3 to 12, 1978, the Commission made an onsite visit in view of the dire events occurring in Nicaragua and in response to requests by various groups representative of the Nicaraguan community interested in the full effectiveness of human rights in the country to the Commission for it to come to Nicaragua without delay.⁷ In its report on the visit, the Commission concluded that the Government of

⁶ State of Nicaragua response. Note MRE/DM/DMC/00259/10/21, October 22nd, 2021.

⁷ During the 1978 visit, the IACHR received reports and met with State authorities, civil society representatives, and representatives of the church and of international organizations, and interviewed victims in Managua, Masaya, Estelí, Granada, León, Diriamba, Jinotepe, Chinandega, and Matagalpa. It also visited several jails.

Nicaragua was grossly, persistently, and generally responsible for serious infringements of the rights to life, integrity, and personal liberty, and the rights of association and freedom of expression. It also indicated that various legal and practical impediments to voting rights were being created that were impeding their full exercise.⁸

31. On July 19, 1979, the Sandinista National Liberation Front (*Frente Sandinista de Liberación Nacional* – FSLN-its Spanish acronym) defeated dictator Anastasio Somoza and a National Government Reconstruction Board took power, which called elections in 1985 that resulted in the election of Daniel Ortega as President of the Republic. He governed until 1990, year in which Violeta Chamorro was elected by popular vote as President of the Republic (1990-1997). She was succeeded by Arnoldo Alemán (1997-2002), and then Enrique Bolaños (2002-2007). In 2007, Daniel Ortega was reelected (2007-2012); and was again reelected for the terms 2012-2017 and 2017-2022.
32. The 1985 elections were the first steps towards building a rule of law in Nicaragua after decades of bloody dictatorships and periods of revolution and war. That construction began to falter over the years, especially, with the so-called 1999 “Alemán-Ortega Pact”, which marked the start of an ongoing and progressive process of concentration of power in the executive branch, with serious repercussions for the cementing of the rule of law and for Nicaraguans’ fundamental rights.

1. “Alemán-Ortega Pact”

33. According to information in the public domain, in 1999, the Sandinista National Liberation Front (FSLN), headed by Daniel Ortega, and the Liberal Constitutionalist Party (PLC), headed by then- President Arnoldo Alemán, negotiated a set of agreements aimed at ensuring executive branch control, subordination and control of the other branches of government, and the retention and/or attainment of privileges and immunities.
34. The so-called “Alemán-Ortega Pact” was implemented through the institution of a hybrid system in the structures for democratic representation and in government

⁸ On that occasion, it indicated that as a result of the conflict that occurred in September 1978, the Government was responsible for many deaths owing to the abuses perpetrated by the National Guard in the “clean-up operation” and other actions that took place several days after the end of hostilities, where many people were summarily and collectively executed merely for living in neighborhoods or villages where members of the Sandinista National Liberation Front had acted, and defenseless young people and children were murdered.. The Commission concluded its 1978 report by indicating that the human rights violations referred to in this report had impacted all sectors of the Nicaraguan population. Their victims have been and are in particular people of limited economic means and youth aged 14 to 21. The harm and suffering caused by these violations have resulted, most apparently, in an intense and general feeling among the Nicaraguan population favoring the establishment of a system that will guarantee respect for human rights. IACHR, Report on the Situation of Human Rights in Nicaragua, 1979. Conclusions.

institutions. This made possible a group of constitutional and legal reforms and political collaborative actions by means of modifications to the Nicaraguan state institutional structure, to ensure that the FSLN and PLC held power. These reforms and actions, taken together, to be discussed in greater depth later in this report, “gave President Ortega the control over the institutions that encompass the context in which the state response to the social protests occurred from April 18 onwards.”⁹

2. Political, social and human rights crisis precipitated on April 18, 2018

35. The Commission identified the wildfire in the Indio-Maíz natural reserve as immediate background to the April protests.¹⁰ The wildfire occurred in late March and early April 2018, in one of the country’s largest reserves, and was said not to have been fully extinguished.¹¹ According to information received, in protest against the weak state response to the fire, young people mobilized and were subjected to State repression.¹²
36. Days after the fire, without prior public debate, the government published in the official gazette a reform of the social security system that increased worker and employer contributions and reduced retirement pensions by 5%, allocated to cover the medical care guaranteed under Article 3 of the Social Security Law.¹³ This led to peaceful protests initially convened by older persons, which were violently repressed by shock forces on April 18. This led to general peaceful protests throughout the country led by groups of students and young people, as well as workers, farmers, businessmen, environmentalists, and human rights defenders, and the general public.¹⁴
37. The violent state response to the social protests triggered a serious political, social, and human rights crisis which, over three years later, has deepened as a result of the de facto institution of a state of emergency in the country, as well as prolonged

⁹ GIEI-NICARAGUA. Report on the violent events that took place in Nicaragua between April 18th and May 30th.

¹⁰ In 2015, the IACHR was informed of the violent State repression of the “Anti-Canal Movement” protests, aimed at suspending the project to build the inter-oceanic canal in the country. IACHR, Audencia sobre la Construcción del canal transoceánico and su impacto sobre los derechos humanos en Nicaragua, (Hearing on the construction of the inter-oceanic canal and its impact on human rights in Nicaragua) [Available only in Spanish], 154th period of sessions, March 16, 2015. Various sources identified the repression of this movement as additional important background to the policy of state repression against the opposition. OHCHR, Human Rights Violations and Abuses in the Context of the Protests in Nicaragua, 2018, par.9.

¹¹ Confidencial, Tres escenarios tras la insurrección de abril en Nicaragua, Analysis by the Center for Communications Research (Centro de Investigación de la Comunicación - CINCO), May 8, 2018.

¹² Confidencial, Tres escenarios tras la insurrección de abril en Nicaragua, Analysis by the Center for Communications Research (Centro de Investigación de la Comunicación - CINCO), May 8, 2018; La Prensa, Así te contamos la marcha de los jóvenes que exigen una respuesta al incendio en Indio Maíz, April 12, 2018; Hoy! Marchas and contramarchas en Managua, and el incendio sigue en reserva Indio Maíz, April 13, 2018.

¹³ Resolution 1-317, Gazette No. 72, published on April 18, 2018.

¹⁴ IACHR, 2018 Annual Report, Chapter IVB: Nicaragua.

undermining of democratic institutions through the concentration of power in the executive branch and progressive breach of the principle of separation of powers. These factors are also the reason for the ongoing impunity surrounding the gross violations of human rights that began on April 18, 2018.

38. As the IACHR has extensively documented, the protests that began in April 2018 were repressed through the use of lethal force by police and parapolice groups under the rule of the President, as their Commander in Chief. A police state was also established to quell the dissidence and close democratic forums through measures taken by the National Police to deem public demonstrations illegal, arbitrarily require prior authorization for protests, and raid and seize the premises of human rights organizations and independent media outlets, among others.
39. At an initial phase of the repression, the scale of state violence and the strategies deployed to discourage demonstrations made evident that actions coordinated by the executive branch had been taken to control the public arena.¹⁵ In its Report "Gross Human Rights Violations in the Context of Social Protests in Nicaragua," the Commission revealed that State violence followed a common pattern marked, among others, by the excessive and arbitrary use of police force, including lethal force. Between April 18 and June 20, 2018, the repression by the police, parapolice force and groups of armed third parties had led to at least to 212 death people. Also, until June 6th, it recorded a total of 1,337 people injured.¹⁶
40. The Commission also noted human rights violations at a second phase in the context of "clean-up operations" deployed by National Police agents and parastate groups to dismantle the roadblocks (*tranques*) and barricades around the country, which would increase the death toll since the start of the protests on April 18, 2018.¹⁷
41. As of July 2018, the State of Nicaragua had retaken control of the streets and succeeded in removing all roadblocks. However, in order to consolidate the "normalization" of activity in the country, in a third phase, it imposed a strategy of judicial persecution and criminalization of government dissidents, demonstrators, students, activists, and human rights defenders through unlawful and arbitrary arrests and prosecutions, based on unfounded and disproportionate charges,

¹⁵ In its Report "Gross human rights violations in the context of social protests in Nicaragua," the Commission revealed that state violence followed a common pattern, characterized by: the excessive and arbitrary use of police force, the use of groups vigilantes or shock groups with the acquiescence, tolerance and collaboration of state authorities, intimidation and threats against leaders of social movements, a pattern of arbitrary arrests of young people and adolescents who participated in protests, irregularities in the initiation of investigations regarding the murders and injuries that occurred in this context, obstacles in accessing emergency medical care for the injured, as a form of retaliation for their participation in the demonstrations, the dissemination of propaganda and stigmatization campaigns, direct and indirect censorship measures. IACHR. Annual Report 2018. Chapter IV.B Nicaragua. Para. 36. IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, 2018, para 55.

¹⁶ IACHR, Gross Violations of Human Rights in the Context of Social Protests in Nicaragua, 2018, par. 86

¹⁷ IACHR, Press Release 156/18 - The Special Monitoring Mechanism for Nicaragua (MESENI) Completes Third Week in Action, Observes Tougher Repression and Raids by Police and Parapolice Groups. Washington, D.C./Managua, July 19, 2018.

involving serious and widespread violations of judicial guarantees.¹⁸ In that regard, the Commission noted that the hundreds of arbitrary arrests; the selective and mass criminalization of dissidents; the systematic pattern of violations of due process guarantees; the ineffectiveness of the habeas corpus remedy [*recurso de exhibición personal*]; the excessive use of pretrial detention, the institution of prosecutions related to crimes such as terrorism, interpreted incompatibly with an effective democratic society; failure to comply with orders for the release of protest participants in the country; and, in general, manipulation of criminal law aimed at prosecuting all of those identified as government dissidents, had made evident the lack of independence of the Nicaraguan system for the administration of justice as a whole.

42. In December 2018, the Commission noted a fourth state repression phase characterized by the closure of democratic forums in the country through actions such as: increasing acts of aggression against and harassment of journalists; the raiding, closure, and censorship of the media; imprisonment or exile of journalists and social leaders; closure of civil society organizations without due process guarantees; continued detention and prosecution of leaders, human rights defenders, and government opponents; and arbitrary expulsion – or threat of expulsion – of naturalized persons and permanent residents because they had participated in protests.
43. The GIEI's final report on the violent events that took place between April 18th and May 30th, 2018, confirmed that "[t]he social protests that began in Nicaragua on April 18th (...) did not result from isolated incidents, but were rather caused by years of institutional processes and State-sponsored practices that restricted the expressions of citizens, closed spaces for dialogue, compromised public institutions and concentrated power [in] the hands of President Ortega and Vice-President Murillo [duo]. This created and increasingly exacerbated the social disapproval that was demonstrated throughout the years by various forms of social expression which were violently suppressed". It also indicated that the persistent and ongoing articulation of the forces of repression, in 2018 showed that the decisions had been taken by the top State authorities. In that regard, the GIEI considered that the State response to the demonstrations and protests occurred in the context of general and systematic attack on the civilian population and that the State of Nicaragua engaged in behavior that under international law should be considered crimes against humanity.¹⁹
44. The IACHR has documented the breach from then onwards of the principle of separation of powers and the undermining of democratic institutions in Nicaragua through the concentration of power in the executive branch and the lack of independence of the judiciary and the Attorney General's Office, among others, as well as the perception of the National Assembly's operation in full alignment with

¹⁸ IACHR, Press Release, 187/18 – [IACHR Calls On the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families](#), Managua/Washington, D.C., August 24, 2018.

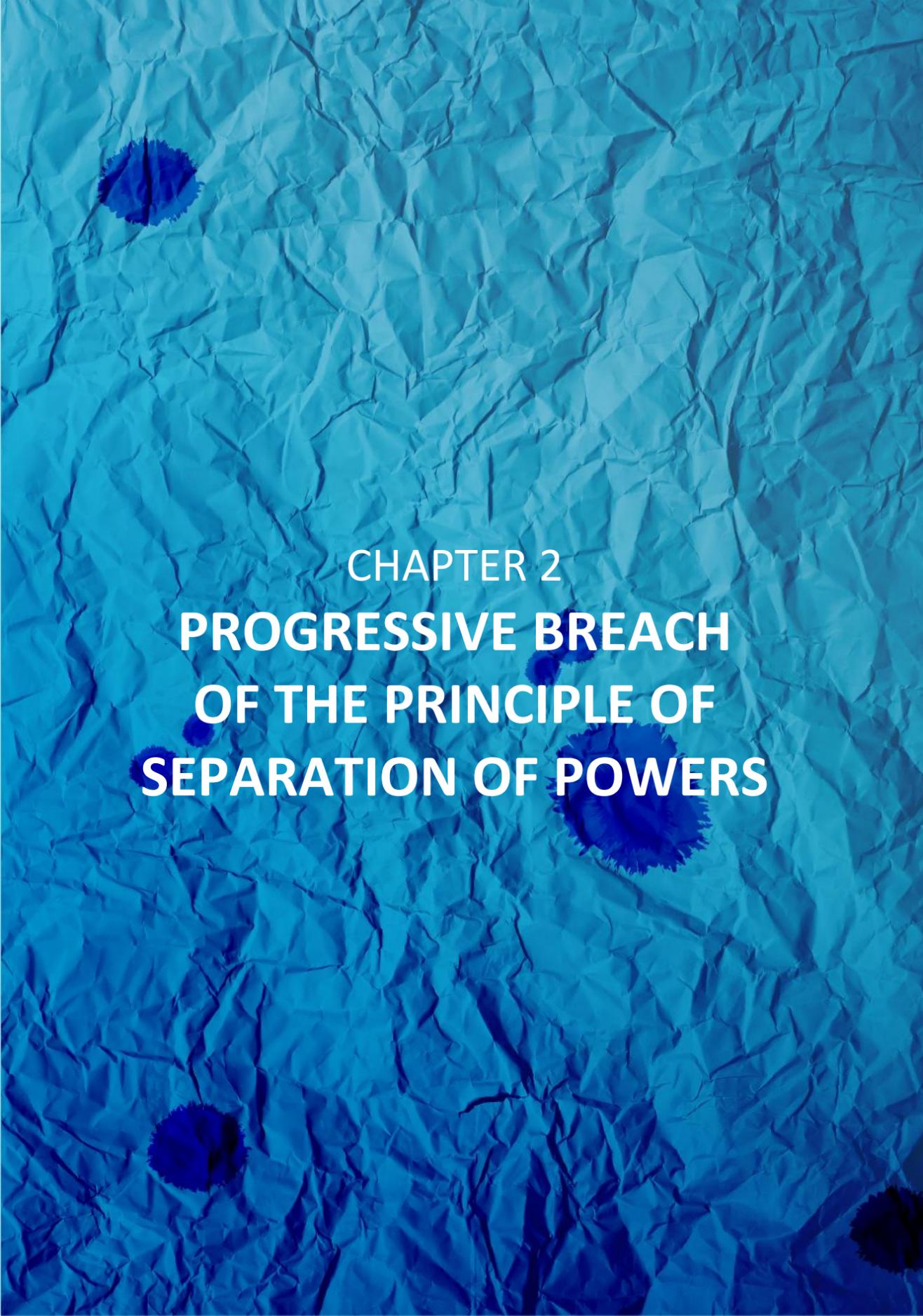
¹⁹ GIEI, [Report on the violent events that took place between April 18th and May 30th](#), December 21, 2018.

the executive branch. And the existing coordination between the National Police and groups sympathizing with the government to assault, surveil, threaten, and constantly harass anyone identified as a government opponent.

45. In this context, the Commission noted, through its MESENI, from the latter half of 2019 onwards, patterns of human rights violations consisting of the intensification of surveillance, harassment and selective repression of social and political leaders, human rights defenders, journalists and press workers, and of anyone identified with the opposition; systematic attacks on indigenous communities and peoples; and reports of extrajudicial executions of dissidents and farmers. The Commission expressed its concern regarding, in this fifth phase, a continued de facto state of emergency through a police state that maintained suspended or severely limited fundamental rights, such as freedom of expression and association, which permitted no form of dissidence, the right of assembly, the protection of human rights, social protest, and participation in public affairs, thereby consolidating the most intense and systematic assault on public liberties that had occurred in the country since the start of the crisis.²⁰
46. In 2021, the IACHR has noted the intensification of a new phase of repression through a set of actions whose effect would be to end participation by the opposition in the electoral process, and to facilitate the perpetuation in power of the current authorities, in a context of widespread impunity and widespread and prolonged breach of the rule of law in the country, which the IACHR condemned.²¹

²⁰ IACHR, [Two Years into Nicaragua's Human Rights Crisis, the IACHR Stresses its Permanent Commitment to Victims and Confirms the Consolidation of a Fifth Phase of Repression](#), April 18, 2020.

