

## **ANNEX: ASSESSMENT OF NICARAGUA AGAINST THE OBJECTIVE CRITERIA FOR HRC ACTION**

During the thirty-second session (HRC32) of the UN Human Rights Council in June 2016, Ireland delivered a statement<sup>1</sup> on behalf of a cross-regional group of States (building upon a previous joint statement by the Maldives) proposing objective criteria – or “guiding principles” – to “help [the Human Rights Council] decide, in an objective and non-selective manner, when the Council should usefully engage with a concerned State, to prevent, respond to, or address violations and to assist in de-escalation of a situation of concern.” Application of these objective criteria has been further reaffirmed in cross-regional joint statements delivered by the Netherlands at the 35th session of the Council on behalf of 49 States, a joint statement delivered by Australia on behalf of 11 incoming members of the Council from all regional groups at the 37th session, and similar joint statements delivered by Fiji on behalf of 10 incoming members at the 40th session; and by the Marshall Islands on behalf of nine incoming members at the 43rd session.

Analysis by our organisations, set out below, shows that all of the criteria identified in the joint statement have been partially or fully met in the case of Nicaragua.

- ✓ **Call for action by the UN SG, HC or another relevant UN organ, body or agency?**  
The High Commissioner has consistently urged the Council to keep the situation on its agenda. Ahead of HRC43, the OHCHR report recommended that the international community and the HRC “reaffirm the commitment of the international community to support Nicaragua to find a solution to the socio-political crisis it faces, including efforts to establish a comprehensive action plan towards accountability,” and to “request OHCHR to enhance its monitoring, documentation, analysis, and public reporting on the human rights situation in Nicaragua, notably as a contribution to ensuring accountability, and to support the rule of law and security sector reforms.”<sup>2</sup>

Since then, she has been clear that the situation has not improved, and Nicaragua continues to refuse to cooperate with her and her Office. At the 45<sup>th</sup> session in September, she noted that “there has been no progress in the human rights situation and no sign that the Government is constructively addressing the tensions and structural problems that triggered the socio-political crisis in April 2018”.<sup>3</sup> In the same update, she also noted that the recommendations of her 2019 report “have not yet been implemented, resulting in continued impunity, and further violations,” and she renewed her call for access to the country.

- ✓ **Recommendation for action by a group of Special Procedures?**  
Since the beginning of the crisis Special Procedures have consistently raised their concerns publicly and recommended action through joint statements, letters, opinions as well as Urgent Actions, including:
- Joint letter: Comments on the Law on Anti-Money laundering, Financing of Terrorism and Financing the Proliferation of Weapons of Mass Destruction (OL NIC 4/2020), 4 January 2021.<sup>4</sup>
  - Joint statement: Nicaragua: UN expert urges to improve protection of environmental rights defenders, 1 February 2021.<sup>5</sup>

<sup>1</sup> Joint Statement delivered by Ireland (“Objective Criteria for HRC action”), 32<sup>nd</sup> session of the UN Human Rights Council, 8 July 2016, available at: <https://www.dfa.ie/our-role-policies/international-priorities/human-rights/ireland-and-the-human-rights-council/irelands-statements-hrc-32nd-session/preventingrespondingtoandaddressinghumanrightsviolations-jointconcludingstatement/>.

<sup>2</sup> OHCHR. Situation of Human Rights in Nicaragua: Report of the United Nations High Commissioner for Human Rights (A/HRC/42/18), 3 September 2019, available at: <https://undocs.org/en/A/HRC/42/18>.

<sup>3</sup> OHCHR. Update on the human rights situation in Nicaragua, pursuant to resolution 43/2, 14 September 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26228&LangID=E>.

<sup>4</sup> Comentarios sobre la Ley Contra el Lavado de Activos, el Financiamiento al Terrorismo y el Financiamiento a la Proliferación de Armas de Destrucción Masiva (Ley nº 977), aprobada por el Parlamento nicaragüense el 16 de julio de 2018 (Spanish only), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25778>.

