



33rd session of the UPR

Human Rights Watch submission on Nicaragua

October 10, 2018

Introduction

An enormous concentration of power by the executive has allowed President Daniel Ortega's government to commit egregious abuses against critics and opponents with complete impunity. A crackdown by security forces and armed pro-government groups in 2018 left 300 dead, over 2,000 injured, and hundreds arbitrarily arrested and prosecuted.

Since taking office in 2007, Ortega's government has aggressively dismantled all institutional checks on presidential power. Stacked with his supporters, the Electoral Council has barred political parties, arbitrarily removed opposition lawmakers, and ratified elections despite serious allegations of fraud. The Supreme Court of Justice has ruled that these abusive practices are lawful and upheld Ortega's circumvention of a constitutional prohibition on re-election and run for a second term. His party secured a 79 percent majority in Congress, enabling it to fast-track institutional reforms that gave the president personal control over the police and army, and allowed him to legislate by decree as well as run for indefinite reelection.

Since its last UPR review in 2014, the human rights situation in Nicaragua has taken a drastic downward turn. Not only has Nicaragua failed to implement many of the recommendations it had previously supported, it has blatantly disregarded many of its core human rights obligations, including in the areas of freedom of expression, freedom of association and assembly, and due process.

Crackdown on Dissent

In April 2018, massive anti-government protests broke out across the country. Police, in coordination with armed pro-government groups, brutally repressed them, killing hundreds and injuring several thousand. Government forces are responsible for most of the 324 people (including 23 children) who had been killed as of September, and for most of the more than 2,000 who had been injured. Some of the killings constituted extrajudicial executions. Public hospitals under the purview of the Ministry of Health reportedly denied or obstructed medical care for wounded protestors. Twenty-two police officers were killed in clashes with protestors between April and September, according to official statistics.

Police arbitrarily arrested, and pro-government groups kidnapped, hundreds of people as part of “a policy” to “eradicate the structural conditions which support opposition voices and critics,” according to the United Nations Office of the High Commissioner for Human Rights (OHCHR). In some cases, the whereabouts of detainees were not confirmed for up to two weeks, constituting enforced disappearances during the time they were missing. During its previous UPR, in 2014, Nicaragua accepted a number of recommendations urging it to promote pluralism and freedom of expression, notably a recommendation by Canada to: “Ensure the full protection of the freedom of expression of its citizens, including the right to peaceful protest, and refrain from and condemn actions intended to intimidate or repress citizens exercising their rights.”

National Police subjected protestors to abuses that at times amounted to torture, including beatings, waterboarding, electric shocks and rape. Many told the press and Human Rights Watch of being forced to record self-incriminating videos.

High level officials repeatedly accused protesters of being “terrorists” or “attempting to overthrow the government.”

Though some detainees have been released, Nicaraguan non-governmental organizations providing legal counsel to detainees report 320 people are being prosecuted in connection to the protests, including 136 accused of “terrorism” related charges. The IACHR and the OHCHR found defendants are subject to frequent due process rights violations, such as being denied legal representation of their choice, being unable to meet privately with their lawyers while in detention and having closed trial hearings.

The abuses perpetrated by authorities remain unpunished. The Attorney General's Office and the Supreme Court obstructed international human rights bodies' efforts to document and investigate these cases. In 2014, Nicaragua accepted recommendations to end impunity in the country, including one from Australia to: “Protect the rights to freedom of expression and assembly and ensure all abuses allegedly committed by police are transparently investigated.”

Recommendations

In the 19th UPR Session of 2014, Nicaragua accepted two recommendations calling on the government to ensure separation of powers, three to strengthen the independence and capacity of the human rights ombudsman office, and four to strengthen the independence of the judiciary. Nicaragua should follow through on these commitments and specifically:

Executive

- Remove police chiefs who bear responsibility for gross human rights violations;

- Order law enforcement authorities to immediately dismantle armed pro-government groups;
- Nicaraguan authorities should extend the mandate of the Interdisciplinary Group of Independent Experts (GIEI) in November for another six months and broaden its capabilities to investigate human rights violations between April and through the end of its mandate; and,
- Refrain from making statements stigmatizing individuals or groups that oppose government policy as “terrorists,” “coup-plotters,” or similar statements for exercising their right to peaceful assembly or freedom of expression.