²¹ IACHR. [93/21 - Three Years After the Start of the Human Rights Crisis in Nicaragua, IACHR Condemns Ongoing Impunity](#), Washington, D.C., April 19, 2021



CHAPTER 2
**PROGRESSIVE BREACH
OF THE PRINCIPLE OF
SEPARATION OF POWERS**

PROGRESSIVE BREACH OF THE PRINCIPLE OF SEPARATION OF POWERS

47. The human rights crisis precipitated in 2018 and the state's response thus far was enabled through the subjugation of the judiciary and the Attorney General's Office, among others, to the government's designs, clearly undermining the rule of law and democracy, evident in the disregard for the mandate of judicial independence and separation of powers, especially through the criminalization of dissidence, the lack of guarantees of the independence and impartiality of the judiciary, and the impunity surrounding human rights violations. Moreover, the National Assembly, in full alignment with the Executive branch,²² enacted a set of laws whose effect would be to close even further the democratic forums and silence dissidence in the country, including freedom of expression. The events of 2021 make evident the government's intent to remain in power through a set of systematic actions aimed at thwarting opposition participation in the general elections to be held in November this year.

A. Executive branch: presidential reelection without term limits and public security

48. From 2000 to 2018, a set of constitutional and legal reforms were enacted in Nicaragua that facilitated the control of power from the executive branch. The first reforms were enacted during the presidency of Arnoldo Alemán. In 2007, during Daniel Ortega's second presidency, deeper reforms were made, intended to institute a model of absolute control, also made possible through the executive branch's control and influence in the legislature.
49. In that regard, the IACHR notes that different factors, such as decisions of the Supreme Electoral Council intended to eliminate or abolish government opposition; laws in violation of international law; as well as reported electoral fraud starting with the 2008 municipal election period,²³ and 2011 national

²² In Chapter IV.B of its 2019 Annual Report, the IACHR indicated that the human rights crisis in Nicaragua had made evident that the Legislative Assembly posed no counterweight to the executive branch, a situation that had existed for several years. In fact, in the context of the closure of democratic and protest forums in the country, the legislature approved the dissolution of nine human rights defender organizations in reprisal for their work; prolonged the mandate of the Truth, Justice, and Peace Commission, whose independence and impartiality had been constantly questioned by civil society, the families of the victims and the IACHR itself; and streamlined the enactment of a group of the laws incompatible with the right to truth, access to justice, and integral reparation for the victims of repression in April 2018. IACHR, 2019 Annual Report, Chapter IV.B Nicaragua, OEA/Ser.L/V/II. Doc. 5, February 24, 2020, pars. 47 ff.

²³ La Prensa. Así fraguó el fraude el FSLN en 2008 and 2011. February 7, 2016. Confidencial. La maquinaria del fraude electoral del FSLN. April 12, 2021.

election period,²⁴ resulted in a National Assembly controlled by the governing party and its allies. Other events that facilitated this context were: cancellation of the legal status of the Sandinista Renovation Movement (MRS) on June 11, 2006²⁵ and the expulsion from the National Assembly of 29 opposition Deputies members of the Independent Liberal Party (*Partido Liberal Independiente* - PLI), the second electoral force at the time.²⁶

1. Presidential reelection without term limits

50. Regarding the electoral system, it is important to mention the electoral reforms that facilitated the concentration of power. First, the IACHR notes the 2000 constitutional reform by which the percentage of valid votes required for election to the presidency and vice presidency of the Republic was reduced from 45% to 40%, establishing that “the candidates for those offices must obtain a relative majority of at least forty percent of the valid votes, except in the case of those with a minimum of thirty-five percent of the valid votes which exceeds the valid votes of the candidates who came in second place by a minimum of five percentage points.”²⁷ Subsequently, with the 2014 constitutional reform,²⁸ the second round was eliminated and a simple majority of votes to win elections established.
51. On the other hand, in 2009, Daniel Ortega was serving as President for a second term. At the time, by constitutional mandate, he was prohibited from running for President in the 2011 elections. The Constitution in force in 2009, prohibited, through Article 147, the reelection of the president and vice president of the Republic to successive terms of office.²⁹ The Constitution also prohibited the reelection of serving mayors and vice mayors, establishing in its Article 178 that

²⁴ Carter Center. *The November 2011 elections in Nicaragua*. 2012.

²⁵ CSE. Resolution of June 11, 2008, rescinding the legal status of the MRS.

²⁶ BBC. *El Parlamento de Nicaragua destituye a 28 diputados opositores*. July 29, 2016. Regarding this event, the IACHR expressed concern over the removal of the deputies and urged the State to adopt all measures necessary to guarantee the free exercise of political rights in the country. IACHR. *111/16 - IACHR Expressed Concern over Removal of Opposition Legislators in Nicaragua*. Washington, D.C., August 8, 2016

²⁷ Article 4 of the Constitutional Reform amending Article 147 of the Constitution.

²⁸ *Law Partially Amending the Constitution of the Republic of Nicaragua*. Law No. 854. Enacted on January 29, 2014. Published in Gazette No. 26, of February 10, 2014.

²⁹ “The following parties may not run for the offices of President or Vice President of the Republic: (a) Anyone who is serving or has served as President or acting President of the Republic at any time during the term in which the election is held for the following term, or anyone who has served for two presidential terms”; (b) the Vice President of the Republic or anyone called to replace him, if he has served as Vice President or as acting President during the twelve months prior to the date on which the election is held for the next National Assembly term. *Text of the Constitution of Nicaragua incorporating the amendments as of September 16, 2010*. Published in La Gaceta, Diario Oficial No. 176, of September 16, 2010.

they could only be reelected for one term and that they could not be reelected to the immediately following term.³⁰

52. Notwithstanding the foregoing, on October 15, 2009, the executive branch together with mayors and vice mayors filed a petition before the Supreme Electoral Council (CSE) for the application of the constitutional principle of unconditional equality for participating in the political affairs of the nation, “without limitations other than age and citizen rights suspended by firm judgment,”³¹ and for the inapplicability of the “Electoral prohibition on running for the offices of President and Vice President, and for Municipal Mayors and Vice Mayors.”³²
53. On October 16, 2009, the CSE rejected the petition *ad portas*, arguing that even if the constitutional principle of unconditional equality was at odds with the principle of constitutional electoral prohibition for the president and vice president of the Republic, mayors and vice mayors “to participate successively in the electoral processes to be held as part of the November 2021 and 2022 elections³³”, it was not within its purview to resolve it. That same day, the petitioners brought an amparo action to the Constitutional Chamber of the Supreme Court of Justice, arguing that the CSE decision “denying them the right to participate actively in the upcoming [national and municipal] elections constituted a veritable absolute political prohibition.”³⁴ In that regard, the IACHR notes that Article 173 of the Constitution in force at the time provided that there was no further remedy, ordinary or special, against electoral resolutions of the Supreme Court.³⁵
54. Despite the above, on October 19, 2009, the Constitutional Chamber of the Supreme Court, by Judgment No. 504, admitted the amparo action. In its decision, it found that the CSE had exclusive electoral jurisdiction but not exclusive administrative jurisdiction, where it was in fact subject to jurisdictional control; that, regarding the offices of president and vice president of the Republic, and municipal mayor and vice mayor, there was unequal treatment regarding the right to run successively for the same public office in the subsequent elections and, therefore, it declared inapplicable Article 147.a of the Constitution.³⁶ It also ordered the CSE to issue a certificate declaring the petitioners “to be citizens

³⁰ National Assembly. Text of the Constitution of Nicaragua incorporating the amendments as of September 16, 2010. Published in La Gaceta, Diario Oficial No. 176, of September 16, 2010.

³¹ Judgment No. 504 of the Constitutional Chamber of the Supreme Court, of October 19, 2009.

³² According to the petitioners’ argument, the provision generated inequality in and before the law “since it only applies to directly popularly elected offices whose represented [sic] were democratically elected,” and not to other “directly popularly elected offices, such as National Assembly Deputies, Central American Parliament Deputies, Members of the Councils of the Atlantic Coast Autonomous Regions, and indirectly elected offices, such as Supreme Electoral Council (CSE) magistrates, Prosecutor of the Republic, Member of the Office of the Comptroller General of the Republic, Prosecutor for Human Rights Protection, Overseer [Intendente] and Superintendent of Banks, and the Supreme Court of Justice magistrates, among others.” Constitutional Chamber of the Supreme Court. Judgment No. 504, of October 19, 2009.

³³ Constitutional Chamber of the Supreme Court. Judgment No. 504, of October 19, 2009.

³⁴ Constitutional Chamber of the Supreme Court. Judgment No. 504, of October 19, 2009.

³⁵ 1987 Constitution of the Republic of Nicaragua, Articles 147, 173, and 178.

³⁶ Constitutional Chamber of the Supreme Court. Judgment No. 504, of October 9, 2009.

enjoying political – constitutional – electoral rights to participate in the elections to be held in 2011 and 2012, in the same offices they now hold, as candidates for president – vice president – mayor – and vice mayor, respectively,”³⁷ and ordered the referral of the case to the plenary of the Court for endorsement and its erga omnes effectiveness.

55. On September 30, 2010, the plenary of the Supreme Court, by Judgment No. 6, confirmed Judgment No. 504 of the Constitutional Chamber and declared the inapplicability erga omnes of the constitutional provisions of Articles 147.a and b, and 178.³⁸ Therefore, the IACHR notes, despite the constitutional prohibition, the decisions of two branches of government (Supreme Electoral Council and judiciary) allowed Daniel Ortega to run for the presidency in the November 2011 elections.
56. Subsequently, by a 2014 constitutional reform,³⁹ the National Assembly – controlled by the party affiliated with the executive branch – repealed Article 147 of the Constitution that prohibited immediate reelection to the presidency of the Republic and authorized presidential reelection without term limits, which has allowed Daniel Ortega to remain as President.⁴⁰
57. In that regard, the IACHR has held that reelection without term limits and/or the same person serving as president for lengthy periods in certain contexts where there are no safeguards or adequate guarantees for the independence of democratic institutions, may pose some risks to the representative democratic system, fundamental pillar of the inter-American system. To the extent that the authority in charge has the authority of nomination in the oversight bodies and other branches of government, his or her prolonged or indefinite tenure may generate a concentration of power rendering illusory the institutional equilibrium of the system of weights and counterweights, and ultimately undermine the bases of democracy, such as alternation in office and access to power as a guarantee of pluralism.⁴¹
58. For its part, the Inter-American Court has held that authorizing presidential reelection without term limits is inconsistent with the principles of representative

³⁷ Constitutional Chamber of the Supreme Court. Judgment No. 504, of October 9, 2009.

³⁸ The Supreme Court wrote that: “THIS SUPREME COURT OF JUSTICE considers and confirms that both the President of the Republic, Commander José Daniel Ortega Saavedra and the Mayors to which Judgment No. 504-2009 applied have the right to run in the national and municipal elections of 2011 and 2012 respectively, and any elections held thereafter; the former for President of the Republic and the latter for Mayors, since, as indicated in Judgments No. 504-2009 and 67-201, text of which is reiterated here: “The Principle of Popular Sovereignty and the Right to Elect and to be Elected may not be altered even by derived constituent power, since it is an essential substantive human right. Supreme Court of Justice. Judgment No. 6, of September 30, 2010.

³⁹ Law Partially Amending the Constitution of the Republic of Nicaragua. Law No. 854. Enacted on January 29, 2014. Published in Gazette No. 26, of February 10, 2014.

⁴⁰ IACHR, 2018 Annual Report, Chapter IVB-Nicaragua. OAS, Electoral Accompaniment Mission Report. General Elections in the Republic of Nicaragua, November 6, 2011. See also: The Carter Center, The November 2011 Elections in Nicaragua. Study Mission Report, available at: www.cartercenter.org.

⁴¹ IACHR, Report No. 303/20. Case 13.727, Report on the Merits, Fabio Gadea Mantilla, Nicaragua, par. 78.

democracy, and, therefore, with the obligations set forth in the American Convention and Declaration of the Rights and Duties of Man.⁴²

59. In that regard, the Court has held that the aim of prohibition of indefinite mandates is to prevent people who hold popularly elected office from keeping themselves in power. It has also emphasized that representative democracy is characterized by the fact that the people exercise power through their representatives as are established by the Constitution, who are chosen in elections based on universal suffrage.

Perpetuation of individuals in public office entails the risk that the people will cease to be duly represented by their elected leaders, and that the system of government may come to resemble an autocracy more than a democracy.⁴³

60. The Inter-American Court also held that enabling presidential reelection without term limits by allowing the incumbent president to run for reelection has serious consequences in terms of access to power and the functioning of democracy in general. Therefore, the removal of limits preventing presidential reelection without term limits must not be subject to being decided by the will of the majority or their representatives for their own benefit.⁴⁴ The Court also held that, as a general rule, the risks to democracy in the region of presidential reelection without term limits have materialized, and it concluded that enabling presidential reelection without term limits keeps political forces other than the person holding the office of president from gaining popular support and being elected, it affects the separation of powers and, in general, weakens the functioning of democracy.
61. Finally, both the Commission and the I/A Court of H.R. have pointed out that the right to be reelected is not recognized in the American Convention on Human Rights. Specifically, the Inter-American Court established that indefinite presidential re-election is not protected as an autonomous right.⁴⁵ Likewise, it is not recognized in the Convention or the American Declaration, and in general, in the *corpus iuris* of international human rights law, in other international treaties, in regional customary law, or in the general principles of law.⁴⁶
62. In parallel, the IACHR notes that the Alemán-Ortega pact enabled Electoral Law No. 331 to be enacted in 2000, as well as the successive reforms thereto until 2021, which, together, “Far from increasing democratic participation and ensuring free,

⁴² IA Court HR. Advisory Opinion OC-28/21. [Presidential Reelection without Term Limits in Presidential Systems in the Context of the Inter-American Human Rights System](#), June 7, 2021.

⁴³ IA Court HR. Advisory Opinion OC-28/21. [Presidential Reelection without Term Limits in Presidential Systems in the Context of the Inter-American Human Rights System](#). June 7, 2021, par. 73.

⁴⁴ IA Court HR. Advisory Opinion OC-28/21. [Presidential Reelection without Term Limits in Presidential Systems in the Context of the Inter-American Human Rights System](#). June 7, 2021, par. 144.

⁴⁵ IA Court HR. Advisory Opinion OC-28/21. [Presidential Reelection without Term Limits in Presidential Systems in the Context of the Inter-American Human Rights System](#). June 7, 2021, par. 91-102.

⁴⁶ IA Court HR. Advisory Opinion OC-28/21. [Presidential Reelection without Term Limits in Presidential Systems in the Context of the Inter-American Human Rights System](#). June 7, 2021, par. 91-102.

fair, competitive, legitimate, appropriately monitored elections, the reform in question”, introduce changes that restrict electoral competition and the exercise of political rights.⁴⁷

63. In that regard, the IACHR notes that the 2000 text eliminated the legal definition of “public association for candidate nomination” (“asociaciones de suscripción popular”) for participating in elections, restricting political participation in electoral processes to political parties. Specifically, the Electoral Law No. 331 of 2000 restricts the participation in electoral processes to the figure of political parties. A form of organization that is not typical within indigenous and ethnic communities of the Atlantic Coast. It also limited the formation of political parties, their form of membership and how they obtain legal status and established additional grounds for the suspension and cancellation of their legal status.⁴⁸ As a result of this reform, indigenous and ethnic communities were excluded from participating in the 2000 municipal elections. For this reason, the Yapti Tasba Masraka Nanih Asla Takanka (YATAMA) indigenous organization lodged a complaint before the IACHR, which was declared admissible,⁴⁹ and, having analyzed the merits of the case, referred it to the IA Court HR.
64. In its 2005 judgment, the Inter-American Court declared the international responsibility of the Republic of Nicaragua for violation of the political right of the candidates nominated for election by YATAMA. The Court also found that there was no judicial remedy available to counter the decisions issued by the CSE, and that Electoral Law No. 331, of 2000, was ambiguous because it failed to establish clearly the consequences of failure to comply with certain requirements, both for those participating through a party and those participating through an alliance of parties, and ordered the State of Nicaragua to make the following legislative modifications:
 - Establish a simple, prompt and effective recourse to contest the decisions of the Supreme Electoral Council that affect human rights;
 - Reform the electoral law so that it regulates clearly the consequences of failure to comply with the requirements for electoral participation, the procedures that the Supreme Electoral Council should observe when determining such non-compliance, and the reasoned decisions that this Council should adopt in this regard, as well as the rights of the persons whose participation is affected by a decision of the State;

⁴⁷ IACHR. Press Release. 122/21 - The IACHR Expresses Concern over Electoral Reform Passed in Nicaragua and Calls on State to Guarantee Free and Fair Elections, May 14, 2021

⁴⁸ Law No. 331, Electoral Law with incorporated amendments. Enacted on May 26, 2012, published in La Gaceta No. 168 on September 4, 2012.

