

Written Presentation of:

Office of United Nations High Commissioner for Human Rights

Presented by:

Guillermo Fernández Maldonado
Senior Human Rights Officer
Mission Coordinator for Nicaragua

at a hearing on

“The Evolving Human Rights Crisis in Nicaragua”

before the

Tom Lantos Human Rights Commission

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INTRODUCTION

My attendance today before the Tom Lantos Human Rights Commission is in my capacity as Senior Human Rights Officer of the Office of the United Nations High Commissioner for Human Rights, Mission Coordinator for Nicaragua. I am here to provide an informal, unsworn, oral briefing to the Commission on the topic of human rights crisis in Nicaragua and nothing in my remarks should be understood to be a waiver, express or implied, of the privileges and immunities of the United Nations under the 1946 Convention on the Privileges and Immunities of the United Nations.

Chairman Mc Govern, Chairman Hultgren and members of the Commission, on behalf of the United Nations High Commissioner for Human Rights, Michelle Bachelet, I would like to thank you for the invitation extended to us to brief this Committee about the findings from our monitoring activities, since April 2018, and recommendations made by the High Commissioner for Human Rights to the State of Nicaragua and the international community.

I would like to start by briefly refer to OHCHR's mandate and then focus my intervention on our work on Nicaragua, and in particular on the findings and recommendations of the report we published on 29 August "Human rights violations and abuses in the context of protests in Nicaragua. 18 April-18 August 2018".

OHCHR OVERVIEW

OHCHR is the leading UN entity on human rights with a unique mandate to promote and protect all human rights for all people. Within the framework of its global mandate under General Assembly resolution 48/141, OHCHR provides assistance in the form of technical expertise and capacity-development in order to support the implementation of international human rights norms and standards on the ground. It assists governments, which bear the primary responsibility for the protection of human rights, to fulfil their obligations and supports individuals to claim their rights. Likewise, it is the Secretariat to all UN human rights mechanisms – such as the Human Rights Council and the treaty monitoring bodies.

Monitoring and reporting is a fundamental part of OHCHR work. Through the independent voice of the High Commissioner, the Office can identify gaps concerning fulfilment and implementation of human rights and play an important role in raising the alarm on specific situations with an aim at preventing human rights violations.

In this regard, our report on Nicaragua and the recommendations provided therein offer, we believe, an important tool to help Nicaragua overcome its current deep political and social crisis, strengthen its institutions, and help in the search for truth and accountability.

OHCHR remains ready to support the Nicaraguan State to fulfil its international human rights obligations. We will also continue to cooperate with regional human rights mechanisms and the international community.

OHCHR ENGAGEMENT WITH NICARAGUA

Since the beginning of April, OHCHR Regional Office for Central America, based in Panama, started to closely monitor and report on the human rights situation in Nicaragua when initial demonstrations alerting on the slow and insufficient response of the Government to forest fires in the Indio Maíz Biological Reserve erupted in the country.

At the invitation of the Government, a team of OHCHR human rights officers was deployed to Nicaragua on 26 June 2018, to support the work of the Verification and Security Commission established within the National Dialogue process, and to carry out human rights monitoring. OHCHR team also coordinated its activities with the Inter-American Commission on Human Rights, as per on-going practice and agreement of cooperation, provided technical assistance to UN agencies present in the country in relation to their contributions to the Universal Periodic Review (UPR) process, and regularly shared information and analysis with the international community.

In addition to these activities, OHCHR Regional Office for Central America, based in Panama, conducted a joint mission with UNESCO to specifically monitor the situation of journalists and media workers, and hosted a two-day training in Managua with 40 human rights defenders on protection measures and civil society engagement with the UPR process.

On 29 August, the then High Commissioner, Zeid Ra'ad Al Hussein, presented the public report "Human rights violations and abuses in the context of protests in Nicaragua. 18 April-18 August 2018", that was the product of the monitoring work conducted both remotely and from Managua (also available at https://www.ohchr.org/Documents/Countries/NI/HumanRightsViolationsNicaraguaApr_Aug2018_EN.pdf).

The next day the Minister of Foreign Affairs of Nicaragua sent a letter to OHCHR informing that the Government was withdrawing the invitation to visit the country given that the reasons for the visit linked to the work of the Verification and Security Commission had ceased. Therefore it asked OHCHR team to leave the country. Since then, a team has continued to monitor remotely the situation from Panama through available open sources,

complaints, reports and interviews carried out remotely and in other neighboring countries.