<sup>5</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26701&LangID=E>.

- Joint letter: *Comments on the Law on the Regulation of Foreign Agents and the Special Law on Cybercrime, recently approved by the National Assembly (OL NIC 3/2020)*, 13 November 2020.<sup>6</sup>
- Opinion No. 39/2020, Working Group on Arbitrary Detention, concerning Kevin Roberto Solis, 9 October 2020.<sup>7</sup>
- Opinion No. 21/2020, Working Group on Arbitrary Detention, concerning 16 persons, 3 July 2020.<sup>8</sup>
- Opinion No. 17/2020, Working Group on Arbitrary Detention, concerning Miguel Mora and Lucia Pineda, 2 July 2020.<sup>9</sup>
- Joint statement: *Nicaragua must stop reprisals against journalists, say human rights experts*, 26 August 2019.<sup>10</sup>
- Joint statement: *Nicaragua must stop repression of human rights – UN experts*, 22 November 2018.<sup>11</sup>
- Joint statement: *Nicaragua must end "witch-hunt" against dissenting voices, say UN experts*, 9 August 2018.<sup>12</sup>
- Joint statement: *Nicaragua: Government must end violence and reinstate political dialogue*, say UN, 14 June 2018.<sup>13</sup>
- Joint statement: *Nicaragua: Experts say appalled by Government's violent response to peaceful protests*, 27 April 2018.<sup>14</sup>

✓ **Does the State concerned have an “A status” NHRI? If so, has that institution drawn the attention of the international community to an emerging situation and called for action?**

Since 2019, Nicaragua’s National Human Rights Institution has been downgraded to B status<sup>15</sup> following a recommendation by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI) in May 2018 and March 2019, based on its failure “to adequately speak out [...] in response to credible allegations of serious human rights violations.”<sup>16</sup>

✓ **Has the State concerned been willing to recognise that it faces particular human rights challenges and laid down a set of credible actions, including a time-table and benchmarks to measure progress, to respond to the situation? Is the State concerned engaging in a meaningful, constructive way with the Council on the situation?**

In her update to the Council in September 2020, the High Commissioner clearly offered her assessment that “there has been no progress in the human rights situation and no sign that the Government is constructively addressing the tensions and structural problems that triggered the socio-political crisis in April 2018.”<sup>17</sup> Nicaraguan authorities have consist-

<sup>6</sup> Comentarios sobre la Ley de Regulación de Agentes Extranjeros y la Ley Especial de Ciberdelitos, aprobadas recientemente por la Asamblea Nacional (Comments on the Law on the Regulation of Foreign Agents and the Special Law on Cybercrime, recently approved by the National Assembly) (Spanish only), 13 November 2020, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25691>.

<sup>7</sup> Available at: [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A\\_HRC\\_WGAD\\_2020\\_39\\_Advance\\_Edited\\_Version.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_39_Advance_Edited_Version.pdf).

<sup>8</sup> Available at: [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A\\_HRC\\_WGAD\\_2020\\_21\\_Advance\\_Edited\\_Version.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A_HRC_WGAD_2020_21_Advance_Edited_Version.pdf).

<sup>9</sup> Available at: [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A\\_HRC\\_WGAD\\_2020\\_17\\_Advance\\_Edited\\_Version.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A_HRC_WGAD_2020_17_Advance_Edited_Version.pdf).

<sup>10</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24920&LangID=E>.

<sup>11</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23919&LangID=E>.

<sup>12</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23434&LangID=E>.

<sup>13</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23201&LangID=E>.

<sup>14</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23005&LangID=E>.

<sup>15</sup> GANHRI. Chart of the status of National Human Rights Institutions, November and March 2019, available at: [https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/Status%20Accreditation%20-%20Chart%20\(%2027%20November%202019\).pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/Status%20Accreditation%20-%20Chart%20(%2027%20November%202019).pdf), and <https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20%2804%20March%202019.pdf>.