⁴⁹ IACHR. Admissibility. Report No. 125/01, Case 12.388, YATAMA.

- Reform the regulation of requirements established in the Electoral Law that have been declared in violation of the American Convention on Human Rights; and
 - Adopt, within a reasonable time, the necessary measures to ensure that the members of the indigenous and ethnic communities may participate in the electoral processes effectively and according to their traditions, practices and customs.⁵⁰
65. As of the date of adoption of this report, the information available suggests that the State of Nicaragua has not complied with the judgment, this meaning, according to the Inter-American Court itself, “frontal disregard for the obligations arising from the judgment issued by the Court and the State Party’s commitments under the Convention, which inhibits reparation for the human rights violations declared in the judgment and divests the Convention of its effectiveness in the instant case.”⁵¹
66. In another vein, and in addition, in application of Electoral Law No. 331, on June 11, 2008, the CSE canceled the legal status of the Sandinista Renovation Movement (MRS), arguing that incurred in grounds of “self-dissolution,” as provided by Article 74.3⁵² of that law, which excluded the organization from participating independently in the municipal and national elections.⁵³
67. It is important to note that the OAS General Assembly has deemed essential to adopt measures to promote free and fair elections in Nicaragua. Notable among them are: (a) modernization and restructuring of the Supreme Electoral Council to ensure it operates in a fully independent, transparent, and accountable fashion; (b) a pluralistic political process leading to the effective exercise of civil and political rights, including the rights of peaceful assembly and freedom of expression, and open registration of new political parties; (c) independent technical review and updating of voting registries and independent audit of voter rolls; (d) independent, credible, and accredited international electoral observation; and (e) transparent and effective voter registration, ID card distribution, and voting center management (...).⁵⁴ As of the date of adoption of this

⁵⁰ IA Court HR. Case of Yatama v. Nicaragua. Preliminary Objections, Merits Reparations and Costs. Judgment of June 23, 2005. Series C No. 127.

⁵¹ IA Court HR. Caso Yatama Vs. Nicaragua. Supervisión de Cumplimiento de Sentencia. [Monitoring Compliance with Judgment. [Only in Spanish]

⁵² CSE. Resolution of June 11, 2008, rescinding the legal status of the MRS.

⁵³ IACHR, Report No. 18/19, Petition 1261-08, Sandinista Renovation Movement et al., February 24, 2019. On that occasion, the legal status of the Conservative Party (PC) was also canceled, which the CSE restored in May 2010. La Prensa. CSE regresa diputación and personería a conservadores [CSE restores the deputies and legal status of the conservatives], May 19, 2010.

⁵⁴ “Restoring Democratic Institutions and Respect for Human Rights in Nicaragua through Free and Fair Elections.” Adopted by the OAS General Assembly at its 50th regular session, AG/CG/doc.5 (L-O/20), Washington, D.C., United States of America, October 21, 2020.

report, none of the measures proposed by the OAS General Assembly has been implemented.

B. State security forces

68. At the Executive Branch level, the Commission notes with concern how state security entities and institutions have played an important part of the process of concentrating and maintaining power through the manipulation, control, and diversion of functions of the National Police and the Army, and the creation of apparatus for control and surveillance of the citizenry, especially of the political opposition, as is analyzed below.

1. National Police

69. The National Police force was founded in 1979, only a few months after the overthrow of the Somoza dictatorship. Nicaraguan sociologist Elvira Cuadra Lira notes that, in 1990, “with the electoral defeat of the Sandinista Revolution and the change of government that paved the way for the political transition, the police were confronted with many and prolonged social conflicts. With its forces depleted, without the necessary equipment, and with compromised citizen confidence, the institution embarked upon a professionalization and modernization process that gained national and international recognition.”⁵⁵
70. Subsequently, as documented by GIEI-Nicaragua, Daniel Ortega’s ascent to the presidency in 2007 also marked a major change in the conception of the State whereby a subordinate police force was essential to the regime. Accordingly, it was necessary to reform the institution to alter its nature and ends, from an institution charged with ensuring the rights of all citizens to one that had to act in concert with the party allegiances that created it.⁵⁶ The IACHR also notes the mounting political violence as of that year, as well as the number of reports and signs of police participation in repressive and violent actions where abuse of authority, disproportionate use of force, and impunity were evident.⁵⁷ In that regard, the

⁵⁵ Cuadra Lira, Elvira. Dispositivos del silencio: Control social and represión en Nicaragua [Apparata of silence: Social control and repression in Nicaragua] (Clacso, 2018).

⁵⁶ GIEI-NICARAGUA. Report on the violent events that took place in Nicaragua between April 18th and May 30th.

⁵⁷ As reported by various human rights organizations and security specialists, as well as obstructing marches with anti-mortar devices, the PN beat people, manifestly abusing their authority, made disproportionate use of force, and made brutal and cruel arbitrary arrests. In the vast majority of cases, no investigations were reported, and few police involved were punished. Some of the most relevant cases were: the conflict and violence stemming from the results of the 2008 municipal elections; the El Carrizo massacre during the 2011 presidential elections; the 2013 assault on the #OcupalNss protest; repression of a sugar workers march in Chichigalpa; the march marking March 8, 2014, in Managua; the 2015 Las Jagüitas massacre; the negligence, omission, and aggression against protesters during the “Protest Wednesdays” against the Supreme Electoral

IACHR notes that since 2008, civil society organizations have reported the promotion of selective government political persecution through a disregard for political rights, freedom of demonstration, of association, of expression, and of participation, among others, with different mechanisms against a deteriorated democracy, paving the way for the consolidation of an authoritarian regime.⁵⁸

71. In 2014, Law 872 was enacted, “on the organization, functions, career, and special social security regime of the National Police (PN).”⁵⁹ By virtue of that law, the National Police came to be directed by the president of the Republic in his capacity of Commander in Chief, with authority to order the use of National Police forces and resources in accordance with the Constitution and the law, thereby eliminating the Interior Ministry (Ministerio de Gobernación) as an intermediary oversight and control entity between the president and the police institution leadership.
72. This reform gave the president the authority to designate the Director General of the National Police from among the members of the National Leadership Board [*Jefatura Nacional*] and to remove him for “disobeying the orders of the President of the Republic in his capacity as Commander in Chief of the National Police in the exercise of his authorities.”⁶⁰ It also established that out of “institutional interest, the time of active service of general officers may be extended by the President of the Republic and Supreme Chief of the National Police, and, for the rest of the police hierarchy, by the Director General of the National Police” and the authority to call up “retired officers of the National Police to carry out specific missions in special cases, to be reincorporated through contract.”⁶¹
73. In its chapter on “Community Participation in Citizen Security,” the law provided that the National Police were to “enhance surveillance and citizen and human security in the communities to strengthen the security of persons and their property” and created the “Voluntary Police as a National Police auxiliary and support body, composed of Nicaraguan citizens who provide their service on a voluntary and temporary basis.”⁶²
74. The IACHR notes that, in addition to the institutional changes introduced through the 2014 legislative reform, among the most evident executive branch transgressions into the police institutional structure were: the prolongation of the

Council; the police obstruction of the farmers march to Managua and the miners protest in the town of El Limón; in 2015 and 2016, the government obstruction and repression of various protest demonstrations against irregularities in the presidential electoral process; and, in 2017, three cases of police or military brutality: the murder of 15-month-old child Daira Junieth Blandón; the murder of Ms. Elea Valle’s two minor children in an alleged confrontation between irregular armed groups and joint police and army forces; and the beating of farmer Juan Lanzas. GIEI-NICARAGUA. Report on the violent events that took place in Nicaragua between April 18th and May 30th.

⁵⁸ IACHR, Public Hearing, Freedom of expression and political rights in Nicaragua, October 27, 2008.

⁵⁹ Law 872, enacted on July 1, 2014, published in La Gaceta on July 7, 2014.

⁶⁰ Law 872, enacted on July 1, 2014, published in La Gaceta on July 7, 2014, Article 10

⁶¹ Law 872, enacted on July 1, 2014, published in La Gaceta on July 7, 2014, Article 38.

⁶² Law 872, enacted on July 1, 2014, published in La Gaceta on July 7, 2014, Articles. 22 and 23.

tenure of the former First Commissioner National Director Aminta Granera for consecutive terms, from 2006 to 2018,—although the law only permitted one term in that post;⁶³ the promotions in rank and posts granted to officers prior to the established time in exchange for their loyalty; and the appointment by the Director General of the National Police of one of her in-laws, Francisco Javier Díaz Madrid, by Presidential Agreement 98-A- 2018, of July 5, 2018. He exercised these functions until September 5, 2018, date on which he was promoted to First Commissioner by Presidential Agreement 130-A- 2018.⁶⁴

2. Army

75. In another vein, the IACHR notes that following the 1979 overthrow of the Somoza dictatorship, the Sandinista Popular Army was created, conceived “as an army to defend the Revolution’s political agenda.” In 1990, the institution changed its name to Army of Nicaragua and embarked upon a modernization and professionalization process. The IACHR notes that, according to available information, the Army’s 1990s decision to refrain from involvement in domestic conflicts, even when police capacities were overwhelmed by the violence and high level of social mobilization, boosted “public confidence in the military institution and its credibility.”⁶⁵ Subsequently, by virtue of presidential initiative No. 290, of 2007, whose aim was subordination of the army to the executive branch, which gained traction, the President implemented a “co-optation strategy (...) based on: reiteration of the government rhetoric that constantly reminded the army and police of their political origins and former party ties; the expansion of military autonomy, enabling it to create companies and perform different types of economic activities; and the designation of officers, active or retired, to key public offices, such as social security, construction and diplomacy.”⁶⁶
76. By 2010, a kind of strategic agreement was established between the army and the government which would become evident in light of the set of reforms to the military institution’s normative framework implemented the following year. Specifically, the laws enacted in 2010 were: (a) the National Defense Act, the Borders Legal Regime Act, and the Democratic Security of the Republic of

⁶³ She finally retired by Presidential Agreement 113-A- 2018, of July 31, 2018.

⁶⁴ GIEI-NICARAGUA. [Report on the violent events that took place in Nicaragua between April 18th and May 30th.](#)

⁶⁵ Elvira Cuadra Lira. [La pervisión de la fuerza: el Ejército and la Policía en la crisis nicaragüense.](#) Flacso Costa Rica. 2020. Elvira Cuadra Lira. [La pervisión de la fuerza: el Ejército and la Policía en la crisis nicaragüense.](#) Flacso Costa Rica. 2020.

⁶⁶ Elvira Cuadra Lira. [La pervisión de la fuerza: el Ejército and la Policía en la crisis nicaragüense.](#) Flacso Costa Rica. 2020. Elvira Cuadra Lira. [La pervisión de la fuerza: el Ejército and la Policía en la crisis nicaragüense.](#) Flacso Costa Rica. 2020.

Nicaragua Act; and (b) the Constitution and Military Code reforms, implemented in 2014; and (c) the Sovereign Security Act, enacted in 2015.⁶⁷

3. Parastate groups

77. In its report on its working visit to the country, published in June 2018, the IACHR noted the participation by parapolice groups and shock groups or Sandinista mobs, which acted with the acquiescence, tolerance, and collaboration of state authorities, specifically, the Police.⁶⁸ In the present report, the IACHR defines “parastate groups” as groups that perform repressive functions and act in coordination with the National Police or the Army. This in direct subordination to the presidency, vice presidency of the Republic and/or municipal mayors. They are shock groups or Sandinista mobs, and paramilitary groups.
78. The “shock groups,” also known as Sandinista mobs, were formed in late 2007 and early 2008. The IACHR expressed concern, in the context of the November 2008 elections, regarding the violent events stemming from the elections, noting that “individuals armed with sticks, stones, machetes, and homemade mortars participated in the street confrontations that took place after the November 9 municipal elections, resulting in several injuries.”⁶⁹
79. As amply documented by GIEI-Nicaragua, the shock groups or Sandinista mobs are composed of members of the Sandinista Youth, residents of poor neighborhoods, and gang members or former gang members, among others, recruited by political leaders, the Citizen Power Bureaux (GPC), town halls, and state institution staff members.⁷⁰ Their participation in attacks and assaults on the political opposition or those expressing social discontent has also been a constant of the Ortega government’s eleven years.
80. As a relevant background, it should be noted that, in 2007, Daniel Ortega formed a paramilitary group known as the “blue shirts” for the color of their clothing, to

⁶⁷ Elvira Cuadra Lira. *La pervisión de la fuerza: el Ejército and la Policía en la crisis nicaragüense*. Flasco Costa Rica. 2020. Elvira Cuadra Lira. *La pervisión de la fuerza: el Ejército and la Policía en la crisis nicaragüense*. Flasco Costa Rica. 2020.

⁶⁸ IACHR, *Gross Violations of Human Rights in the Context of Social Protests in Nicaragua*, June 2018, par. 58 and ff.; IACHR, Press Release 124/18, IACHR Urges Nicaragua to Dismantle Parapolice Groups and Protect the Right to Peaceful Protest, June 1, 2018.

⁶⁹ IACHR. *Press Release 51/08 - IACHR Expresses Concern over Electoral Situation in Nicaragua*, November 25, 2008.

⁷⁰ Since 2011, the heads of gang youth reintegration centers have been issuing public warnings about recruitment by governing party political secretaries and weapons supplied for participation in assaults on political opposition groups. The most serious case was that of the youth Samir Matamoros, who shot at a protest demonstration on the days that came to be known as “protest Wednesdays,” outside the Supreme Electoral Council. The youth had been a gang member, went through a reintegration process, and was pressured by government sympathizers to form shock groups. GIEI-NICARAGUA. *Report on the violent events that took place in Nicaragua between April 18th and May 30th*.

strengthen his security. They were composed of former military members, and had “a quasi-military structure, [used] weapons of war, and [carried out] military operations.”⁷¹ Their presence was to be noted as a security force for Daniel Ortega in public activities in which the president was participating, and were used “to strike hard,”⁷² violently repressing demonstrations protesting against the government and citizen protests rejecting electoral processes denounced as irregular.⁷³

81. The recruiter and head of the “blue shirts” was Manuel Alí Rivas Vallecillo, FSLN militant, Ortega confidant, and head of Ortega’s security team in the 1980s. In July 2010, Rivas Vallecillo was designated the President’s security advisor by presidential decree.⁷⁴ In a report published in 2010, the Nicaraguan Center for Human Rights (*Centro Nicaraguense de Derechos Humanos* - CENIDH) considered that “the objective may have been to accord institutional status to a paramilitary group.”⁷⁵ This because the new advisor showed himself to be an unconditional loyalist to the president and completely independent from the police and Army themselves. That same year, the President decided to promote officers also showing themselves to be his unconditional loyalists.⁷⁶
82. In the context of the state repression of social protests that began on April 18, 2018, initially, the state of Nicaragua had denied any linkage with parapolice forces.⁷⁷ Through a public statement of May 31, 2018, published the day after the repression of the march that took place in support of the Madres de Abril (April Mothers), it stated that “in Nicaragua there is no there are shock forces or paramilitary groups related to the Government.” Later, in public interviews, Daniel Ortega acknowledged their existence, stating that they were “right-wing groups,” and later stated that they were only sympathizers of the Sandinista Front organized to

⁷¹ Cuadra Lira, Elvira. *Dispositivos del silencio: Control social and represión en Nicaragua*, op. cit. (Clacso, 2018).

⁷² La Prensa, *Profesión: apalear*, November 15, 2009; El Nuevo Diario, *Condenan agresión de "camisas azules"*, December 20, 2007.

⁷³ OHCHR, *Human Rights Violations and Abuses in the Context of the Protests in Nicaragua*, August 2018, p. 37. Centro Nicaraguense de Derechos Humanos (Nicaraguan Center for Human Rights-CENIDH, its Spanish acronym), *Informe Impunidad de las Violaciones los Derechos Civiles and Políticos en Nicaragua en el contexto de Debilitamiento Institucional* (Report on Impunity Surrounding the Violations of Civil and Political Rights in Nicaragua in the Context of the Undermining of Institutions) (Available only in Spanish), 2014.

⁷⁴ *Presidential Decree 28-10*, Gaceta No. 113, Wednesday, July 16, 2010. La Prensa, *Ortega crea unidad de seguridad paralela*, July 8, 2010.

⁷⁵ CENIDH. *Derechos Humanos en Nicaragua 2010* (Human Rights in Nicaragua 2010) (Available only in Spanish).

⁷⁶ CENIDH. *Derechos Humanos en Nicaragua*, 2010, p. 46.

