



**JUBILEE CAMPAIGN
ECOSOC Special Consultative Status (2003)**

**Submission to the United Nations Human Rights Committee
regarding
Nicaragua
for the 129th session
29 June - 24 July
ALTERNATIVE STATE REPORT**

Submission by
Jubilee Campaign

Jubilee Campaign is a non-governmental organization in consultative status with the Economic and Social Council since 2003. Our work focuses on promoting the rights of religious and ethnic minorities and raising the status of vulnerable women and children - to protect them from bodily harm and sexual exploitation.

I. Introduction

Jubilee Campaign is a non-profit organization that focuses on promoting human rights and religious liberty in nations across the world. We assist individuals and families seeking asylum in the West from religious based persecution as well as promoting the care and well-being of larger groups of refugees fleeing religious and ethnic persecution. Another main focus of our work is exalting the stories of victims of religious persecution, and vulnerable women and children. Jubilee Campaign has had special consultative status with ECOSOC since 2003 and engages with multiple UN bodies routinely throughout the year on various topics such as human rights, refugees, women and children's rights and protection, and international religious freedom.

II. International Covenant on Civil and Political Rights

Article 3

The States Parties to the present Covenant Undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and accordance with such procedure as are established by law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary.

Article 20

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited to law.

III. Freedom of Religion

Violations of religious freedom and practice in Nicaragua have recently been increasing simultaneously with the recurrence of democratic protests and demonstrations, illustrating how the situation of religious freedom is often intertwined with the current political climate of a nation. According the United States Commission on International Religious Freedom (USCIRF) and Reuters, since President Daniel Ortega announced in April 2018 an unprecedented change in the nation's pension plan in which there was a "plan to increase worker contributions to social security and to lower pensions," resulting in massive civilian protests. Pro-Ortega forces started targeting the protestors while the Catholic Church began offering places of shelter and protection for the protestors who were being violently targeted. As a result, the relationship between the government and the Catholic Church became strained.

President Ortega swiftly rescinded his commitment to this new pension plan amidst the deadly violence, but protests continue to erupt throughout Nicaragua in which citizens are beaten down by Ortega's agents and supportive forces. The Catholic Church has maintained its commitment to

protect the people by providing shelter, safety, medical care, and more, which has displeased President Ortega.

According to USCIRF, “Government forces regularly hound clergy in church and at home, desecrate churches, and intimidate worshippers to the point where some are unable or unwilling to attend mass.” Such actions clearly violate Article 18 Paragraph 1 of the ICCPR in that they present unlawful obstacles to the free practice and manifestation of one’s religion. Moreover, according to USCIRF, “President Ortega made an inflammatory speech denouncing the Church in which he called clergymen ‘coup mongers,’ ‘terrorists,’ and ‘pedophiles’ and accused them of stockpiling weapons in their churches on behalf of protestors.” This speech, which President Ortega gave in July 2018, ushered in a month of unprecedented religiously incited violence. Mobs of Ortega supporters shot and attacked Church leaders and members. Such inducement to violence of a religious group violates Article 20 of the ICCPR and is concerning, given that the “advocacy for religious hatred” comes from the head of state. On the other hand, according to Open Doors, authorities “favored churches taking a pro-government stance” and mainly protestant churches conceded either out of “conviction or fear.” Such coercion or fearmongering to elicit support from churches regardless of their true political beliefs violates Article 19 Paragraph 1 of the ICCPR.

2019 saw even worse conditions of religious persecution. One new method taken up by security officials was to repress and intimidate churchgoers by filming them entering and exiting the church before and following worship. Such subversive and invasive actions violate Article 18 Paragraph 1 of the ICCPR which states that every individual has the freedom to privately practice or manifest their religious beliefs. Throughout 2019 there were many instances of pro-Ortega mobs circling around churches during worship and although there were only a few instances in which these mobs became violent, at a November 2019 mass service at the San Felipe Molagüina church in which mobs used machetes and other weapons to attack attendees, police forces who were called to peacefully end the riot ignored the situation and did not take any steps to stop the violent attacks.

Throughout 2019 there was an informal campaign to harass a few notable Church leaders, including Bishop Abelardo Mata Guerva, Father Ramón Alcides, and Father Edwin Román. Police officials arrested Father Ramón Alcides in December by police officials under unofficial charges of “disturbing the peace” through conducting a mass. The police arrested Father Alcides, subjected him to uncomfortable sleeping conditions, and he was later released. Another Father, Edwin Román, was detained multiple times at police checkpoints. The Spokesperson of the UN High Commissioner for Human Rights expressed his concern and urged the Government to end the “persistent repression of dissent” and the “ongoing pattern of arbitrary arrests.”¹ These arrests are in clear violation of Article 9 of the ICCPR.