It must be noted that the international community has echoed the concerns regarding the crisis in Nicaragua and has strongly supported the work of the Office, regretting the expulsion of OHCHR from the country, and acknowledging OHCHR's report. This has been recently reflected in the joint statement issued by 36 States at the Human Rights Council and the adoption of the latest OAS' resolution on Nicaragua on 12 September.

MAIN FINDINGS

I would like now to share with you the main findings from the High Commissioner's report that summarize patterns of human rights violations and abuses committed in relation to the social protests and the ensuing political crisis in Nicaragua.

However, as highlighted by the former High Commissioner, repression and violence observed over the past five months are the "*product of the systematic erosion of human rights over the years, and highlight the overall fragility of institutions and the rule of law.*" Communications from several Special Procedures from the Human Rights Council, as well as views and concluding observations from UN treaty bodies and the recommendations emanating from the UPR mechanism of the Council also reflected analogous concerns.

- 1) According to OHCHR report, since the social protests began in April 2018, repression and other forms of violence have resulted in over 300 people killed and 2,000 persons injured.
- 2) The unfolding crisis has undergone three phases. The first one saw a repressive response to the protests by the police and pro-Government armed elements, and was followed by a "clean-up" stage (from mid-June to mid-July), whereby pro-Government armed elements, including those known as "shock forces" (*fuerzas de choque*) and mobs (*turbas*), forcibly dismantled roadblocks and barricades. The third and current stage of the crisis has seen demonstrators and others considered as Government opponents persecuted and criminalized.
- 3) Based on analysis of information available to OHCHR, the overall response of the authorities to protests has failed to meet applicable standards of the management of assemblies, in violation of international human rights law.
- 4) Although some demonstrations turned violent, the vast majority of protesters were peaceful. In cases where protesters were violent, the use of lethal force by authorities against non-lethal threats and the reliance on pro-Government armed elements, also violated international human rights law. The response sought to systematically repress dissent against the Government.

- 5) Human rights violations documented by OHCHR include disproportionate use of force by the police that sometimes resulted in extrajudicial killings; enforced disappearances; obstructions to access to medical care; widespread arbitrary or illegal detentions; prevalent ill-treatment and instances of torture and sexual violence in detention centres; violations of freedoms of peaceful assembly and expression, including the criminalization of social leaders, human rights defenders, journalists and protestors considered critical of the Government.
- 6) Information obtained by OHCHR strongly indicates that pro-Government armed elements, including “shock forces” and “mobs”, acted with the acquiescence of high-level State authorities and of the National Police, and often in a joint and coordinated manner.

These groups participated in raids and attacks against protesters and carried out illegal detentions. Although the Government no longer denies the existence of pro-Government armed elements, it condones their actions and allows them to operate with impunity.

- 7) The overall enjoyment of the rights to health, work, education and food has been severely impacted since the beginning of the crisis. This takes place in context of a deteriorating economic situation.

The repression of protests by the police and pro-Government armed elements generated a violent response by some individuals who took part in the protests. Serious abuses were committed by anti-Government protesters including the killing and injuring of police officers and members of the Sandinista party and the destruction of public infrastructure. These abuses should be duly investigated and those responsible should be penalized within fair trials. OHCHR has stressed that the abuses committed do not legitimize in any way a response that is not in line with international human rights law.

- 8) In the current stage of the crisis, authorities continue to resort to smear campaigns, threats of prosecution, arbitrary dismissals of civil servants and other forms of harassment or intimidation against individuals and human rights defenders perceived as critical of the Government. Leaders of rural movements (*Movimiento Campesino*) and of student movements have been particularly targeted
- 9) This pattern has created a climate of fear and mistrust amongst the population. The level of persecution is such that many of those who have participated in the protests, defended the rights of the protesters, or simply expressed dissenting opinion, have been forced to hide, have left Nicaragua or are trying to do so.
- 10) According to estimates made by non-governmental organizations, as of 18 August more than 300 individuals, including human rights defenders, are facing trials for serious crimes, including charges of terrorism and organized crime, for having participated or supported the protests. The trials of people charged in relation to

the protests have serious flaws and do not observe due process, including the impartiality of the courts.

11) The current number of protests (reduced) indicates the chilling effect of repression. Throughout September, we have received a number of reports of firearms attacks and intimidation against peaceful protesters in the course of marches held in Managua and other localities by Sandinistas' mobs, pro-government armed elements and Police.