⁷⁷ On May 27, the National Police indicated that, as a result of the National Dialogue, police forces would stay in their stations to guarantee peaceful marches and that their agents would not be present in the vicinity of university campuses. In the same communiqué, the police denied they had any ties with parapolice forces. National Police, Nicaragua, *Nota de Prensa 25-2018*, May 27, 2018; in public statements, the Vice-President of Nicaragua indicated: “In Nicaragua there are no riot squads or paramilitary groups with ties to the government, therefore we cannot accept accusations of painful and tragic events that we have not provoked, that we will never provoke, and that, on the basis of groundless accusations, attempts are made to restrict the enforcement of the Constitutional Duty of Law Enforcement Forces to contribute to the safety of the Families.” *El 19 Digital*, *Declaraciones de Rosario Vicepresidenta de Nicaragua en Edición del Mediodía de Multinoticias*, May 31, 2018.

defend themselves.⁷⁸ Nevertheless, after the implementation of the “clean-up operations” for the lifting of roadblocks (*tranques*), on July 20, President Daniel Ortega asserted that the groups who participated in the clean-up operations were “volunteer policemen” and cited security reasons to justify their undercover operations.⁷⁹ Also, the State inform to the IACHR that, in all interventions to restore public order “only participate professional police forcers and volunteers”⁸⁰. Regarding this, in its annual report of 2018, the Commission observed that the establishment and actions of parapolice forces and riot squads do not pertain to the duties of the Voluntary Police Force or for the purposes of their functioning as provided for in Law 872.⁸¹

4. Surveillance apparata and political control

83. The IACHR notes that, in parallel, beginning in 2007, the government instituted in Nicaragua a citizen surveillance and control system, organized territorially as Citizen Power Councils and Bureaux, and the Sandinista Leadership Committees.

4.1 Citizen Power Councils and Bureaux

84. By Executive Decree no. 112, of November 29, 2007, President Daniel Ortega created the Citizen Power Councils (CPC) and the Citizen Power Bureaux (GPC) “so that the Nicaraguan people, in the exercise of direct participatory democracy by the country’s various social sectors, organize and participate directly and actively in the nation’s integral development and support the plans and policies of the President of the Republic designed to implement these objectives,” with a presence “in the communities, regions, neighborhoods, districts, municipalities,

⁷⁸ Confidencial, “[Diez mentiras de Daniel Ortega](#)”, 10 septiembre de 2018; Confidencial, [Ortega ofrece su “régimen de terror” hasta 2021](#), 24 de julio de 2018; Fox News, [Bret Baier interviews President Daniel Ortega](#), 23 de Julio de 2018.

⁷⁹ [Euronews, “Euronews entrevista al presidente de Nicaragua Daniel Ortega sobre la mortal crisis del país”](#), July 20, 2018.

⁸⁰ State of Nicaragua, State’s Observations on the “Chapter IV. B- Annual Report of the IACHR”, February 22, 2019. p. 29.

⁸¹ According to Law 782, in its Article 25, The members of the Voluntary Police shall only carry out support tasks in prevention activities such as: 1) Assist the Police in surveillance, patrolling, controlling traffic, and natural disasters. 2) Assist the authorities when they are aware of the perpetration of criminal incidents, safeguarding the place, providing the necessary help to victims, and providing timely reports to the authorities having jurisdiction. In addition, “The members of the Voluntary Police, for the fulfillment of their tasks, shall be duly identified by wearing uniforms and their own badges, their activity must always be coordinated and supervised by a member of the National Police, and in their actions they are governed by the basic principles underlying the institution’s performance.” Nicaragua, Law 872. [Organización, funciones, carrera y régimen especial de seguridad social de la Policía Nacional](#), July 7, 2014.

departments, autonomous regions, and nationwide.” Together with the CPC and GPC, he created a National Citizen Power Bureau.⁸²

85. Regarding the above, at a public hearing held in 2017, the IACHR was informed of the subsequent political agreements between the Liberal Constitutionalist Party and the Sandinista National Liberation Front that rendered partisan the entire State institutional structure. According to the information received, President Daniel Ortega, since his ascent to the presidency on January 10, 2007, has disregarded the institutional structure by creating Councils that compete with institutions, including state institutions – parallel institutions that have come to usurp the powers accorded by law to the ministries and state entities. The organizations maintained that the institutional structure created for the implementation of citizen participatory processes has essentially been disregarded and restrictions imposed on the creation of forums for civil society-State communication. By these means, the President has concentrated power in himself.⁸³
86. According to the civil society organizations, the CPC were partisan shock forces to obstruct demonstrations or any form of protest or complaint to the government.⁸⁴ This organizational and citizen participation structure became part of the National Economic and Social Planning Council (CONPES). Rosario Murillo, Ortega's wife, and who was the Coordinator of the Secretariat of Communication and Citizenship, was appointed as executive secretary of Conpes. For his part, Gustavo Porras, then a deputy of the National Assembly and president of the Assembly since 2017, was appointed as deputy executive secretary.⁸⁵
87. The CPCs were divided into different groups to address topics of interest to the community, such as health, education, housekeeping, etc. Among the first working groups were those related to citizen security. In November 2007, the citizen security CPCs replaced the Crime Prevention Committees, the form of organization and citizen consultation promoted by the Police for coordination of crime and delinquency prevention activities in poor neighborhoods and communities.⁸⁶
88. In 2014, the National Assembly enacted the Family Code, creating the Family, Community, and Life Bureaux,⁸⁷ with presence “at the departmental, municipal,

⁸² Presidential Decree 112-2007, Creation of the Citizen Power Councils and Bureaux, enacted on November 29, 2007 and published in La Gaceta No. 230, of November 29, 2007.

⁸³ IACHR, Public Hearing, Situation of Human Rights in Nicaragua, 127th period of sessions, March 1, 2007. See also, IACHR, Public Hearing, Administration of justice in Nicaragua, 131st period of sessions, March 12, 2008.

⁸⁴ IACHR, Public Hearing, Freedom of expression and political rights in Nicaragua, 133rd period of sessions, October 27, 2008.

⁸⁵ Notimérica. Nicaragua. El presidente de Nicaragua, Daniel Ortega, crea los Consejos del Poder Ciudadano por decreto.

⁸⁶ Cuadra Lira, Elvira. Dispositivos del silencio: Control social and represión en Nicaragua. Clacso, 2018.

⁸⁷ Law 870 – Family Code, published in La Gaceta No. 190, of October 8, 20014; Preliminary Title, Chapter V. Article 32 reads: “The Family, Community, and Life Bureaux are organized with persons, women, men, youth,

neighborhood, and rural levels.” Through this reform, the Family Bureaux were formally institutionalized, replacing the CPC, which meant that they even had public budgetary allocations.⁸⁸

89. In the context of the crisis that began on April 18, 2018, the IACHR received information on the active participation of the formerly known CPCs in the criminalization of people opposed to the government. In particular, the IACHR warned about illegal raids and arrests that were made from lists drawn up with the intelligence work of the former CPCs, who report directly to the vice presidency. In these cases, after identifying the opposition persons, police and parapolice groups entered their homes under use of force and without a court order⁸⁹.

4.2 Sandinista Leadership Committee

90. The Sandinista Leadership Committees, part of the FSLN structure, and the Sandinista Youth, established themselves in public institutions to ensure public employee participation in activities such as marches, occupation of roundabouts and traffic circles in the city of Managua, counter-marches, fairs, and other political acts.⁹⁰ They are also responsible for surveillance of public employees who are not government sympathizers.⁹¹

4.3 National Sovereign Security System

91. In addition to these security actions, in December 2015, the National Assembly enacted Law 919, on Sovereign Security, creating the National Sovereign Security System “as a group of actions intended to guarantee the security of Nicaraguans through ongoing coordination and cooperation in this field among the State institutions. They fulfill their function through basic and specialized operations, using human resources and technical means.” The System is coordinated by the President of the Republic and the Army of Nicaragua, with the Department of Information for Defense of the Army of Nicaragua being the Executive Secretariat.⁹²

and older people living in a community, to reflect and work together. Promoting family values and family unity, self-esteem and esteem for others, responsibility, rights and obligations, communications, coexistence, understanding, and community spirit with a view to achieving consistency between what is, what is thought, and what is done. The Family, Community, and Life Bureaux draw their inspiration from Christian values, Socialist ideals, and solidarity-based practices.

⁸⁸ Cuadra Lira, Elvira. *Dispositivos del silencio: Control social and represión en Nicaragua*. Clacso, 2018.

⁸⁹ IACHR, 2018 Annual Report, Chapter IV.B – Nicaragua.

⁹⁰ Cuadra Lira, Elvira. *Dispositivos del silencio: Control social and represión en Nicaragua* (Clacso, 2018).

⁹¹ Confidencial, *Habla exsecretaría política del FSLN en el Banco Central*, Ligia Gómez, November 18, 2018.

⁹² *Law No. 919* on Sovereign Security. Enacted on December 2, 2015, and published in la Gaceta No. 241, of December 18, 2015.

92. This law defines as anti-sovereign security action all unlawful human conduct that poses a risk or threat to sovereign security: risks to sovereign security are those uncertain or random hazardous natural or human factors with a high level of uncertainty that do not yet pose a threat to sovereign security and are expressly defined by law; and threats to sovereign security those unambiguous natural factors or unlawful acts that at time of evaluation are real, have the capacity and intent to cause harm, and are expressly defined by law.⁹³
93. Article 14 of said law provides that the “activities of the National Sovereign Security System, and its organization and internal structure, means and procedures, personnel, facilities, databases and data centers, sources of information, and information and/or data that may lead to knowledge of the above-mentioned matters are confidential public information, as provided in Law No. 621, Access to Public Information Act, published in La Gaceta, Diario Oficial No. 118, of June 22 2007.”
94. According to CENIDH, the Sovereign Security Act has had major impact on human rights because it militarizes citizen security matters, predominantly under the Army of Nicaragua, and the risks this poses for the rights of the public, and because its definition of threat to security is broad and leaves a great room for discretion.⁹⁴ In its 2015 Annual Report, the Commission indicated, regarding this law, that the “laxity with which some sovereign security objectives are addressed, and the definition of threat itself and of other terms used in the text could facilitate military interventions in domestic affairs, especially in the context of protests and public demonstrations.”⁹⁵

C. *The Justice Administration System*

1. The Judiciary

95. The Commission underscores how important an efficient and independent administration of justice is to strengthen democracy and making the rule of law fully effective. A judiciary that meets such standards is able to curtail abuses and guarantee lawfulness and the protection of the rights of all people.
96. In this sense, the IACHR has previously noted that the State of Nicaragua lacks an independent judiciary as a result of its appointment processes, impacted by factors

⁹³ [Law No. 919](#), on Sovereign Security. Enacted on December 2, 2015, and published in la Gaceta No. 241, of December 18, 2015, Article 5.

⁹⁴ CENIDH, [Derechos Humanos en Nicaragua, Informe 2015](#). See also: La Prensa: [Vigente ley de seguridad soberana que “militariza el Estado”](#), December 26, 2015; and [Ley de Seguridad Soberana: ¿Por qué es polémica?](#), October 28, 2015; El Nuevo Diario, [Entra en vigencia Ley de seguridad soberana](#), December 24, 2015.

⁹⁵ IACHR, [2015 Annual Report](#), Chapter IV.A *Use of Force*, par. 31.

such as nepotism and official party influence and manipulation.⁹⁶ In particular, through the 2000 constitutional reform, the National Assembly added judiciary and electoral authority posts. In each case, the number of Supreme Electoral Council judges and co-judges (alternates) rose from 12 to 16.⁹⁷ The number of the Supreme Electoral Council (CSE) principal members (*propietarios*) rose from five to seven, with three alternates, and the Higher Council of the Office of the Comptroller General of the Republic was created, composed of five member comptrollers and three alternates.⁹⁸ This 2001 reform meant that the highest judiciary posts, including electoral posts, were divided between the FSL and the PLC.

97. These changes to the number of members of these entities in practice made possible a hybrid system: the CSE was composed of four Sandinista Front affiliates and three Liberal Party affiliates. Similarly, the CSJ was composed of eight governing party and eight Liberal Constitutionalist Party affiliates.⁹⁹
98. In 2010, President Daniel Ortega issued Executive Decree 3-2010,¹⁰⁰ extending the tenure of all authorities of the branches of government and State institutions, including the Supreme Electoral Council and the Supreme Court of Justice, enabling them to remain in their posts although their terms had expired, thereby guaranteeing control over the highest national court.¹⁰¹
99. In that regard, the then UN Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, in her report indicated that the perpetuation in office of judges and magistrates whose term had expired was one of the serious problems of the judiciary's independence and autonomy in Nicaragua, and she noted that "[in] July 2013, the terms of all CSJ magistrates will have expired (...)” and

⁹⁶ See IACHR, 2018 Annual Report, Chapter IV.B – Nicaragua. OCHCR. [Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul - Consulta subregional sobre la independencia del Poder Judicial en América Central \(Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul - Subregional consultation on the independence of the judiciary in Central America\)](#) (available only in Spanish), April 2, 2013. United States Department of State, [Nicaragua 2017 Human Rights Report](#), April 20, 2018, p. 8. IACHR, Public Hearing, Situation of human rights in Nicaragua, 127th period of sessions, March 1, 2007.

⁹⁷ IACHR, Public Hearing, Situation of human rights in Nicaragua, 127th period of sessions, March 1 2007

⁹⁸ [Law No. 330](#), Partial Reform of the Constitution of the Republic of Nicaragua. Enacted on January 18, 2000 and published in La Gaceta No. 13 on January 19, 2000.

⁹⁹ CEJIL. [Nicaragua: ¿Cómo se reformó la institucionalidad para concentrar el poder?](#) 2017.

¹⁰⁰ [Executive Decree No. 3, of 2010](#), enacted on January 9, 2010 and published in La Gaceta No. 6, January 11, 2010.

¹⁰¹ GIEI-NICARAGUA. [Report on the violent events that took place in Nicaragua between April 18th and May 30th](#). The executive decree indicated that: “on February 2, 2010, the terms of the Supreme Electoral Council magistrates end, and on March 7 of this year [2010], regional elections will be held on the Caribbean Coast of the Republic of Nicaragua. However, the National Assembly has not called the corresponding election for those posts, which would make it difficult to declare the citizens elected in the elections [*justas electorales*] to be held in the nation’s North Caribbean and South Caribbean regions. Additionally, the electoral authority would remain totally without leadership on the first of June of this year, on the eve of the electoral process for the 2011 national elections.” [Executive Decree No. 3-2010](#), enacted on January 9, 2010, by President Daniel Ortega Saavedra.

recommended their appointment as a matter of urgency.¹⁰² For its part, in its report, GIEI-Nicaragua concluded that “in real terms, these institutional changes meant that power was divided between the FSLN and the PLC and the doors closed to opposition political movements, limiting the right of political participation.”¹⁰³

100. Likewise, the then UN Special Rapporteur denounced the strong political influence in the appointment of the CSJ magistrates, especially since the official party majority in the National Assembly enabled State officials to be designated without the support of any other political representation.¹⁰⁴ By 2014, the FSLN and magistrates close to the President held three of the four chambers of the judiciary.¹⁰⁵
101. The IACHR notes, in addition to this, a judicial career service that lacked guarantees of impartiality. In that regard, the United Nations Special Rapporteur indicated that the National Council on Administration and the Judicial Career Service was not respecting the selection and election processes, that the Judicial Career Service Act was not being applied insofar as it concerned irremovability, since it did not take into account the judge’s consent, and that “the removal system lacks sufficient guarantees of impartiality.”¹⁰⁶

¹⁰² OCHCR. Informe de la Relatora Especial sobre la independencia de los magistrados and abogados, Gabriela Knaul - Consulta subregional sobre la independencia del Poder Judicial en América Central. April 2, 2013, par. 68 and Recommendation B.6.

¹⁰³ GIEI-NICARAGUA. Report on the violent events that took place in Nicaragua between April 18th and May 30th.

¹⁰⁴ See IACHR, 2018 Annual Report, Chapter IV.B- Nicaragua. Reference to UN, Informe de la Relatora Especial sobre la independencia de los magistrados y abogados, Gabriela Knaul, Consulta subregional sobre la independencia del Poder Judicial en América Central, April 2, 2013; In 2009, the Committee against Torture received allegations that “indicate lack of impartiality and independence of the public institutions of the judiciary, essential qualities to ensure effective application of the principle of legality and, especially, irregularities in the appointment of judges, partisan use of the judiciary structures, and cases of corruption among the judges and police agents.” UN, Committee against Torture, June 10, 2009, par. 14.

¹⁰⁵ El Confidencial, Instalan Corte Suprema de Ortega, April 23, 2014; See also La Prensa, La Justicia al Estilo de Ortega, August 11, 2015.

¹⁰⁶ For which reason she warned of the need for “these institutions [the National Administration and Judicial Career Service Council] to be in practice independent of the supreme courts of justice, with independent members, that establish objective and transparent procedures for the selection, appointment, promotion, removal, suspension and dismissal of judges.” She also indicated that “[t]he composition of this body must pluralistic, predominantly composed of magistrates and judges, and must guarantee participation by civil society entities. The process of selecting its members should also be transparent and public.” OHCHR. Informe de la Relatora Especial sobre la independencia de los magistrados and abogados, Gabriela Knaul - Consulta subregional sobre la independencia del Poder Judicial en América Central. April 2, 2013, pars. 67 and 86.