¹ United Nations, UN High Commissioner for Human Rights, *Press Briefing on Nicaragua*, 19 November 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25313&LangID=E> .

On March 5, the funeral of renowned Nicaraguan poet and priest Friar Ernesto Cardenal was disrupted and disrespected by members of the Sandinista Front of Nicaragua, the leading socialist party, as they shouted offensive phrases.

IV. Unlawful Punishment for Exercising Freedom of Political Expression

The most recent concluding observations on Nicaragua by the Human Rights Committee were released in 2008, following the 15-year-late periodic report submitted by the state. In these concluding observations, the Human Rights Committee made recommendations regarding torture and ill-treatment that have still yet to be fully considered and implemented by 2020, 12 years after these observations were published.

One of the first areas of concern raised by the Human Rights Committee was ill-treatment by police and other law enforcement:

14. The Committee notes with concern that detainees continue to suffer ill-treatment at the hands of the forces of law and order, especially in prisons, but also at the time of their arrest by the police, and that in most cases such conduct goes unpunished.

(a) The State party should take immediate, effective steps to end such abuse, remain vigilant, investigate and, where appropriate, bring to trial and punish members of the forces of law and order responsible for ill-treatment, and indemnify the victims.

(b) The State party should step up training in human rights for the forces of law and order so that they do not engage in such conduct.

16. The Committee is concerned about alleged instances of wrongful arrest occurring, in particular, in connection with public protests.

The State party should protect the lives and safety of all individuals against excessive use of force by the police. The Committee recommends that it consider reforming the Code of Criminal Procedure, which allows the police to detain people without a warrant, contrary to the provisions of the Constitution.

With regards to the Committee's concern of "ill-treatment" of prison inmates, in the most recent State Report Nicaragua submitted to the Human Rights Committee, the government made the claim that Nicaragua prohibits mistreatment and torture and denies any recent actions have been unlawful. The state report cited Article 36 of the Constitution which prohibits torture and any other cruel, inhuman or degrading "procedures, punishment or treatment." In addition the government refers to Articles 486 of Act No. 641 of Nicaragua's Criminal Code which defines torture and includes a punitive provision against government officials who are proven to have administered unlawful torture upon any individual. The penal measures include, "7 to 10 years of imprisonment for their violation of the state's constitution and criminal code, and up to 12 years of disqualification from their career." Despite this legislation the only recorded punishment of officials involved with torture comes from outside the country. The United States Department of

the Treasury's Office of Foreign Assets Control on March 5, 2020 officially sanctioned the Nicaraguan National Police (NNP), as well as three notable individuals within the NNP: Juan Antonio Valle Valle, Luis Alberto Perez Olivas, and Justo Pastor Urbina. Perez Olivas, the leader of El Chipote Prison, was sanctioned for the numerous accounts of torture that occur in this prison under his direction, abuses such as sexual violence, electrocution, slashing skin with barbed wire, and physical beatings with metal weapons.² According to the U.S. Department of the Treasury, "a demonstrator held at El Chipote stated that masked men hung him from the ceiling and beat him with baseball bats, tubes, and guns for two days. The demonstrator later described how he was taken to a masked man who he recognized by voice and build as Perez Olivas, who forced him to film a confession implicating other protestors."³ Pastor Urbina, according to Human Rights Watch, was sanctioned for his repetitive repression of political dissenters and reporters, such as Nicaraguan magazine *Confidencial's* headquarters and the organization Nicaraguan Center for Human Rights.⁴

The year 2019 saw a large number of arbitrary killings of political oppositional peaceful protestors at the hands of government officials and their proxies. According to the United States Department of State 2019 Report on Human Rights, in mid-May, Eddy Montes, a dual citizen of Nicaragua and the United States, was shot and killed by officers while serving his unjust sentence at La Modelo prison. He had been arrested solely for his involvement in pro-democracy activities and demonstrations. The police report was falsified to make it appear that Montes was killed for his attempt to initiate an act of insurrection, but a multitude of witnesses explained that his death was the sole fault of prison officers. Montes' arbitrary arrest for his political beliefs, as well as his subsequent murder, clearly violate Article 6 and Article 19 Paragraph 1 of the ICCPR, prohibiting deprivation of one's life and protecting freedom of political beliefs without intrusion, respectively.

According to Human Rights Watch, torture was a common reality for detainees, and such forms of torture that occurred includes: "beating captured protestors at the time of arrest and during their detention, at times denying them urgent medical attention; raping detainees, including with metal tubes and firearms, or threatening to rape them; subjecting detainees to waterboarding, electric shocks, acid burns, mock executions, forced nudity, and removal of fingernails." Such egregious acts violate Article 7 which states that all individuals have freedom from torture and other cruel mistreatment. The United States Department of State revealed that in September of 2019, the United Nations Office of the High Commissioner for Human Rights released a report that revealed incidents that amounted to torture, most commonly occurring in La Modelo and La Esperanza prisons. Such accounts of torture include unjust use of pepper spray on prisoners, nonconsensual penetrative body searches, and forced feeding and starvation. Female prisoners faced the above violations, but additionally reported numerous instances of rape and other forms of sexual violence "while in the custody of security forces."