<sup>16</sup> GANHRI Subcommittee on Accreditation. Report-May 2018, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20May%202018-Eng.pdf>;

GANHRI. Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), 11-15 March 2019, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20March%202019%20-%20EN%20.pdf>.

<sup>17</sup> OHCHR. Update on the human rights situation in Nicaragua, pursuant to resolution 43/2, 14 September 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26228&LangID=E>.

ently denied allegations of human rights violations. For instance, at the HRC in September 2020, Nicaragua refused to accept the assessment of the situation presented by the High Commissioner, accusing the OHCHR of a lack of objectivity and interference in internal affairs.<sup>18</sup>

✓ **Is the State concerned effectively cooperating with HRC Special Procedures, including by allowing country visits?**

Nicaragua has not allowed access to the Special Procedures since a visit by the Special Rapporteur on the Right to Food in 2009, despite a number of outstanding visit requests, including by the Working Group on Enforced Disappearances, the Working Group in Arbitrary Detention and the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.<sup>19</sup> Nicaragua has failed to respond to most communications sent by the Special Procedures.<sup>20</sup>

✓ **Is the State concerned engaging with OHCHR, including in the field of technical assistance and effective engagement with the UN Human Rights Treaty Bodies?**

In August 2018, the OHCHR team on the ground was expelled from Nicaragua the day after they published a report on the patterns of human rights violations and abuses committed in the country.<sup>21</sup> As of January 2021, the OHCHR continues to be barred from monitoring the human rights situation from the ground.<sup>22</sup> The OHCHR Regional Office for Central America has therefore had to continue their monitoring of the human rights situation remotely.

✓ **Has a relevant regional mechanism or institution identified the situation as requiring the attention of the international community? Is the State concerned cooperating with relevant regional organisations?**

In 2018, the IACHR formally established two mechanisms to monitor and investigate the human rights situation in agreement with the Nicaraguan government: The MESENI and the GIEI. In December 2018, Nicaraguan authorities expelled both the MESENI and GIEI from Nicaragua, a day before GIEI's report was due to be released. Following their expulsion from the country GIEI released their report concluding that abuses in the country, including murder, arbitrary detentions, and persecution, amounted to crimes against humanity.<sup>23</sup> Following a resolution adopted by the General Assembly of the Organization of American States (OAS) in June 2019,<sup>24</sup> the Permanent Council appointed, in August 2019, a Commission to address the political and social crisis in Nicaragua.<sup>25</sup> In September 2019, the government denied the Commission on Nicaragua access to the country.<sup>26</sup> Despite the refusal of the government of Nicaragua to meet the Commission, the Commission was able to submit a report as mandated. The report concluded that "Nicaragua is experiencing a critical human rights situation that urgently demands the attention of the Inter-American community and the world at large."<sup>27</sup>

<sup>18</sup> HRC. General debate on the oral update by the High Commissioner for Human Rights and oral updates of the High Commissioner on the situation of human rights in Nicaragua and the Bolivarian Republic of Venezuela - 3rd Meeting, 45th Regular Session, 15 September 2020, available at: <http://webtv.un.org/search/item2-general-debate-3rd-meeting-45th-regular-session-human-rights-council/6190918624001/?term=nicaragua&lan=English&cat=Human%20Rights%20Council&sort=date&page=1#player>.

<sup>19</sup> OHCHR. View Country visits of Special Procedures of the Human Rights Council since 1998, available at: <https://spin-ternet.ohchr.org/ViewCountryvisits.aspx?visitType=pending&lang=en>.

<sup>20</sup> More information at: OHCHR, Communication report and search, <https://spcommreports.ohchr.org/TmSearch/Results?page=2>.

<sup>21</sup> OHCHR. Press briefing note on Libya, Nicaragua, Malawi and Guatemala, 4 September 2018, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23497&LangID=E>.

<sup>22</sup> OHCHR. Update on the human rights situation in Nicaragua, pursuant to resolution 43/2, 14 September 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26228&LangID=E>.