2. The Attorney General's Office

102. As for the Attorney General's Office, Article 24 of Law No. 346, of 2000, creating the Attorney General's Office,¹⁰⁷ provides that the prosecutor general and deputy prosecutor general "shall be elected by the National Assembly from among separate lists proposed by the President of the Republic and the National Assembly Deputies, for a term of five years beginning on the date of assumption of office. They shall be elected by favorable vote of at least seventy percent of the total number of Deputies."
103. The IACHR notes that since the creation of the Attorney General's Office, the prosecutor general and deputy prosecutor general have been elected based on a two-party formula resulting from the "Alemán-Ortega" pact. The designation of party affiliates close to the President has meant the progressive loss of the independence and autonomy of that Office.¹⁰⁸ In fact, according to the observations made in the GIEI's 2018 final report, "the top hierarchy" of the Attorney General's Office is entirely occupied by persons who formerly worked in top-level police posts, namely: Prosecutor General Ana Guido (former Commissioner General), Deputy Prosecutor General Julio González (former Senior Commissioner), and Inspector General Douglas Vargas (former police captain). In particular, the 2014 designation of the Prosecutor General—a woman of acknowledged Sandinista trajectory, is said to have totally impacted the composition of the Attorney General's Office. Since then, in contravention of national norms, prosecutors have been elected through internal competitions whereby entry by FSLN affiliates is always favored.¹⁰⁹ In addition, her appointment as Prosecutor General marked the start of process of relocation of prosecutors not affiliated with the governing party. More recently, in the context of the current crisis, [the need for] affinity with the national government is reflected in the political persecution of prosecutors who ultimately resigned from public office.¹¹⁰
104. The IACHR notes that, in addition to this, the Political Secretaries and the Sandinista Leadership Councils or Committees (CLS), hybrid structures de facto established within each institution, facilitate executive branch influence and control over the Attorney General's Office.¹¹¹ Their function makes it possible to ensure, among other things, participation by public employees in activities such as

¹⁰⁷ Law No. 346, Organic Law of the Attorney General's Office. Published in La Gaceta No. 196, of October 17, 2000. This law was not enacted and its publication was not ordered by the President of the Republic. By virtue of Article 142 of the Constitution, the President of the National Assembly ordered its publication.

¹⁰⁸ IACHR, 2018 Annual Report, Chapter IV.B-Nicaragua.

¹⁰⁹ This selection process was facilitated by the intervention of the Special Committee of the National Assembly, —the majority of whose members were also FSLN—, for which reason it rejected the candidacy of other people. "The policy of control exerted by the FSLN over the Office of the Public Prosecutor began in 2007 with the election by the National Assembly of Ana Julia Guido Ochoa as Deputy Attorney General, and the subsequent extension of her term by virtue of Presidential Decree No. 03/2010." GIEI, Nicaragua, Report on the violent events that took place between April 18th and May 30th, 2018, p. 47.

¹¹⁰ GIEI-NICARAGUA, Report on the violent events that took place in Nicaragua between April 18th and May 30th.

¹¹¹ IACHR, 2018 Annual Report, Chapter IV.B-Nicaragua

marches and traffic circle occupations, and to keep under surveillance public employees discontent with the government.¹¹²

105. In the context of the human rights crisis of 2018, the IACHR pointed out that the lack of independence of the justice administration system facilitated the use and manipulation of criminal law to criminalize and prosecute voices critical or opposed to the government. This led to hundreds of legal proceedings under unfounded and disproportionate charges, such as money laundering, terrorism, treason, as well as violations to the judicial guarantees of the detained persons. In this regard, the IACHR expressed its concern about the centralization of the processes in Managua, which would facilitate the appointment of prosecutors and judges related to Sandinismo to review the processes followed against opponents of the Government¹¹³.

D. Other power concentration strategies

106. The IACHR notes that the FSLN-PLC hybrid structure resulting from the “Aleman-Ortega Pact” has also impacted on other high posts and spread throughout the government, examples of which, owing to their relevance, are described below.

1. Control of the autonomous regimes

107. The IACHR notes that the hybrid system also operated in the Atlantic Coast region, undermining the autonomous regime recognized by the State in 1987 by Law No. 28, the Autonomy Statute of the Atlantic Coast.¹¹⁴ That statute recognized autonomy rights of the Coast’s inhabitants, expressed in their right to their forms of social and political organizations, respect for communal property, political representation in the regional governmental entities, mother tongue education,

¹¹² GIEI, Nicaragua, Report on the violent events that took place in Nicaragua between April 18th and May 30th, p. 47. According to documentation of the International Crisis Group, after the 18 April uprising, the FSLN sent a mandatory request to public employees to provide information regarding all of their social media accounts. International Crisis Group, A Road to Dialogue After Nicaragua’s Crushed Uprising, Report No. 72, 2018, p. 4; During its working visit, the Commission learned of reports of dismissals and threats to government personnel who had supported the protests. Some workers indicated that there were government supporters who were in charge of investigating workers’ social media profiles with a view to reporting any anti-government postings. IACHR, Gross Violations of Human Rights in the Context of Social Protests in Nicaragua, June 21, 2018, par. 166; La Prensa. Despidos ilegales a trabajadores del Estado de Nicaragua. April 28, 2018; La Prensa. Desatan persecución policial y laboral a estudiantes y empleados públicos que participaron en protestas. May 6, 2018; La Prensa. Trabajadores del Estado asediados y corridos por oponerse al régimen. May 22, 2018.

¹¹³ La Prensa, Los siete jueces que el orteguismo usa para reprimir a los manifestantes en Nicaragua, 1 de octubre de 2018; CIDH, Informe Anual 2018, Capítulo IVB-Nicaragua.

¹¹⁴ Law No. 28. Autonomy Statute of the Atlantic Coast Regions of Nicaragua. Enacted on September 7, 1987. Published in La Gaceta No. 238, of October 30, 1987.

benefit from the natural resource exploitation, and guarantees of participation in decisions on matters of regional interest.

108. The regional autonomy of the Coast was adopted at an historic moment and in exceptional circumstances due to the war and active participation by the indigenous insurgency through which it laid out its visions of self-government and self-determination. But the autonomy agreement, established in the 1987 Autonomy Statute, did not reflect indigenous aspirations for real autonomy that would protect their living spaces, the territory, and forms of local autonomy. The Statute went less than half-way between, on the one hand, the Nicaraguan State, which wished to contain the risk of secession in an external war of aggression context, and, on the other, recognition of the Coast's wish for self-determination, expressed in various ways by the conflict's belligerent groups, especially the at-arms indigenous movement.¹¹⁵
109. The Statute created two popularly elected representative bodies, the Autonomous Regional Councils, one in each region—North and South—elected every five years, with representation of the indigenous peoples and ethnic communities inhabiting the region.¹¹⁶ In practice, a mestizo hegemonic political representation model was imposed, controlled by the FSLN and the PLC.¹¹⁷

2. Immunity and privileges

110. Another concentration of power strategy is the implementation of the legal reforms to ensure the immunity of the leaders of the main political parties. In particular, the IACHR notes that, through the 2000 constitutional reform, the former president of the Republic and former vice president, elected by direct popular vote in the immediately preceding term, were incorporated in the National Assembly as deputies and alternates, and as Deputies, Principal and Alternate, the candidates for President and Vice President of the Republic who had participated in the corresponding election who had come in second place. This meant that Arnoldo Alemán, at the end of his term in 2002, became Deputy in the National Assembly with immunity, and Daniel Ortega as of the reform until his second term began in 2007.¹¹⁸

¹¹⁵ Miguel González. La tragedia de Alal: regresión (no restitución) de derechos en el Régimen de Autonomía en Nicaragua. Published in *Autonomías y autogobierno en la América diversa*. Miguel González, Araceli Burguete Cal and Mayor, José Marimán, Pablo Ortiz-T., Ritsuko Funaki (coordinators). 2021.

¹¹⁶ Miguel González. La tragedia de Alal: regresión (no restitución) de derechos en el Régimen de Autonomía en Nicaragua. Published in *Autonomías and autogobierno en la América diversa*. Miguel González, Araceli Burguete Cal and Mayor, José Marimán, Pablo Ortiz-T., Ritsuko Funaki (coordinators). 2021.

¹¹⁷ Miguel González. La tragedia de Alal: regresión (no restitución) de derechos en el Régimen de Autonomía en Nicaragua. Published in *Autonomías and autogobierno en la América diversa*. Miguel González, Araceli Burguete Cal and Mayor, José Marimán, Pablo Ortiz-T., Ritsuko Funaki (coordinators). 2021.

¹¹⁸ *Law on Partial Reform of the Constitution of the Republic of Nicaragua*. Law No. 330. Enacted on January 18, 2000 and published in La Gaceta No. 13 on January 19, 2000.

111. In addition, the absolute majority quorum was changed to two-thirds for declaration of the stripping of immunity of the President of the Republic by the National Assembly.¹¹⁹ This action, together with Executive Decree 3-2010,¹²⁰ by which the tenure of the authorities of the branches of government and institutions of the State was extended, enabled a group of actions designed to concentrate and control power and ensure privileges and immunities. As indicated above, one action in this area was to carry out in 2009, the actions necessary to ensure that Daniel Ortega could run in the 2011 presidential elections.
112. The “Alemán-Ortega Pact” was also evident in the prosecution of Arnoldo Alemán for money-laundering and corruption. In 2002, during the Enrique Bolaños government, the Office of the Prosecutor General of Justice accused him of using during his term (1997-2002) public funds to defraud the State. He was removed as deputy and sentenced in 2003 to 20 years of imprisonment for money-laundering and corruption,¹²¹ This was later commuted to house arrest. In 2005, judge Roxana Zapata allowed him to live with his family and to move freely within the city of Managua; in 2007, during Daniel Ortega’s second term, he was allowed to move throughout the country.¹²² On January 15, 2009, the charges of corruption against him were dropped by the Supreme Court of Nicaragua, presided over by Manuel Martínez Sevilla, PLC member and former minister during the Alemán presidency, identified as the main political operator of his party for negotiations with the FSLN.¹²³
113. Lastly, information in the public domain gives account of the wealth accumulated by Arnoldo Alemán during his presidential term and, subsequently, by Daniel Ortega, in his successive terms of office. The IACHR notes that, according to available information, the Ortega Murillo family is of “incalculable” wealth, said to include energy, fuel, tourism, and telecommunications companies.¹²⁴ According to a Transparency International investigator, the level of corruption in Nicaragua has risen in tandem with the concentration of power.¹²⁵

¹¹⁹ [Law on Partial Reform of the Constitution of the Republic of Nicaragua](#). Law No. 330. Enacted on January 18, 2000 and published in La Gaceta No. 13 on January 19, 2000.

¹²⁰ [Executive Decree No. 3, of 2010](#), enacted on January 9, 2010 and published in La Gaceta No. 6 on January 11, 2010.

¹²¹ Transparency International mentioned Arnoldo Alemán as among the world’s ten most corrupt rulers in the last 20 years. El País. [“Los más buscados” por EE UU: El expresidente nicaragüense Arnoldo Alemán](#), April 1, 2011.

¹²² IACHR, Public Hearing, Administration of justice in Nicaragua, 131st period of sessions, March 12, 2008. Notimerica.com. Nicaragua. [El ex presidente de Nicaragua Arnoldo Alemán obtiene la libertad condicional para circular por todo el país](#). March 17, 2007.

¹²³ Connectas.org. [La Justicia del Caudillo](#).

¹²⁴ Expediente Público. [Familia-Partido-Gobierno-Empresas: Nicaragua, el país más corrupto de Centroamérica](#). February 4, 2021.

¹²⁵ Confidencial. [“En Nicaragua la corrupción se viene agravando desde 2012.”](#). April 6, 2021.

2.1 *Office of the Human Rights Advocate* (*Procuraduría para la Defensa de los Derechos Humanos*)

114. The Inter-American Commission has also identified the lack of independence of the Office of the Human Rights Advocate, which would act in complete alignment with the Executive. In particular, it has been pointed out for failing to fully investigate the complaints of torture and ill-treatment of detainees, as well as the human rights violations that occurred since April 2018. In the same sense, in the report of the High Commissioner of the United Nations on human rights in Nicaragua –that covered the events from August 19, 2018, to July 31, 2019– it was noted that the national human rights institution, the Office of the Human Rights Advocate, which is also the national government mechanism for the prevention of torture, would not have shown any independence. In this regard, according to the report, “during the 40th session of the Human Rights Council, the State delegation was represented by the Deputy Commissioner of the Office of the Human Rights Advocate, who repeated the Government’s justification of its actions in response to the failed coup d’état and indicated that his institution had not found any evidence of torture of protesters deprived of liberty”. Likewise, said report notes that in March 2019, the PDDH category was lowered from “A” to “B” as it was unable to demonstrate its independence.¹²⁶
115. For its part, in 2021, the United Nations Committee on Economic, Social and Cultural Rights expressed its concern about the lack of independence of the Office of the Human Rights Advocate as well as its lack of reaction to human rights violations in the State. For this reason, the Committee urged the State to adopt all necessary measures in order to guarantee that the Office of the Human Rights Advocate fulfills its mandate to protect and promote human rights, with full independence and diligence, and so that comply with the Principles Relating to the Statute and Functioning of National Human Rights Institutions.¹²⁷

2.2 *Truth commission*

116. In connection with the state’s efforts to seek the truth, on April 29, 2018, the National Assembly approved the establishment of a Truth Commission. Since its creation, the Commission noted questioning of the effectiveness of the Commission, due to the lack of participation of civil society and the families of the victims in its creation and formation, as well as the lack of clarity in its mandate and functions.¹²⁸ Also, the reports of the Commission have been challenged¹²⁹ by

¹²⁶ Human Rights Council, Report of the United Nations High Commissioner for Human Rights, A/HRC/42/18, september 17, 2019. para. 7.

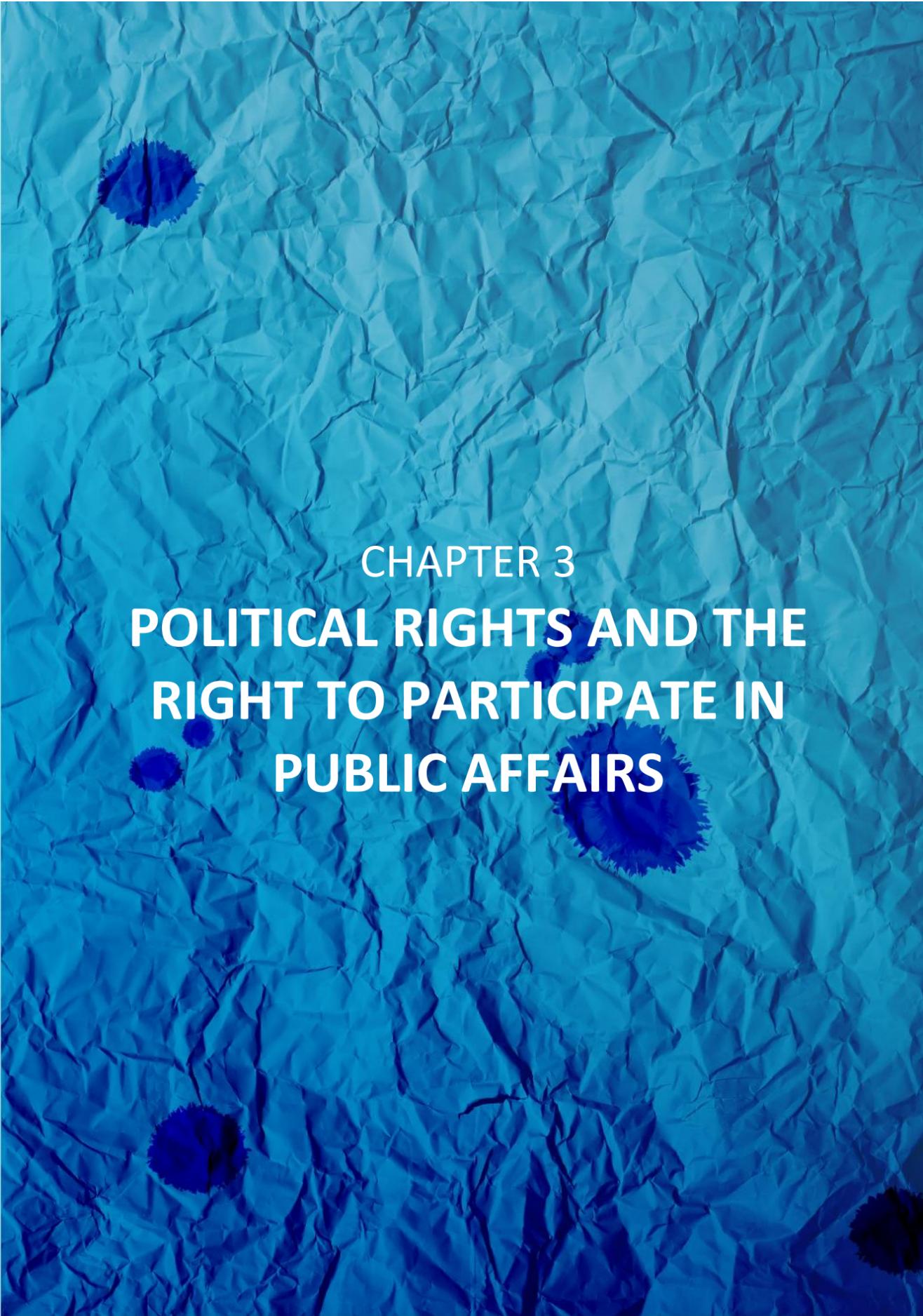
¹²⁷ Committee on Economic, Social and Cultural Rights, Concluding observations on the fifth periodic report of Nicaragua, October 15, 2021, para. 7 (only spanish versión).