Congress

- Modify the overbroad definition of terrorism in the legislation approved on July 17, 2018, to bring it under the international standards identified by the December 22, 2010, report of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;

Attorney General’s Office

- Conduct prompt, exhaustive and impartial investigations into the widespread human rights violations perpetrated by police officials, investigating police chiefs who bear responsibility for such abuses as a matter of priority;
- Conduct prompt, exhaustive and impartial investigations into the numerous allegations of torture, cruel, inhumane and degrading treatment of detainees;
- Conduct prompt, exhaustive and impartial investigations into the abuses perpetrated by armed pro-government groups, including but not limited to killings, torture, rape and abductions of protesters;
- Refrain from using counter-terrorism legislation to persecute government critics for exercising their right to freedom of peaceful assembly, freedom of expression or for receiving foreign funding;
- The Attorney General’s Office should guarantee that detainees are brought before a judge within 48 hours, which is the legal limit established under Nicaraguan law;
- Cooperate fully with the Interdisciplinary Group of Independent Experts (GIEI) established by agreement with the Inter-American Commission on Human Rights (IACHR) and the Organization of American States (OAS), including by granting full access to official documentation and courtrooms.

National Police

- Take immediate steps to prevent any use of excessive force to repress or disband peaceful protests;

- Protect and respect the fundamental rights of detainees and promptly investigate any allegations of torture, inhumane, cruel or degrading treatment against detainees in police delegations;
- Promptly confirm or deny the arrest of an individual to their relatives and do not arbitrarily withhold information on the whereabouts of detainees.

Prison Authorities

- Explicitly confirm or deny the arrest of an individual to their relatives, and do not arbitrarily withhold information on the whereabouts of detainees;
- Guarantee that defense lawyers have unfettered access to their clients in detention and that they are able to meet privately, without fear of retaliation for exercising their right to defense;
- Guarantee that detainees are not arbitrarily subjected to a maximum-security regime;
- Comply with judicial orders regarding when a detainee should be presented in a courtroom, when they can be taken away after a hearing concludes, habeas corpus writs, and orders for medical examinations of detainees;
- Ensure that detainees can exercise their rights to make phone calls and receive visits, including from family members and lawyers.

Attacks against Human Rights Defenders and Journalists

During the previous UPR, Nicaragua accepted a number of recommendations to respect the rights of human rights defenders and journalists, such as Norway's recommendation to: "Promote efforts to ensure that the right to freedom of expression can be fully exercised and that all violations against human rights defenders and journalists are effectively investigated and prosecuted" and Austria's recommendation that Nicaragua "[g]uarantee a safe and enabling environment for journalists and human rights defenders and ensure that all cases of attacks against them are investigated by independent and impartial bodies."

Nevertheless, human rights defenders and other critics of the government have increasingly become the targets of death threats, intimidation, online defamation campaigns, harassment, surveillance, assault, and judicial persecution. Public officials repeatedly make stigmatizing statements to undermine the credibility of defenders. In July 2018, for example, during a public address, Ortega referred to prominent Catholic bishops who have denounced the abuses as "assassins" and "coup-plotters."

Police and armed pro-government groups harassed, threatened, intimidated, attacked, robbed, and confiscated equipment from journalists and bloggers who reported on the protests. Reporters who are critical of the government often face online defamation campaigns.

Nicaraguan police or authorities have harassed or deported several foreign correspondents, according to first-account video testimony published by media outlets.

In August, for example, police detained a Brazilian-American documentary filmmaker in Carazo, confiscated her equipment, interrogated her for several hours, and deported her the next day.