² "Crackdown in Nicaragua: Torture, Ill-Treatment, and Prosecutions of Protesters and Opponents." *Human Rights Watch*, 7 Jan. 2020, www.hrw.org/report/2019/06/19/crackdown-nicaragua/torture-ill-treatment-and-prosecutions-protesters-and.

³ "Treasury Sanctions Nicaraguan National Police and Police Commissioners Involved in Human Rights Abuse." *U.S. Department of the Treasury*, 5 March 2020, <https://home.treasury.gov/news/press-releases/sm930>

⁴ Megan Monteleone. "US Sanctions on Nicaragua Officials Open Door for Accountability." *Human Rights Watch*, 17 March 2020, <https://www.hrw.org/news/2020/03/17/us-sanctions-nicaragua-officials-open-door-accountability>

While the concluding observation noted the lack of sanitary conditions in the detention centers already in 2008 there have been no improvements. We have received reports that prisons were so unsanitary and overcrowded that many prisoners would get parasites, which they were then unable to treat due to inadequate medical care. In less formal facilities used to hold prisoners temporarily- either during enforced disappearances or before transfer to another location- it was common to find rodents and insects as well as lack of electricity, sewage systems, and air circulation units. In the 2008 Concluding Observations, the Human Rights Committee makes the following recommendations regarding the necessity of improving prison conditions:

The State party should step up its efforts to improve conditions for all persons deprived of their liberty, complying with all requirements of the Standard Minimum Rules for the Treatment of Prisoners. It should tackle overcrowding as a matter of priority. It should supply the Committee with figures illustrating the progress made since the approval of this recommendation, especially the effect of specific steps to improve conditions for persons deprived of their liberty.

Finally, for individuals who are not detained, killed, or tortured for their political activity, enforced disappearance is another common violation of human rights. Many dissenting individuals were detained and disappeared without formal charges for days to weeks at a time without any opportunities to contact family or seek out lawyers. According to the U.S. State Department, “human rights organizations claimed the NNP and prison system’s inability to locate prisoners was not due to poor recordkeeping but was instead a deliberate part of a misinformation campaign.”

V. Trafficking in Persons

In the 2008 Concluding Observations, the Human Rights Committee states:

9. The Committee is concerned at the absence of specific penalties for trafficking in and the sexual exploitation of women and children, and the fact that women and children are trafficked for sexual exploitation purposes in the State party.

The State party should step up efforts to combat the trafficking of women and children and, in particular:

(a) Explicitly make trafficking in and the sexual exploitation of women and children criminal offenses;

(b) Ensure that punishment commensurate with the gravity of the offences is inflicted upon anyone who exploits women and children for such purposes;

(c) Maintain its efforts to make the general public aware of the criminal nature of the sexual exploitation of women and children;

(d) Arrange training courses for the competent authorities;

(e) Protect and assist the victims of sexual exploitation.

However, in the US Department of State's 2019 Trafficking in Persons Report, it is revealed that, though Nicaragua has made some surface-level steps to address human trafficking, such as formulating a national action plan and establishing a system of assisting victims, actual implementation and application of these measures remains minimal. Firstly, the government has not prosecuted or convicted any traffickers and continues to identify fewer victims; the government also did not report any investigations, prosecutions, or convictions of government employees complicit in trafficking offenses. Though there are multiple significant NGOs operating within the nation to address trafficking, the government did not take any steps towards cooperation or collaboration in these efforts. National plans and laws, such as the National Strategy for Comprehensive Attention to Victims of Trafficking in Persons and the 2014 national law prohibiting trafficking are lacking in that they do not adopt a comprehensive definition for trafficking in persons, do not receive enough funding, and do not routinely release annual reports and statistics. Such recent reports on the lack of an improved situation in regards to trafficking in Nicaragua exhibit that the government has failed to fully take into consideration and implement, in particular, 9b and 9e of the Human Rights Committee's concluding observations of 2008.

In its most recent 2019 State Party report to the Human Rights Committee, the government of Nicaragua contrastingly makes the claim that Act No. 896 against Trafficking in Persons has been successful in that it established a National Coalition Against Trafficking in Persons and the Single National Register for Information on Trafficking in Persons, which has supposedly led to "fewer victims, fewer complaints of trafficking in persons and fewer cases brought to trial." Moreover, the claim is made that the broad definition of trafficking throughout Nicaraguan anti-trafficking legislation actually aids in the process of prosecution and victim reparations, as it allows for "penalties applying whatever the purpose of the trafficking," and that "the language used and the forms of exploitation mentioned go beyond the minimum international standards."