¹²⁸ IACHR, Grave Human Rights Violations in the Context of Social Protests in Nicaragua, 21 June 2018.

¹²⁹ Commission on Truth, Justice and Peace, Second Preliminary Report, October 15, 2018, p. 4 and 5.

civil society because of its lack of independence from the government, as well as for manipulating the facts and “attempting to make the actual perpetrators and those directly responsible disappear, by changing the dates, places, and circumstances of the offense.”¹³⁰

¹³⁰ See IACHR. Report Chapter IVB Nicaragua, 2018, para. 106.



CHAPTER 3

**POLITICAL RIGHTS AND THE
RIGHT TO PARTICIPATE IN
PUBLIC AFFAIRS**

POLITICAL RIGHTS AND THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

117. Political rights, recognized in Article XX of the American Declaration of the Rights and Duties of Man,¹³¹ are those that recognize and protect the right and duty of every citizen to participate in the political life of his or her country. These are by nature rights that serve to strengthen democracy and political pluralism.¹³² As the IACHR has emphasized, there exists a “direct relationship between the exercise of political rights and the concept of democracy as a way of organizing the state ...”¹³³.
118. Democracy is understood to be “[...] a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.”¹³⁴ Democracy is essential for the effective exercise of fundamental freedoms and human rights”.¹³⁵ For its consolidation, it is essential to have an institutional structure guided by the separation, independence, and balance of powers, as well as the effective exercise of political rights through free and fair elections, and respect for and promotion of pluralism in society.¹³⁶
119. Regarding the exercise of democracy, the Inter-American Court has held that its effective exercise in the States of the Americas constitutes an international legal obligation and they have, in their sovereignty, agreed that such exercise is no longer solely a matter of their domestic, internal, or exclusive jurisdiction.¹³⁷
120. In that connection, the Commission emphasizes that “the exercise of political rights is an essential element of representative democracy”. For that reason, it has referred to the need to hold “authentic and free” elections, indicating that there is “a direct link between this electoral mechanism and the system of representative democracy”. In the Commission’s view, the authenticity of elections to which Article 23.2 of the American Convention refers means, in a positive sense, that there must be some consistency between the will of the voters and the result of the

¹¹⁵ IACHR, Resolution No. 01/90 Cases 9768, 9780 and 9820 (Mexico), September 29, 1990¹³¹ Article XX of the American Declaration provides that “Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.”

¹³² IACHR, Democracy and Human Rights in Venezuela, December 30, 2009, par. 18.

¹³³ IACHR, Democracy and Human Rights in Venezuela, December 30, 2009, par. 21; and Second Report on the Situation of Human Rights in Peru, June 2, 2000, Chapter IV, par. 1.

¹³⁴ UN General Assembly, 2005 World Summit Outcome, A/60/L.1, 15 September 2005, par. 135.

¹³⁵ Article 7 of the Inter-American Democratic Charter.

¹³⁶ Article 3 of the Inter-American Democratic Charter; and UN Commission on Human Rights, Resolution 2000/47, Promoting and consolidating democracy, 25 April 2000.

¹³⁷ IA Court HR. Advisory Opinion OC-28/21. Presidential Reelection without Term Limits in Presidential Systems in the Context of the Inter-American Human Rights System, June 7, 2021, par. 55.

election. However, “[i]n the negative sense, the characteristic implies an absence of coercion which distorts the will of the citizens.”¹³⁸ Specifically, the Commission has held that the authenticity of elections covers [two] different categories of phenomena:¹³⁹ on one hand, those referring to the general conditions in which the electoral process is carried out and, on the other hand, phenomena linked to the legal and institutional system that organizes elections and which implements activities linked to the electoral act, that is everything related in an immediate and direct way to the casting of the vote.¹⁴⁰

121. To summarize, the IACHR understands that for elections to meet the requirements established in Article 23 of the American Convention, it is essential for States to take steps that make it possible to ensure adequate general conditions in which the election is carried out, as well as during the organization of the electoral process and its implementation. This covers both the taking of positive measures such as abstention by the State from favoring any candidate or political group. The Commission also specifically recognizes that in fulfilling the obligations that enable the authenticity of elections to be guaranteed, not only are obligations being fulfilled that derive from political rights from an active standpoint, but also, from a passive standpoint, through the equity of the election, this contributes to respecting the right to participate on equal terms.¹⁴¹
122. In view of the serious human rights crisis precipitated on April 18, 2018, and the profound deterioration of the democratic institutional structure—resulting from the concentration of power and above-described reforms that for years undermined the separation of powers—, the 2021 general elections represented for Nicaraguan society the possibility of initiating a transitional period for the successful restoration of the rule of law and democracy, as well as the guarantee of the right to memory, truth, and access to justice by the victims of state violence. In 2021, however, the IACHR noted the intensification of a new phase of repression through a group of actions whose effect would be to end the opposition’s participation in the electoral process and facilitate the perpetuation in power of the current authorities of the Executive branch, in a context of generalized impunity and prolonged undermining of the rule of law that persists in the country and is condemned by the IACHR.¹⁴²
123. Among the actions carried out by the State to obstruct the exercise of the political rights of persons considered to be in opposition to the government in Nicaragua, the IACHR identifies: the arrests and criminalization of leaders, including presidential nominee candidates, by passing and using ambiguous laws that arbitrarily restrict the political rights of the Nicaraguan population, electoral law

¹³⁸ IACHR, Resolution No. 01/90 Cases 9768, 9780 and 9820 (Mexico), September 29, 1990, par. 47.

¹³⁹ IACHR, Resolution No. 01/90 Cases 9768, 9780 and 9820 (Mexico), September 29, 1990, par. 48.

¹⁴⁰ IACHR, Resolution No. 01/90 Cases 9768, 9780 and 9820 (Mexico), September 29, 1990, par. 48.

¹⁴¹ IACHR. Report No. 303/20. Case 13.727. Merits. Fabio Gadea Mantilla. Nicaragua. October 29, 2020, par. 59. [unofficial translation]

¹⁴² IACHR. Three Years After the Start of the Human Rights Crisis in Nicaragua, IACHR Condemns Ongoing Impunity, Washington, D.C., April 19, 2021

reforms inconsistent with international human rights law, and arbitrary cancellation of the legal status of opposition parties, among others.¹⁴³ Regarding this last point, the IACHR notes that the OAS General Assembly has noted with alarm the “worrisome trend of utilizing legislation to intimidate and/or threaten members of pro-democracy groups and independent medias in Nicaragua”¹⁴⁴.

124. The IACHR also notes the increasing harassment of those identified as government dissidents, human rights defenders, and victims of human rights violations and their families. The IACHR also expressed concern over the repression of farmers and students, who played a lead part in the protests that began on April 18, 2018, and in the national dialogue of that year,¹⁴⁵ as well as for the persistent human rights violations.¹⁴⁶

A. Arbitrary arrests and criminalization of presidential nominee candidates and/or those deemed government dissidents

125. Following the publication of the Electoral Calendar for the general elections to be held on November 7, on May 11, the Inter-American Commission noted an intensification of repression against the political opposition, social leaders, human rights defenders, and journalists, especially through arbitrary arrest and indictments on baseless charges. These arrests were carried out by the National Police, in some cases with the participation of people in civilian clothes and motorcycles. To date, most of them remain in the facilities of the Judicial Assistance Directorate (Dirección de Auxilio Judicial), known as “Nuevo Chipote”; and those who have been formally charged are being tried by authorities of the Judiciary.
126. On May 20, the Attorney General’s Office brought an action against nominee candidate Cristiana María Chamorro Barrios under the charge of “indications of money-laundering.” On the same date, the facilities of the independent media outlet Confidencial and the programs Esta Noche and Esta Semana, directed by journalist Carlos Fernando Chamorro, were seized. On May 28, two former staff members of the Violeta Barrios de Chamorro Foundation, Walter Antonio Gómez Silva, financial administrator, and Marco Antonio Fletes Casco, general accountant,

¹⁴³ IACHR. 209/21 - [IACHR Condemns the State Actions Aimed at Ending Opposition Participation in Nicaragua's Upcoming Election](#). Washington, D.C., August 11, 2021.

¹⁴⁴ OAS General Assembly resolution AG/RES. 2962 (L-O/20), “Restoring Democratic Institutions and Respect for Human Rights in Nicaragua through Free and Fair Elections,” AG/doc.5710.20 rev.1, October 21, 2020.

¹⁴⁵ IACHR. MESENI NEWSLETTER. [CIDH y OACNUDH urgen poner fin a las detenciones arbitrarias y a liberar a todas las personas detenidas desde el inicio de la crisis](#). July 2021 [Available only in Spanish]

¹⁴⁶ IACHR. MESENI NEWSLETTER. [IACHR condena el conjunto de acciones estatales que tienen como efecto poner fin a la participación de la oposición en las próximas elecciones en Nicaragua](#). August 2021. [Available only in Spanish]

- were arbitrarily arrested, having also been charged on May 20, along with Cristiana Chamorro.
127. On June 2, Cristiana Chamorro was arrested and then the government began a phase of judicial prosecution of nominee candidates and opposition political leaders. These events took place only a few days after the period established in the [OAS General Assembly resolution](#) of October 2020 for Nicaragua to implement the electoral reforms needed to guarantee free, fair, and transparent elections and to restore democratic guarantees—measures that were not implemented.
 128. As of August 31, seven presidential aspirants had been arrested and over 30 arbitrarily detained,¹⁴⁷ among them, Arturo Cruz, Félix Maradiaga, Juan Sebastián Chamorro, Miguel Mora, Medardo Mairena and Noel Vidaurre, who were deprived of their liberty after announcing their intent to present their candidacy for the presidency, thereby preventing them from formalizing their participation in the electoral process. In addition, on June 12 and 13, the main leaders of the UNAMOS political party, formerly Sandinista Renovation Movement (MRS), were arbitrarily arrested, among them three nominee candidates for deputy for the National Unity party: Tamara Dávila, Ana Vijil and, Suyen Barahona.
 129. On July 5, the National Police arrested: Medardo Mairena Sequeira, Pedro Joaquín Mena Amador, Freddy Alberto Navas López, Lesther Lenin Alemán Alfaro, and Max Isaac Jerez Meza. The first three are members of the Farmers' Movement (*Movimiento Campesino*) and the last two of the Nicaraguan University Alliance (*Alianza Universitaria Nicaraguense*). According to the press release issued by the National Police, they were arrested for crimes allegedly committed in 2018, and in order to investigate violations of Law 1055, "Defense of the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace," based on ambiguously defined crimes.
 130. The information available indicates that the State has not officially confirmed the whereabouts of more than the 30 persons arrested, preventing them from contacting their families for over 80 days, and from accessing to an attorney of their choice. In addition, they would be held in dire detention conditions. In this context, at the request of the IACHR, on July 24, 2021, the Inter-American Court granted provisional measures for Juan Chamorro, José Aguerri, Félix Maradiaga, Violeta Granera, and their immediate families, given the extreme risk to their life and integrity in the context of deprivation of their liberty, measures that were later extended.¹⁴⁸ Moreover, the IA Court HR granted provisional measures in favor of

¹⁴⁷ France24. [Oleada de arrestos a opositores sacude a Nicaragua a cuatro meses de las elecciones](#). July 26, 2021.

¹⁴⁸ I/A Court H.R., Matter of Juan Sebastián Chamorro et al. with regard to Nicaragua. Ratification, expansion and monitoring of provisional measures. Order of the Inter-American Court of Human Rights of September 9, 2021.

Támara Dávila.¹⁴⁹ Subsequently, on August 25, 2021, the IACHR requested the IA Court HR to extend the provisional measures to include Lesther Lenin Alemán Alfaro, and Freddy Alberto Navas López.

131. On September 9, 2021, the Court extended these provisional measures to include Lesther Lenin Alemán Alfaro and Freddy Alberto Navas López and demanded the immediate release of all beneficiaries of this protection measure.¹⁵⁰ The IA Court HR ordered Nicaragua “to inform in an unambiguous manner the families and trusted attorneys of their place of detention and permit immediate contact with families and attorneys,” and, in addition, “to guarantee immediate access to health care services and medicine for the beneficiaries.” It also ordered that the authorities were to “guarantee access by the beneficiaries’ trusted attorneys to the totality of their case file and to the online judicial information system.”¹⁵¹
132. The Commission notes that, in addition, on August 24, the Attorney General’s Office brought the first charge against persons held in their 90 days of judicial detention. That charge included presidential candidate nominee Cristiana Chamorro, journalist Carlos Fernando Chamorro, and his brother and founding member of the Pedro Joaquín Chamorro Citizens for Liberty Alliance party (CxL) and seven other persons, for the alleged crimes of improper appropriation and retention; laundering of money, property, and assets; mismanagement; and ideological falsehood and cooperation necessary for the crime of laundering money, property, and assets.¹⁵² Since that date, the Attorney General’s Office has brought various charges against those detained in this context.
133. In that regard, the IACHR and the OHCHR have rejected the improper use of criminal charges against opponents to restrict their right to participate in public affairs and the right of freedom of association by charging them with serious crimes such as “money laundering” or “conspiracy to perpetrate the undermining of the national integrity¹⁵³.”

¹⁴⁹ I/A Court H.R., Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Adoption of Urgent Measures to the benefit of Deisy Tamara Dávila Rivas and her immediate family in the framework of the Provisional Measures adopted in the matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Order of the President of the Inter-American Court of Human Rights of July 19, 2021. I/A Court H.R., Matter of Juan Sebastián Chamorro et al. with regard to Nicaragua. Ratification, expansion and monitoring of provisional measures. Order of the Inter-American Court of Human Rights of September 9, 2021.

¹⁵⁰ I/A Court H.R., Matter of Juan Sebastián Chamorro et al. with regard to Nicaragua. Ratification, expansion and monitoring of provisional measures. Order of the Inter-American Court of Human Rights of September 9, 2021.

¹⁵¹ I/A Court H.R., Matter of Juan Sebastián Chamorro et al. with regard to Nicaragua. Ratification, expansion and monitoring of provisional measures. Order of the Inter-American Court of Human Rights of September 9, 2021.

¹⁵² [Urnas Abiertas. Séptimo Informe. August 2021.](#)

¹⁵³ [238/21 - La CIDH y la OACNUDH condenan criminalización, faltas al debido proceso y graves condiciones de detención de personas consideradas como opositoras en Nicaragua.](#) Washington D.C. / Ciudad de Panamá, 10 de septiembre de 2021

134. According to information received, in bringing the charges, the State has not respected guarantees of due process or the right to a fair trial since in various cases they were brought in private and secret preliminary hearings, at premises other than the judicial courts, in early hours of the morning, and often without the presence of the legal representatives of their choice. None of the judicial decisions on habeas corpus petitions or procedural objections presented by the lawyers have been resolved in favor of the defendants,
135. Moreover, the Commission and the Court have received information on the dire detention conditions in which detainees are being held, especially women, such as constant interrogations, isolation, exposure to artificial light 24 hours a day, lack of medical care, and insufficient access to water and food. These conditions may constitute ill-treatment.
136. Given the extreme seriousness of the overt use of the penal system for electoral political purposes, the Commission strongly condemns the arbitrary detentions carried out by the State of Nicaragua. At the same time, it urges the release of the more than 30 persons arbitrarily detained as of May 2021, including the 130 persons who were deprived of their liberty since the beginning of the crisis in April 2018, over whom it has the obligation to guarantee their integrity and security. The IACHR calls on the State to immediately cease arbitrary and illegal detentions of those who are considered opponents of the government and to restore guarantees for the full enjoyment of civil and political rights.