<sup>23</sup> GIEI-Nicaragua. Report on the violent events that took place between April 18<sup>th</sup> and May 30<sup>th</sup>, 2018, December 2018.

<sup>24</sup> OAS GA. The Situation in Nicaragua AG/RES.2943 (XLIX-O/19), 28 June 2019.

<sup>25</sup> OAS Permanent Council. Resolution on the Appointment of a Commission on Nicaragua (CP/RES. 1135/19), 28 August 2019, available at: [http://scm.oas.org/doc\\_public/english/hist\\_19/cp41406e03.doc](http://scm.oas.org/doc_public/english/hist_19/cp41406e03.doc).

<sup>26</sup> Amnesty International. Nicaragua: OAS member states must continue to work tenaciously against repression, 1 October 2019, available at: <https://www.amnesty.org/en/latest/news/2019/10/nicaragua-oea-debe-continuar-trabajando-contrarepresion/#:~:text=Nicaragua%3A%20OAS%20member%20states%20must%20continue%20to%20work%20tenaciously%20against%20repression,-1%20October%202019&text=It%20is%20unreasonable%20that%20the,refusal%20to%20let%20them%20in>.

<sup>27</sup> OAS High Level Commission on Nicaragua. Report of the OAS High-Level Commission on Nicaragua, 19 November

The government of Nicaragua has not yet allowed any of the regional mechanisms to access the country. However, the MESENI has continued its mandate, receiving numerous statements from impacted people and reporting ongoing harassment and intimidation suffered by those perceived as government opponents, arbitrary detentions, lack of protection for Nicaraguans returning to their country, and restrictions to the exercise of political rights and freedom of expression.<sup>28</sup> Two years after the creation of MESENI, in June 2020, the IACHR noted that Nicaragua has not complied with the recommendations included in the MESENI and GIEI reports or the precautionary measures, “nor has the IACHR observed any steps toward doing so”. The IACHR further “urged the state to facilitate visits from the IACHR and MESENI and other international bodies, such as the OHCHR.”<sup>29</sup>

✓ **Is the State concerned facilitating or obstructing access and work on the part of humanitarian actors, human rights defenders and the media?**

Our organizations have continued to document censorship, attacks and threats against the media, journalists, health workers, Indigenous people, human rights defenders and their families in Nicaragua in 2020.<sup>30</sup>

Concerns in this regard have been highlighted by the UN and regional human rights systems throughout the year:

- In April, the IACHR warned that “a fifth phase of State repression is consolidating in the country,” noting “more intense surveillance, harassment, and selective repression against individuals who are believed to oppose the government, as well as acts of violence in rural areas and against indigenous communities.”<sup>31</sup>
- In July 2020, the High Commissioner expressed concern that “persistent human rights violations continue to be documented against those who the Government perceives as opponents, including human rights defenders, journalists, social leaders, and former political detainees.”<sup>32</sup>
- In October 2020, the IACHR reported having received information about the intensification of a government strategy consisting of attacks on the media and independent press through direct and indirect censorship, as well as acts of siege and threats against social and political leaders and human rights defenders and urged the State of Nicaragua to cease the persecution of dissident or opposition voices.<sup>33</sup>

In a sign of more to come, the National Assembly has in recent months approved several laws that infringe the rights to freedom of expression and association in Nicaragua, and to run for office and vote in fair and free elections.

The *Foreign Agents Law*, passed in October, requires entities and people who receive funding from abroad to register as a “foreign agent” with the Ministry of Interior. In turn, “foreign agents” are barred from intervening in “issues, activities or matters of internal or

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2019, available at: [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-105/19#:~:text=1135%20\(2244%2F19\)%2C.of%2075%20days%20of%20its](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-105/19#:~:text=1135%20(2244%2F19)%2C.of%2075%20days%20of%20its).

<sup>28</sup> For more information visit: <http://www.oas.org/en/iachr/jsForm/?File=/en/iachr/meseni/default.asp>.