State's duty to investigate:

- Rather than recognizing responsibility for any wrongdoing during the crisis, the Government has placed the blame on social and opposition leaders, human rights defenders and media outlets for what they have termed "coup-related violence"
- The Government has attributed the responsibility for all violent actions to those who participated in the protests, including concerning the 198 deaths it had recognized as of 25 July. It has not acknowledged any disproportionate use of force or illegal actions by police officers.
- The State's lack of will to carry out prompt, impartial, thorough and independent investigations on alleged human rights violations and abuses seriously jeopardizes victims' rights to justice, truth and an effective remedy.
- The lack of independence of the judiciary and reported irregularities of the Office of the Attorney-General and the Legal Medical Institute pose serious concerns in terms of accountability.

RECOMMENDATIONS

In his report, the High Commissioner made 16 recommendations (12 to the Government, 2 to the National Human Rights Institution and 2 to the international community).

To the Government of Nicaragua:

1. Put an immediate end to harassment, intimidation, stigmatization, criminalization (including through the use of counter-terrorism legislation) and other types of reprisals in relation to participation in the protests, including against demonstrators, human rights defenders, political opponents, journalists and others.
2. Immediately dismantle and disarm pro-Government armed elements and protect the population from attacks and other illegal and violent actions from such groups.

3. Ensure that independent, impartial, effective, thorough and transparent investigations be promptly conducted into all allegations of serious human rights violations and abuses that have occurred since 18 April, especially extrajudicial killings, torture, enforced disappearances and arbitrary or unlawful arrests and detentions; ensure that criminal investigations comprise all those who perpetrated, directly or indirectly, ordered, supported or tolerated such acts, including the chain of command of relevant authorities. These acts should not remain without sanction.
4. Halt all unlawful arrests and release all persons who have been arbitrarily detained; ensure that the due process rights of all persons being prosecuted are respected and that any criminal charges brought against them are in line with the principles of legality, proportionality and individual liability.
5. Ensure that accurate and up-to-date information on individuals deprived of their liberty and on the location of detention is publicly available; that people are promptly informed of the reasons for their arrest, have access to a lawyer of their choice, are brought promptly before a judge and are guaranteed their right to a fair trial.
6. Ensure the right to freedoms of peaceful assembly is fully respected through the proper management of public gatherings, in line with applicable international human rights norms and standards.
7. Take urgent measures to guarantee the independence and impartiality of the judiciary, refraining from any undue interference, pressure or influence.
8. Resume the National Dialogue in a meaningful and inclusive way to reach agreements based on human rights and democratic principles.
9. End and penalize public stigmatizing of those critical of the Government's policies and actions.
10. Grant OHCHR direct and unfettered access to the whole country, including to places of detention, in accordance with the High Commissioner's mandate and standard practices of engagement and technical cooperation with authorities and civil society.
11. Ensure effective cooperation with the Inter-America Commission on Human Rights' Special Monitoring Mechanism for Nicaragua and the Interdisciplinary Group of Independent Experts.

12. Allow access to the country to the Special Procedures of the Human Rights Council that have requested to conduct an official visit, in line with Nicaragua's standing invitation extended in 2006.

To the national human rights institution (*Procuraduría para la Defensa de los Derechos Humanos*):

13. Implement its mandate, including as national preventive mechanism for the prevention of torture, in full compliance with the Paris Principles reinforcing the rule of law and human rights, including by monitoring the human rights situation, publicly reporting on its findings, and making recommendations to authorities.
14. Cooperate fully with the Global Alliance for National Human Rights Institutions; seek technical assistance from OHCHR, with a view to strengthening its operating practices and institutional framework to promote and protect human rights independently from the Government.

To the Human Rights Council and the broader international community:

15. Monitor the developments in Nicaragua, consider taking measures to prevent a further deterioration of the human rights situation and encourage the General Assembly to do the same. Such measures could include the creation of an International Commission of Inquiry or a hybrid (national – international) Truth Commission to ensure access to truth, justice and reparation for victims.
16. Call on Nicaragua to abide by its international human rights obligations and to fulfil its voluntary commitments and pledges, including in the context of the Universal Periodic Review mechanism of the Human Rights Council, and to fully cooperate with human rights bodies and mechanisms.

I thank you again for convening this hearing and remain at your disposal to answer any questions you may have.

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