B. Cancellation of political parties' legal status

137. The Inter-American Commission has also received information of the cancellation of the legal status of the main opposition parties in the country that would compete in the November general elections.
138. On May 19, 2021, the CSE cancelled the legal status of the Democratic Restoration Party (PRD). Allegedly that decision was taken after members of the party reported that it had entered into an alliance with organizations that defend principles inconsistent with those of the party, and therefore, they were violating its by-laws. The IACHR notes that this decision was taken precisely after the National Coalition announced an alliance with the PRD to compete in the general elections. Subsequently, on May 20, the CSE decided to cancel "ex officio" the legal status of the Conservative Party after it announced that it would not participate in the elections.
139. In addition, on August 2, 2021, deadline for the presentation and registration of candidates for the presidency and vice presidency of the Republic of Nicaragua for the November 7, 2021 elections, Daniel Ortega and Rosario Murillo formally registered their candidacies for the presidency and vice presidency,

respectively.¹⁵⁴ That same day, a Citizen for Liberty Party opposition slate succeeded in registering the candidacies of Oscar Sobalvarro for president and Berenice Quezada for vice president.¹⁵⁵

140. However, on August 6, the Supreme Electoral Council decided to cancel the legal status of that party, which would eliminate the candidacy of the only opposition candidate who had managed to formally register for the next presidential election. In its decision, the CSE also requested the cancellation of the Nicaraguan identity card of the party's president, Kitty Monterrey. On August 8, the Ministry of Interior confirmed the cancellation of her Nicaraguan nationality, in addition to the cancellation of the identity card, birth certificate, and passport of the party's president, who holds another nationality. To this date, she allegedly remains in hiding for fear of detention and/or deportation.¹⁵⁶
141. In that regard, the IACHR has vehemently condemned the CSE resolution, which allegedly was adopted in violation of the Nicaraguan Constitution and based on the Law Regulating Foreign Agents and Defending the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace. As the IACHR has indicated, these norms arbitrarily restrict electoral competition, the exercise of political rights, and other rights, such as freedom of expression and of association.¹⁵⁷
142. For its part, the Inter-American Court has emphasized that opposition voices are essential in a democratic society; without them it is not possible to reach agreements that satisfy the different visions that prevail in society. Hence, in a democratic society States must guarantee the effective participation of opposition individuals, groups and political parties by means of appropriate laws, regulations and practices that enable them to have real and effective access to the different deliberative mechanisms on equal terms, but also by the adoption of the required measures to guarantee its full exercise, taking into consideration the situation of vulnerability of the members of some social groups or sectors.¹⁵⁸

¹⁵⁴ Telesurtv. [FSLN inscribe a candidatos para comicios generales en Nicaragua](#). August 2, 2021.

¹⁵⁵ El Mostrador. [La oposición nicaragüense registra a su primer candidato a la presidencia](#). August 2, 2021.

¹⁵⁶ IACHR. [Condena el arresto domiciliario de Berenice Quezada, candidata a la vicepresidencia de Alianza Ciudadanos por la Libertad y su inhibición para postular a cargos públicos ordenada por el Ministerio Público](#). (IACHR) Condemns the house arrest of Berenice Quezada, vice presidential candidate of the Citizens for Liberty Alliance and the prohibition of her the presentation of her candidacy ordered by the Attorney General's Office). August 3, 2021. On August 5, the Attorney General's Office reported that the charge brought against Berenice Quezada was based on acts allegedly corresponding to the crime defined as "provocation, proposal, and conspiracy to commit terrorist acts." It also indicated that the trial would be held while she was not in detention. IACHR. [IACHR Condemns the State Actions Aimed at Ending Opposition Participation in Nicaragua's Upcoming Election](#). Washington, D.C., August 11, 2021.

¹⁵⁷ IACHR. 209/21 -[IACHR Condemns the State Actions Aimed at Ending Opposition Participation in Nicaragua's Upcoming Election](#). Washington, D.C., August 11, 2021.

¹⁵⁸ IA Court HR. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs. Judgment of ray 26, 2010. Series C No. 213, par. 173.

143. In that regard, the IACHR notes that political rights are fundamentally important human rights within the inter-American system and are closely related to other rights declared in the American Convention, such as freedom of expression, of assembly, and of association, which together make possible the democratic process. The Commission has also referred to the necessity of guaranteeing citizens and organized political groups the right to public assembly, permitting and fomenting a broad debate about the nature of the political decisions adopted by the representatives elected by the citizens.¹⁵⁹ It also considers that to safeguard democracy, in addition to effective political participation, freedom of expression and of social protest are fundamental. In this sense, the Commission urges the State to cease repression and, in particular, to restore the legal status of political parties.

C. Closure of democratic forums and persecution of the media, journalists and press workers

144. La The Commission has repeatedly documented the situation of risk encountered by human rights defenders in Nicaragua as a result of the growing intensity of aggression, threats, harassment, intimidation, and other acts of violence against them both by pro-government groups and National Police officers. Likewise, human rights defenders and, in general, persons identified as dissidents, religious leaders, women social leaders, students, persons released from custody, victims and their families, as well as journalists and press workers are said to remain affected by acts of stigmatization and criminalization in the context of a police state and the shutdown of democratic forums prevailing in the country.¹⁶⁰
145. Moreover, in the context of the November 2021 presidential elections, the IACHR and its Rapporteur for Freedom of Expression have noted a climate of serious deterioration of freedom of expression and free exercise of freedom of the press seen in recent years in the country. In that regard, in its annual reports, the Special Rapporteurship for Freedom of Expression has documented that a media duopoly has been consolidated in Nicaragua, which controls most of the television and radio media outlets. In fact, most of the audiovisual media outlets are under the political control of the presidential family or of an entrepreneur loyal to the government. As a result, these media outlets are partial or their journalists are impeded from carrying out their work in an independent manner. For their part, the independent media have for years faced government harassment and pressure in carrying out their work, especially since the start of the April 18, 2018 crisis.¹⁶¹
146. Beginning in 2018, the State implemented a set of repressive actions and measures to restrict the exercise of protest and the right to demonstrate, and to harass and

¹⁵⁹ IACHR, *Democracy and Human Rights in Venezuela*, December 30, 2009, par. 21; and *Second Report on the Situation of Human Rights in Peru*, June 2, 2000, Chapter IV, par. 1.

¹⁶⁰ IACHR, 2020 Annual Report, Chapter IV.B- Nicaragua.

¹⁶¹ IACHR, 2018 Annual Report, Chapter IV.B-Nicaragua, par. 118.

criminalize opponents of the government regime. In particular, the IACHR and its Special Rapporteur have expressed their grave concern regarding the decision of the Police to declare illegal the protests or demonstrations of social movements, students, and organizations, as well as the decision to establish that prior authorization had to be obtained from this institution for all types of protest in public areas, in violation of the international standards that protect freedom of expression and freedom of assembly. Civil society organizations have reported that, since September 2018, demonstrations and social protests have been de facto prohibited by the National Police.¹⁶²

147. Moreover, information received by the IACHR indicates that State authorities continue to reiterate the official rhetoric that stigmatizes the work of the independent press, in addition to the widespread persecution of journalists, which has materialized in the arbitrary arrests, aggression, death threats, harassment, intimidation and smear campaigns, forced displacement, and criminalization of their work.
148. The IACHR notes that the patterns of systematic repression against freedom of expression, association, and assembly have also been observed in the arbitrary cancellation of the legal status of over 50 civil society organizations in the last two years, including of several dedicated to the defense of human rights; raids and seizures of independent media outlets, and the permanent closure of some 14 community radio stations and national circulation newspapers. For example, on September 27, 2019, the arbitrary retention of [printing] paper and other necessary inputs for newspaper publication resulted in the closure of “El Nuevo Diario.”
149. This year, according to public information, at least 12 journalists of the written press, radio, television, and digital media outlets of various regions of the country have had to go into exile for fear of reprisals. In addition, as indicated above, authorities launched administrative and criminal investigations against the Violeta Barrios de Chamorro Foundation, one of the main organizations for protection of freedom of the press in the country, and the headquarters of the digital magazine Confidencial and of the television program Esta Semana, both of which are directed by Carlos Fernando Chamorro, were raided, who one month later was again forced into exile from which he had returned in late November 2019.¹⁶³
150. As mentioned above, from May 28 to June 15, former director and presidential nominee candidate Cristiana Chamorro Barrios, her driver, Pedro Vásquez Cortedano, and two former staff members of the Walter Gómez Silva and Marcos Fletes Casco Foundation, all beneficiaries of precautionary measures granted by the IACHR, were arrested based on the criminal investigation against the Violeta Barrios de Chamorro Foundation for alleged money laundering related to the use of international cooperation funds, in application of Law No. 977, against Money

¹⁶² IACHR, 2018 Annual Report, Chapter IV.B-Nicaragua, par. 118.

¹⁶³ IACHR. 216/21 –[The IACHR, RFOE, and OHCHR Condemn the Repeated Attacks on Freedom of Expression in Nicaragua](#). Washington D.C./Panama City, August 18, 2021.

Laundering, Terrorism Financing, and the Financing of the Proliferation of Weapons of Mass Destruction.¹⁶⁴

151. The Attorney General's Office has also subpoenaed over 25 journalists to testify, (TBC) media workers who assisted or participated in activities of the Violeta Barrios de Chamorro Foundation, and that were threatened with criminal charges and application of the Special Cybercrime Act if they refused to "collaborate" or insisted on the presence of a defense attorney.

152. Subsequently, on June 20, Miguel Mora was arrested, owner and former director of the 100% News television channel and presidential nominee candidate. The next day, sports commentator Miguel Mendoza was arrested for his critical comments on social media.¹⁶⁵ On August 13, the National Police and the Attorney General's Office raided the facilities of the La Prensa newspaper, seized its property and, the next day, arrested its general manager, Juan Lorenzo Holmann Chamorro, for alleged customs offenses, and crimes of laundering of money, property, and assets.¹⁶⁶

153. As the IACHR has indicated, these repeated actions constitute serious attacks and improper restrictions of the right to freedom of expression which, in some cases, constitute acts of censorship. All this situation impacts not only the rights of journalists and media owners, but also the right of the citizenry as a whole to have access to pluralistic information. The harassment, censure, stigmatization, and official persecution of the press, and the arrests and arbitrary prosecution of the media, journalists, and organizations that defend freedom of press are inconsistent with the protection of freedom of expression and generate a general atmosphere of fear and self-censorship. Moreover, in an electoral process context, they are especially serious, and inconsistent with democracy and with Nicaragua's international human rights obligations.

154. In that regard, both the Inter-American Court and the Commission have recognized the relationship between political rights, freedom of expression, the right of assembly, and freedom of association, and that together these rights make the democratic process possible. Especially in situations of institutional breakdown, the relationship between these rights is even more evident, especially when they are exercised together to protest against the action of state powers that is inconsistent with the constitutional order, or to demand the restoration of

¹⁶⁴ Law No. 977, against Money Laundering, Terrorism Financing, and Financing of the Proliferation of Weapons of Mass Destruction. Published in La Gaceta No. 165, of August 19, 2019.

¹⁶⁵ In early October 2021, both remained in jail, totally incommunicado, under general allegations based on Law 1055, Defense of the Right of the People to Independence, Sovereignty, and Self-Determination for Peace, in proceedings without due process guarantees.

¹⁶⁶ Reports were also received from the workers held incommunicado during the raid and the temporary suspension of La Prensa's intranet server, impeding its web page publication. On August 12, that same newspaper had reported that the withholding of printing paper by the customs authority for over 20 days had forced it to stop the publication of its print edition and to continue only with its digital edition. IACHR. 216/21 –The IACHR, RFOE, and OHCHR Condemn the Repeated Attacks on Freedom of Expression in Nicaragua. Washington D.C./Panama City, August 18, 2021.

democracy. As the Inter-American Court has held, “the lack of an effective guarantee of freedom of expression weakens the democratic system and undermines pluralism and tolerance; that the mechanisms of citizen control and denunciation may become inoperative and, ultimately, this creates fertile ground for authoritarian systems to take root.”¹⁶⁷ The IACHR urges the State of Nicaragua to restore the legal status of civil society organizations, as well as to cease the repression against the media, human rights organizations and individuals considered to be members of the opposition.

D. Laws restricting rights and freedoms aimed at closing democratic spaces

155. The IACHR notes that from 2018 to 2021, the official majority in the National Assembly has facilitated the streamlined enactment of a group of laws and legal reforms that disproportionately restrict or limit the rights and liberties of the Nicaraguan population and the opposition’s party’s participation in the November 2021 general elections. Together, these laws form part of a repressive apparatus that facilitates the concentration of power in the executive branch through the use of force, manipulation of criminal law, and the silencing of dissidence in the country.

1. Law No. 977, against Money Laundering, Terrorism Financing, and the Financing of the Proliferation of Weapons of Mass Destruction (enacted in July 2018).

156. This legal text indicates that its aim is to “protect the national economy and the integrity of the financial system from risks associated with money laundering, terrorism financing, and the financing of the proliferation of weapons of mass destruction.” Pursuant to it, Articles 394 and 395 of the Code of Penal Procedure were amended, on the crimes of terrorism and terrorism financing, respectively.¹⁶⁸ In that regard, in its final report, GIEI-Nicaragua indicated that this “law was enacted in the midst of the violence and was turned into an instrument facilitating the criminalization of dissidents.”¹⁶⁹ For its part, the IACHR, called on the judiciary to better scrutinize charges brought for terrorism, especially because one element

¹⁶⁷ IA Court HR. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs. Judgment of February 8, 2018. Series C No. 348, par. 154.

¹⁶⁸ Law No. 977, against Money Laundering, Terrorism Financing, and the Financing of the Proliferation of Weapons of Mass Destruction. Published in La Gaceta, Diario Oficial No. 165, of August 19, 2019 (Text amended pursuant to Law No. 1000).

¹⁶⁹ GIEI, Report on the violent events that took place in Nicaragua between April 18th and May 30th December 21, p. 60.

of the definition of the crime, “disruption of the constitutional order,” was highly subjective and not part of international practice in combating terrorism.¹⁷⁰

2. Law No. 1040, on the Regulation of Foreign Agents (October 2020)

157. This law establishes an obligation for natural and legal persons that receive funds directly or indirectly from foreign governments, agencies, foundations, companies, and/or associations to register as “foreign agents.” This entails an obligation to present reports and establishes the impossibility of intervening in internal political matters and of “being civil servants, public employees, or candidates for public office.” It also provides for the possibility of establishing, in the event of non-compliance, fines, cancellation of legal status, criminal liability for the commission of crimes against State security, and even the requisitioning of moveable and immovable property and the prohibition of activities.¹⁷¹
158. Prior to its enactment, the Commission noted that the draft law would gravely impact the work of Nicaraguan organizations that were receiving foreign funding or support to pursue their ends, such as social promotion and development and the protection of human right, and called on the State to prevent its enactment.¹⁷² Since its enactment, the IACHR has repeatedly requested the Nicaraguan State to repeal it since, on the excuse of branding as a “foreign agent” any natural or legal person that was a beneficiary of international cooperation or maintained international cooperation ties, it could silence persons and organizations identified as dissidents and prevent any exercise of public freedoms, such as freedom of expression, association, of participation in public affairs, and the right to protest and to defend rights.¹⁷³

3. Law No. 1042, on Cybercrime (October 2020)

159. Its aim is to prevent, investigate, prosecute, and punish crimes committed by natural or legal persons using information and communications technologies, and the integral protection of systems that use those technologies, their content, and

¹⁷⁰ IACHR. 210/18 – Rapporteur on the Rights of People Deprived of Liberty Visits a Nicaragua. Washington, D.C., September 26, 2018.

¹⁷¹ Law No. 1040, on Regulation of Foreign Agents. Published in La Gaceta, Diario Oficial No. 192, of October 19, 2020.

¹⁷² IACHR. R246/20 - The IACHR and its Office of the Special Rapporteur for Freedom of Expression express concern about new legal threats to freedom of expression and indirect measures against the media and journalists in Nicaragua. Washington, D.C., October 7, 2020. IACHR. 249/20 - The IACHR Calls for Persecution of People Identified as Dissidents to End and for Democratic Guarantees to be Reestablished in Nicaragua. Washington, D.C., October 10, 2020.

¹⁷³ IACHR. 43/21 - The IACHR Rejects Nicaragua’s Foreign Agents Act and Calls on the State to Repeal It. Washington, D.C., February 26, 2021. See also letter sent by United Nations Rapporteurs and the IACHR

any of their components, and to establish prison sentences and fines for various behaviors related to the use of digital media, among them, publishing or disseminating "false and/or misrepresented information that causes alarm, fear, or anxiety in the population ..."174.