<sup>29</sup> IACHR. Two Years After the Creation of MESENI, IACHR Recalls Nicaragua’s Pending Human Rights Obligations, 23 June 2020, available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2020/146.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/146.asp).

<sup>30</sup> E.g. see <https://www.amnesty.org/en/latest/news/2020/04/nicaragua-gobierno-aumenta-riesgo-contagio-covid19/>, <https://www.amnesty.org/en/latest/news/2020/05/nicaragua-personas-privadas-de-libertad-tienen-sintomas-covid19/>, <https://www.amnesty.org/en/latest/news/2020/09/nicaragua-gobierno-pareciera-preparar-nueva-fase-represion/>, <https://www.amnesty.org/en/documents/amr43/2535/2020/en/>, <https://www.amnesty.org/en/latest/news/2020/06/nicaragua-president-ortega-stop-arbitrary-dismissals-health-workers/>; <https://www.hrw.org/world-report/2021/country-chapters/nicaragua#>.

<sup>31</sup> IACHR. Two Years After the Creation of MESENI, IACHR Recalls Nicaragua’s Pending Human Rights Obligations, 23 June 2020, available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2020/146.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/146.asp)

<sup>32</sup> OHCHR. Human Rights in Crimea, Nicaragua and Venezuela, 2 July 2020, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26027&LangID=E>.

<sup>33</sup> IACHR. La CIDH llama a cesar de inmediato los actos de persecución contra las personas identificadas como opositoras al gobierno y al restablecimiento de garantías democráticas en Nicaragua (The IACHR calls for the immediate ceasing of acts of persecution against persons identified as opponents of the government and for the reestablishment of democratic guarantees in Nicaragua) (Spanish only), 10 October 2020, available at: <http://www.oas.org/es/cidh/prensa/comunicados/2020/249.asp>.

external politics,” and would face undetermined criminal penalties if they did so. Those failing to register within a 60-day period could face fines and a cancellation of their legal recognition and could be subject to the confiscation of property.

Additionally, the *Law on Cyber-crimes*, which also passed in October, establishes criminal sentences of up to four years in prison for anyone who uses communications technology to “publish” or “disseminate” “false or distorted information, likely to spread anxiety, anguish or fear.” It also punishes with up to five years in prison anyone who publishes “false or distorted information” that “promotes hate and violence, [or] endangers economic stability, public order or health, or national security,” terms that are vague, ambiguous and not defined under the law.

Likewise, in December, the National Assembly approved the *Law for the Defense of People's Rights to Independence, Sovereignty, and Self-determination for Peace*, that bans so-called “traitors” from running for or holding public office. It defines “traitors” in sweeping terms to include, for example, people who “undermine independence, sovereignty and self-determination” or “damage the supreme interests of the nation.”

More recently, in January, the National Assembly approved a constitutional amendment that would allow for lifetime imprisonment for “grave crimes” that are “accompanied by hate, cruel, degrading, humiliating or inhumane treatment, which, because of their impact, provoke commotion, rejection, outrage and disgust to the society.”

In the current context, there is a well-founded fear that these laws will be used to target human rights defenders, journalists, opposition politicians and others who raise their voices to speak out against repressive policies and call for the respect for human rights. UN Special Procedures,<sup>34</sup> the IACHR and its Office of the Special Rapporteur for Freedom of Expression<sup>35</sup> have expressed their concern in this regard.

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<sup>34</sup> Comentarios sobre la Ley de Regulación de Agentes Extranjeros y la Ley Especial de Ciberdelitos, aprobadas recientemente por la Asamblea Nacional (Comments on the Law on the Regulation of Foreign Agents and the Special Law on Cybercrime, recently approved by the National Assembly) (OL NIC 3/2020) (Spanish only), 13 November 2020, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25691>.

<sup>35</sup> IACHR. 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, 7 October 2020, available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?IID=1&artID=1187>.