Despite these claims, according to the US Department of State, the decreasing number of trafficking incidents and victims suggest not that the trafficking situation is being alleviated within the country, but that government anti-trafficking agencies are not identifying and prosecuting cases to the full extent that they should and are able to. Moreover, "inconsistent with the definition of trafficking under international law, the law established the use of force, coercion, or deceit as an aggravating factor rather than an essential element of the crime" and included illegal adoption as a form of trafficking regardless of whether the adoption was for the purpose of exploitation. Such inconsistency in defining trafficking can present obstacles by increasing the variety of cases to investigate beyond those which according to international standards amount to trafficking; for example, human resources and funding can be funnelled towards illegal adoption cases in which the standards for trafficking are not met in that the adoption is not for exploitative purposes, thus funneling those same resources away from legitimate trafficking cases.

VI. Gender Violence

In its 2008 set of Concluding Observations, the Human Rights Committee stated the following:

12. While the Committee notes the approval of a standard operating procedure for handling of cases of domestic abuse and sexual aggression, it is concerned at the increase in recent years in killings of women arising from gender violence and domestic and sexual violence in particular. It is also concerned that attackers appear to go unpunished.

The Committee urges the State party to take immediate steps to put a halt to killings of women and, in particular:

- (a) Conduct investigations and punish their attackers;**
- (b) Allow the victims of gender violence effective access to justice;**
- (c) Provide police protection for victims, and set up shelters where victims may live in dignity;**
- (d) Maintain and promote opportunities for direct participation by women, both nationally and locally, in decision-taking on matters related in particular to violence against women, and ensure that women participate and are represented in civil society;**
- (e) Take steps to prevent and warn against gender violence, such as giving police officers, particularly those in the police units for women, training on women's rights and gender violence.**

The Committee would be grateful to receive detailed information in the next periodic report regarding the progress made in combating gender violence.

While Nicaraguan women generally experience relative equality in the economic and political spheres, violence against women and girls remains a large social problem within Nicaragua. According to the US State Department's 2019 Human Rights Report on Nicaragua, though criminal law prohibits rape as an act of sexual violence and stipulates an 8 to 10 year prison sentence as the punishment for perpetrators, "the government failed to enforce rape and domestic violence laws, leading to widespread impunity and reports of increased violence from released offenders emboldened by their release." Moreover, despite the national and local government's attempts to educate the population about sexual violence through education services and provide assistance to victims through therapy and national hotlines, little success was made to eradicate gender violence and its detrimental effects.

Moreover, there are no reliable statistics to determine whether rates of sexual violence have increased or decreased in relation to prior years, however numerous Nicaraguan NGOs operating on sexual violence issues have reported receiving more cases.

Grassroots efforts of Nicaraguan women in multiple communities in 2012 led to the ratification of Ley Integral Contra la Violencia Hacia Las Mujeres (Comprehensive Law Against Violence Against Women, which was a major step in the right direction in recognizing and strategizing a plan to eradicate violence against women. This law, in addition to recognizing that women

experience “unequal relations of power,” classified femicide and even psychological violence as crimes against women. Additionally, its purpose was to “establish comprehensive protection measures to prevent, punish and eradicate violence and provide assistance to women victims of violence, promoting changes in the sociocultural and patriarchal patterns that sustain power relations.” However, despite such initial success of this law, according to Nacla, “most of the major advances” were “overturned.”

In February 2018, according to the Inter-American Commission on Human Rights (IACHR), the body of a young 12-year-old Nicaraguan girl was found in Los Llanos, and her injuries and physical state indicated that she had been raped before she was murdered. This incident represents only one of the many sexual violence cases that take place in Nicaragua, 80 percent of which include young female victims. In response to this case, and similar cases, IACHR explains that “in the face of the murder of a woman, girl or adolescent committed in the general context of gender-based violence, States have the obligation to investigate ex officio the possible discriminatory connotations of the crime, whether committed in the public or private sphere. In the face of cases of sexual violence, States must adopt research protocols that avoid re-victimizing women, girls and adolescents, as well as facilitating access to comprehensive support services and adapted medical care, including legal, timely and safe interruption of pregnancies resulting from sexual violence.” Since 2006, however, abortion is illegal in all instances, including unwanted pregnancies as a result of rape.

Such criminalization of abortion has caused many Nicaraguan girls and women to seek out informal and unsafe methods of terminating their pregnancies, and in a 2017 survey conducted by Human Rights Watch, five interviewed Nicaraguan women revealed that they sought out illegal and unsafe abortions as they had no other legitimate courses of action. Moreover, in the cases in which family and peers find out about a woman’s pregnancy, blame and shunning are common, transforming the “victims” into the “criminals.”