160. As they had for the law on foreign agents, the Commission and its Special Rapporteur for Freedom of Expression indicated that that legislation seriously threatened the exercise of freedom of expression, imposed fiscal sanctions against the media, and [facilitated] judicial harassment of journalists.¹⁷⁵

4. Law No. 1055, on Defense of the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace (December 2020)

161. In its first article, the law establishes that the following are "Traitors to the Fatherland": Nicaraguans who lead or finance a coup d'état, disrupt the constitutional order, promote or encourage terrorist acts, carry out acts that undermine independence, sovereignty, and self-determination, incite foreign influence in domestic affairs, request military interventions, [organizations that] are organized with funding from foreign powers to carry out terrorist and destabilization acts, who propose and manage economic, commercial, and financial operation blockades against the country and its institutions, who demand, commend, and applaud sanctions imposed on the State of Nicaragua and its citizens, and all those who do harm to the highest interests of the nation set forth in the law." The law stipulates that those so categorized may not run for popularly elected office, without prejudice to the corresponding criminal actions established in the Code of Penal Procedure for the acts of treason, crimes that compromise the peace, and crimes against the Constitution.¹⁷⁶
162. The Commission and the OHCHR have indicated that Law No. 1055 contains provisions that violate regional and international human rights norms and standards.¹⁷⁷ Specifically, the Commission has repudiated its enactment because it disproportionately restricts political rights declared in the American Convention, especially because the grounds for depriving people of the right to run for office

¹⁷⁴ Law No. 1042. Special Cybercrimes Act. Published in La Gaceta, Diario Oficial No. 201, of October 30, 2020.

¹⁷⁵ IACHR. R246/20 - The IACHR and its Office of the Special Rapporteur for Freedom of Expression express concern about new legal threats to freedom of expression and indirect measures against the media and journalists in Nicaragua. Washington, D.C., October 7, 2020. See also [letter sent by United Nations Rapporteurs and the IACHR](#)

¹⁷⁶ Law No. 1055. On Defense of the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace. Published in La Gaceta, Diario Oficial No. 237, of December 22, 2020.

¹⁷⁷ IACHR. 145/21 - IACHR and OHCHR Categorically Condemn Criminal Prosecution of Presidential Precandidates and Urge State of Nicaragua to Release Them Immediately. Washington, D.C., June 9, 2021

set out in the law are broadly defined but do not specify the procedures to be followed nor the authorities that are to decide them.¹⁷⁸

5. Law No. 1060, Reforming and Supplementing the Code of Penal Procedure (February 2021)¹⁷⁹

163. Regarding this reform, the OHCHR has indicated that allowing up to 90 days for judicial review of detention violated the Constitution and the international standards, and that it allows the government to detain people before investigating them, rather than requiring the government to investigate people first before deciding whether there are grounds to detain them. It also indicated that the reform undermined the presumption of innocence and the right to know without delay and in detail what one is accused of [and] puts in jeopardy the integrity and security of so-called “judicial detainees,” who will remain in custody without effective review.¹⁸⁰

6. Law No. 1070, Reforming and Supplementing the Electoral Law (May 2021)

164. On May 4, 2021, the National Assembly elected the new magistrates to make up the Supreme Electoral Council, and their respective alternates. According to public information, those designated are government party allies, elected without the consultation process for which Article 138.9 of the Nicaraguan Constitution provides, which could impact CSE independence and impartiality.¹⁸¹
165. In the same session, the National Assembly enacted Law No. 1070, “Law Reforming and Supplementing Law 331, Electoral Law.”¹⁸² This reform, far from broadening democratic participation and ensuring the holding of free, fair, competitive, observed, and legitimate elections, for the most part led to the reform of the existing system and incorporated rules restricting electoral competition and the exercise of political rights.
166. Firstly, in fact, the law limits participation by establishing additional grounds for suspending and cancelling the legal status of political parties and incorporating

¹⁷⁸ IACHR. [3/21 - IACHR Rejects Passing of Law Restricting Political Rights in Nicaragua](#). Washington, D.C., January 6, 2021.

¹⁷⁹ [Law No. 1060](#). Law Reforming and Supplementing Law No. 406, Code of Penal Procedure of the Republic of Nicaragua. Published in La Gaceta, Diario Oficial No. 25, February 5, 2021.

¹⁸⁰ OHCHR. [Nicaragua, Amendment to Code of Criminal Procedure](#). February 3, 2021.

¹⁸¹ CNN, [Juramentan a nuevos magistrados del Consejo Supremo Electoral](#), May 6, 2021; El Confidencial, [Parlamento abre las puertas a un nuevo fraude electoral del FSLN](#), May 4, 2021.

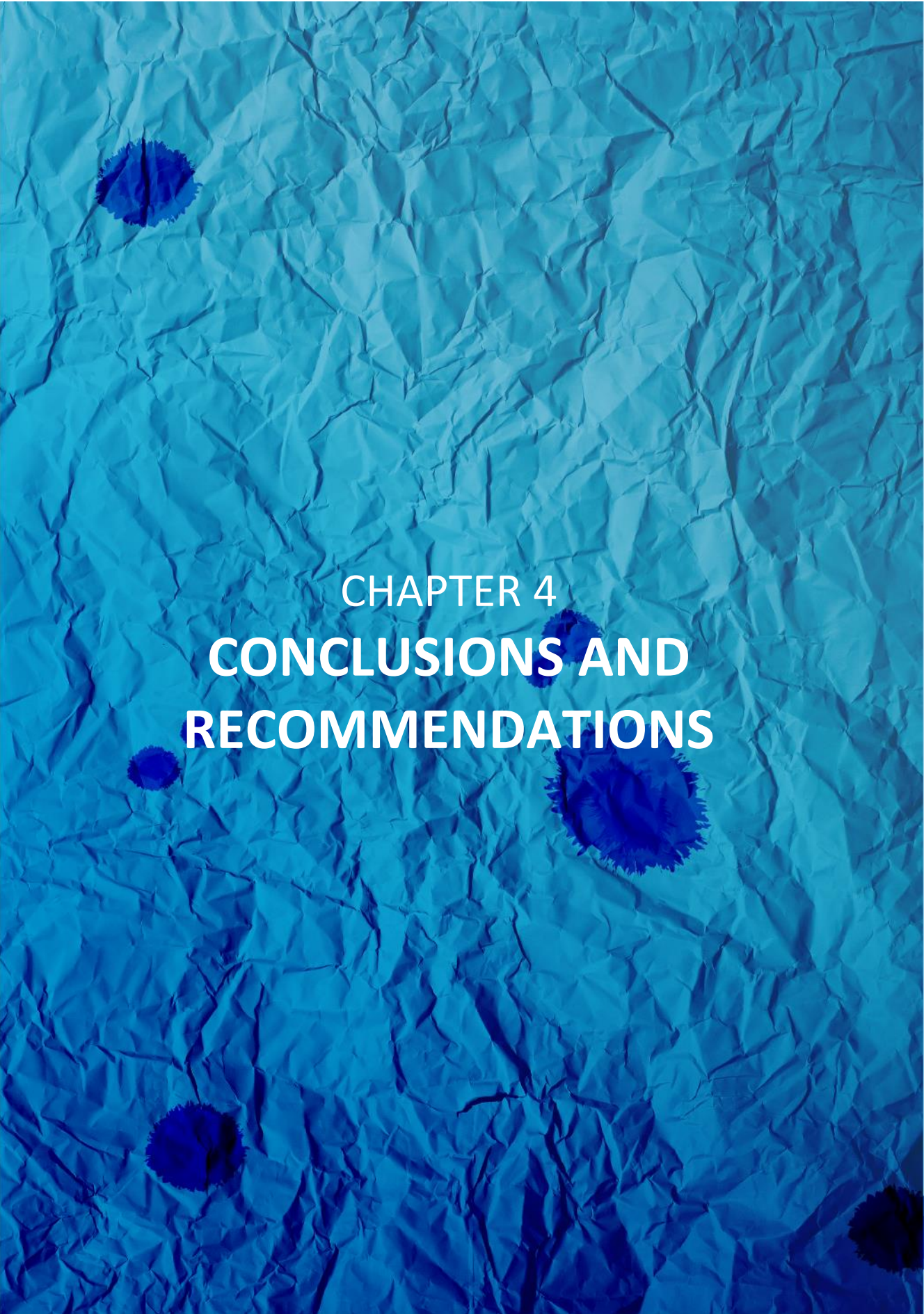
¹⁸² [Law No. 1070](#). Reforming and Supplementing Law No. 331, Electoral Law. Published in La Gaceta, Diario Oficial No. 81, of May 5, 2021.

excessively broad and ambiguous grounds for cancellation, some of which correspond to the official rhetoric by which persons branded as dissidents have been arbitrarily and unlawfully criminalized. Additionally, said reform implements Laws No. 1040, on Foreign Agents, and Law No. 1055, on Defense of the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace, which would arbitrarily impede the registration of candidacies of dissidents.

167. In that regard, by press release of May 6, the OAS General Secretariat also expressed concern over both the election of magistrates who will make up the Supreme Electoral Council, and the enactment of electoral reforms, considering that they “go against the principles and recommendations carried out by the international community, including the OAS Electoral Observation Mission [EOM/OAS] in 2017, and resolutions of the Permanent Council and the General Assembly of the Organization.” According to the statement, the election of magistrates and the enactment of these reforms “clearly give the official party an absolute advantage in controlling electoral administration and justice, eliminating the necessary guarantees and minimal institutional credibility for the development of a free and fair electoral process in November 2021.”¹⁸³
168. The IACHR notes that, according to available information, the group of laws and reforms issued since 2018 are part of a strategy of intensification of repression against any actor who opposes the official rhetoric. Especially in a context of lack of independence and arbitrary and unlawful action by the administrative and judicial bodies, these norms have been used to inhibit public debate and democratic participation, especially in a period of national elections to fill the State’s top offices. They have also had an inhibitory effect on freedom of expression, criminalizing those identified as political dissidents, dismantling civil society organizations and the media, and keeping dissidents in custody in dire conditions of detention. Of concern are these norms emanating from a Legislative Branch that seeks to close the democratic representativeness that constitutes the basis of a democratic state under the rule of law.
169. The Commission has also expressed concern regarding the perpetuation by the National Assembly of rhetoric regarding a “failed coup d’état in Nicaragua,” ignoring the vast majority of victims of the events in the country since April 18, 2018, and, of course, casting doubt on the autonomous operation of that body vis-à-vis the executive branch.
170. As may be seen from the events described in this report, the general elections scheduled for November 2021, are taking place in this climate of repression and closure of democratic forums in the country. The aim is indefinite perpetuation in power and the maintenance of privileges and immunities in a context of repression, corruption, electoral fraud, and structural impunity.

¹⁸³ [Statement from the General Secretariat on the Election of CSE Magistrates and Electoral Reform in Nicaragua](#). May 6, 2021

171. The IACHR emphasizes that, in this context, the major challenge faced by the Nicaraguan State is a quest with civil society participation for blueprints for the restoration of democratic guarantees and freedoms characteristic of the democratic rule of law through the separation of powers, and to guarantee the conditions for the holding of fair, free, and transparent elections.



CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

172. As noted in the report, a gradual process of concentration of power and a progressive weakening of democratic institutions has been operating in Nicaragua, which intensified in 2007 when Daniel Ortega assumed his second term as President of the Republic, and which has been consolidated since the human rights crisis that began in April 2018.
173. This process was made possible through a series of measures adopted to allow presidential reelection and the concentration of the highest political power in the Executive Branch, with the assistance of different state institutions, from the General Assembly, the institutions of the Judicial Branch such as the Supreme Court of Justice, the Supreme Electoral Council, the Office of the Attorney General of the Republic, and the security forces, by persons appointed because they are akin to the governing party or its allies in the pact, and by the lack of independent and impartial control bodies. The IACHR reiterates that the concentration of power has facilitated Nicaragua's transformation into a police state in which the executive branch has instituted a regime of terror and of suppression of all freedoms through control and surveillance of the citizenry and repression by state and parastate security institutions supported by the other branches of government.
174. Through this process of concentration of power, in Nicaragua the principle of separation of powers governing democratic rule of law was subverted. As may be seen from the events described in this report, the different State functions do not correspond to separate and independent bodies whose powers are balanced. All powers are aligned with and directed by the Executive branch, so that they do not provide limits on the exercise of power or prevent arbitrariness; on the contrary, they facilitate or consolidate it.
175. The Inter-American Commission notes with extreme concern that the general elections scheduled for November 2021 are taking place in this climate of repression and closure of the country's democratic forums, in which, in an unusual manner, all persons who publicly expressed their interest in participating as candidates in the elections were arbitrarily detained and remain detained. The concentration of power has enabled the President to issue a group of laws and reforms used to repress, persecute, censure, ensure privileges, and ultimately, to end opposition in the upcoming November 2021 elections in order to perpetuate himself in power indefinitely and maintain his privileges and immunities, in a context of corruption, electoral fraud, and structural impunity for serious human rights violations that may even be classified as crimes against humanity¹⁸⁴. The

¹⁸⁴ GIEI, Nicaragua, [Report on the violent events that took place in Nicaragua between April 18th and May 30th](#), 21 December 2018.

above conditions make a full and free electoral process unviable, which is detrimental to the exercise of the population's political rights.

176. The IACHR considers that democratic rule of law, as a form of political power organization, is governed by, among other fundamental principles, the principle of separation of powers. It presupposes that the different state functions correspond to separate and independent bodies whose powers are balanced so as to create the limits necessary on the exercise of power and prevent arbitrariness. The IACHR notes that the Inter-American Juridical Committee (CJI/RES. 159. (LXXV-O/09) established that democracy “does not consist only in electoral processes, but also in the legitimate exercise of power within the framework of the rule of law, which includes respect for the essential elements, components and attributes of democracy.”¹⁸⁵
177. In this regard, in accordance with the provisions of Article 3 of the Inter-American Democratic Charter, “essential elements of representative democracy include, among others, respect for human rights and fundamental freedoms; access to power and its exercise subject to the rule of law; the holding of periodic, free, fair elections based on universal and secret suffrage as an expression of the sovereignty of the people; the pluralistic system of political parties and organizations; and the separation and independence of the branches of government”.
178. As has been recognized in inter-American jurisprudence, the IACHR recalls that “the greatest current danger facing the region's democracies is not the abrupt breakdown of the constitutional order, but the gradual erosion of democratic safeguards that can lead to an authoritarian regime, even if it is popularly elected.”¹⁸⁶
179. In consideration of the foregoing analysis of the concentration of power, the undermining of the rule of law and the human rights situation in the context of the elections to be held in November 2021, and based on the powers conferred by Article 41.b of the American Convention on Human Rights, the Inter-American Commission on Human Rights makes the following recommendations to the State of Nicaragua:
 1. Adopt the necessary measures to overcome the human rights crisis through the reestablishment of democratic institutions, the full rule of law and fundamental freedoms, including freedom of expression.
 2. Guarantee the necessary conditions to ensure the holding of free, fair and transparent elections, in accordance with the Inter-American standards on the matter enshrined, among other instruments, in the Inter-American Democratic Charter as well as with the recommendations made by the

¹⁸⁵ IA Court HR. Advisory Opinion OC-28/21. [Presidential Reelection without Term Limits in Presidential Systems in the Context of the Inter-American Human Rights System](#). June 7, 2021.

¹⁸⁶ IA Court HR. Advisory Opinion OC-28/21. [Presidential Reelection without Term Limits in Presidential Systems in the Context of the Inter-American Human Rights System](#). June 7, 2021

international community, including those formulated by the OAS Electoral Observation Mission (OAS/EOM) in 2017; and the resolutions of the Permanent Council and the General Assembly of the Organization of American States.

3. Promote and sustain an effective, legitimate and inclusive dialogue with civil society. To this end, the State should create the conditions necessary to assist in promoting public confidence through the cessation of repression, acknowledgement of the events that occurred, and fulfillment of its international obligations in the matters of truth, justice, and reparation.
4. Release all those detained in the context of the crisis precipitated in 2018, including the presidential nominee candidates, those deemed dissidents, and the human rights defenders arrested in 2021.
5. Restore the legal status of civil society organizations and end the repression of the media, human rights defenders, and persons deemed dissidents.
6. Institute proceedings that promote truth, justice, and reparation for the victims of the serious crisis existing in the country.
7. End the impunity surrounding the human rights violations since the start of the crisis in 2018.
8. Repeal and/or adjust the laws enacted in this context so that they conform to the standards of international human rights law. In particular, Law No. 1040 on foreign agents; Law No. 1042 on cybercrime; and Laws No. 1055 and No. 1060, reforming and supplementing the Code of Penal Procedure.

Likewise, the Inter-American Commission recommends to the OAS Member States and the international community in general, to:

9. Demand that the State hold free, fair, and transparent elections in conformity with the recommendations of the international community, the 2017 OAS Electoral Observation Mission (EOM/OAS), and the resolutions of the Permanent Council and of the General Assembly of the Organization of American States.
10. Demand that the Nicaraguan State immediately end the repression and arbitrary arrests, and all other human rights violations now perpetrated.