Recommendations

- Ensure that international human rights standards for freedom of expression, including press freedom, are upheld, and refrain from using administrative, judicial, and financial means to unduly restrict the exercise of this right;
- Immediately investigate all cases of attacks or violations against human rights defenders and ensure perpetrators are brought to justice;
- Refrain from making statements that discredit, delegitimize, or stigmatize human rights defenders and journalists for exercising their right to peaceful assembly or expression; and,
- Comply with previously accepted but not yet implemented recommendations to establish an "Observatory on Human Rights Defenders" in collaboration with organizations that defend human rights in the country.

Cooperation with international bodies

After an in-country visit in May, the IACHR released a report concluding Nicaraguan authorities had perpetrated widespread abuses in responding to anti-government protests that were not isolated actions by rogue agents. The IACHR then created a Special Monitoring Mechanism for Nicaragua (MESENI) to remain in country. The government has curtailed MESENI's operations, including by refusing to provide official information and barring its staff from inspecting detention sites.

Shortly after, the Organization of American States (OAS), the IACHR, and the Nicaraguan government agreed to create an Interdisciplinary Group of Independent Experts (GIEI) that would support the Attorney General Office's investigations into human rights abuses. In August, the GIEI disclosed that it had made no progress because of the government's refusal to collaborate.

In August, the Supreme Court of Justice ordered MESENI and GIEI to seek authorization from the Foreign Affairs Ministry to enter trial hearings that legislation explicitly ordered to be public. Neither MESENI nor GIEI have been allowed in courthouses.

The government allowed OHCHR into the country in June, after months of refusing its requests for an invitation. Authorities consistently obstructed its work, and in August, two days after the OHCHR released a scathing report, the Nicaraguan government expelled its representatives.

Recommendations

- Allow the return to the country of the OHCHR country team, and grant them full, unhindered access to all parts of the country, including detention centers and courthouses, as well as access to official documentation and information;
- Cooperate fully with the IACHR teams, including MESENI, in order that they may complete their investigations without obstacles, and grant them access to all parts of the country, including detention centers and courthouses, as well as access to official documentation and information; and
- Renew and expand the mandate of the GIEI so that the experts may complete their investigations of human rights abuses in Nicaragua, guaranteeing their unhindered access to sites and official documentation, as already referred above.

Annexes

1. Nicaragua's Chief of Torture Center Promoted, HRW Dispatch, September 2018
<https://www.hrw.org/news/2018/09/11/nicaraguas-chief-torture-center-promoted>
2. UN Rights Council Needs to Stem Nicaragua Crisis Now, HRW Dispatch, September 2018
<https://www.hrw.org/news/2018/09/05/un-rights-council-needs-stem-nicaragua-crisis-now>
3. UN Security Council: Condemn Abuses in Nicaragua, HRW Press Release, August 2018
<https://www.hrw.org/news/2018/08/31/un-security-council-condemn-abuses-nicaragua>
4. Nicaragua: Officers Linked to Abuses Promoted, HRW Press Release, August 2018
<https://www.hrw.org/news/2018/08/23/nicaragua-officers-linked-abuses-promoted>
5. Letter Calling for UN Human Rights Council Special Session on Nicaragua, HRW Public Letter, August 2018
<https://www.hrw.org/news/2018/08/23/letter-calling-un-human-rights-council-special-session-nicaragua>
6. Nicaragua: Doctors, Health Workers Arbitrarily Fired, HRW Press Release, August 2018
<https://www.hrw.org/news/2018/08/07/nicaragua-doctors-health-workers-arbitrarily-fired>
7. Nicaragua: Senior Officials Responsible for Abuse, HRW Press Release, July 2018
<https://www.hrw.org/news/2018/07/10/nicaragua-senior-officials-responsible-abuse>
8. OAS: Condemn Egregious Abuses in Nicaragua, HRW Press Release, June 2018
<https://www.hrw.org/news/2018/06/22/oas-condemn-egregious-abuses-nicaragua>
9. Nicaragua: Protests Leave Deadly Toll, HRW Pres Release, April 2018
<https://www.hrw.org/news/2018/04/27/nicaragua-protests-leave-deadly-toll>