



Closure of Civic Spaces in Nicaragua

A Discussion Paper by Marlin Sierra

Translated into English from the original Spanish version.

Since April 2018, Nicaragua has been subject to a continued and unconstitutionally prolonged state of emergency, which established the indefinite suspension of constitutional guarantees for the rights to free association, assembly, expression, information, and peaceful demonstration, and the loss of citizens' ability to exercise their rights. These restrictions have, in turn, generated a permanent social-political and economic crisis, deepening the seriousness of the human rights violations and further reducing the willingness of the state to follow the standards of the different international human rights treaties that Nicaragua has signed.

Nicaragua lives immersed in a system of repression that has its origins in the installation and consolidation of a very centralized authoritarian political system, dominated by President Daniel Ortega and his wife, Vice President Rosario Murillo. The couple exercise total control over all powers of the state, autonomous regional governments, community spaces, and closing democratic spaces, weakening the integrity of the rule of law.

The mass and systemic human rights violations reveal the existence of a policy or plan by the state aimed at promoting, tolerating, and concealing the commission of abuse against citizen guarantees. The state has caused terror in the population through high levels of repression, denial of the most minimal expressions of social protest, and restrictions on now-criminalized actions of solidarity. Excessive police force has been accompanied by paramilitaries and shock forces from the government party that generate even more fear, self-censorship, and higher levels of citizen insecurity. The result has been the forced displacement or relocation of thousands of Nicaraguans, many of whom are seeking refuge in other countries.

The political crisis in Nicaragua since April 2018 is rooted in student and civilian protests, aggravated human rights violations, and was marked by the installment of a dictatorial regime. A disastrous record of 505 deaths (325 reported in the first six months—April 18 to September 23, 2018—and 180 between October 2018 and

December 2020)—murders of peasant leaders, government opposition leaders, and ex-contra—has gone on with total impunity. Furthermore, of the more than 3,000 arbitrary detentions against youth and opposition leaders, 120 of these people remain in jail and are subjected to torture, often in maximum-security cells. Opponents and human rights defenders live under permanent threat, harassment, and surveillance; in some cases, they are not allowed to leave their homes or freely circulate, and those who dare to do so are violently forced to return, because otherwise they are detained and transferred to the offices of the Directorate of Legal Aid, without any court order.

This political and social crisis has had a dramatic collateral effect: the displacement of tens of thousands of Nicaraguans who have had to leave the country to save their lives after being assaulted, wounded, incarcerated, tortured, or threatened with death by party activities or state forces. The April Rebellion, as we call it, did not occur by chance. With Ortega's return to power in 2007, social unrest began growing and increased in the years leading up to 2018, amid a surge in state repression against critical individuals and organizations, restrictions on freedoms of expression, press, mobilization, organization, association, and, in recent years, worship. To this we add the claims of fraud in the 2016–2017 election and the growing loss of independence of state powers.

Ortega returned to power for a second time on January 10, 2007, after his first term from 1985 to 1990. His return was made more likely by the Alemán-Ortega pact (1998–2000),¹ a series of constitutional reforms aimed at favoring his candidacy and allowing him to win the 2006 elections with 38 percent of the valid votes as the FSLN (Frente Sandinista de Liberación Nacional, or Sandinista National Liberation Front) candidate. The pact formed the basis of the questionable 2011 presidential reelection of Ortega despite an explicit prohibition on his candidacy in the constitution. The pact contained an exception in its article 147, amended by the unusual ruling 504 of the Constitutional Chamber of the Supreme Court of Justice in 2009.



In 2014, new constitutional reforms deepened the concentration of power in the president, granting him authority to enact executive orders with general administrative application, establish direct leadership of the army and national police as commander in chief of those institutions, and authorize the involvement of the army in civil activities. This allowed for the configuration of a government model where all state powers (executive, legislative, judicial, electoral), public forces (national police and army), the Office of the Public Prosecutor, the Office of the Public Human Rights Defender, and even the public universities act in coordination with the policy driven by Ortega and Murillo.

In 2016, a new electoral law introduced limitations on the Nicaraguan population's exercise of political rights: exclusion of associations or other traditional forms of organization for electoral processes, restrictions on the formation of political parties, and establishment of discretionary criteria to suspend or cancel the limitations. These elements have guaranteed permanency to Ortega's power, after winning the no-less-disputed elections in November 2016. In those elections, Murillo was chosen as vice president, making a greater presence of the governing family visible in the different positions of power or institutional roles.

These elements are essential for understanding the growing debilitation of democratic institutions and the rule of law since before the repression of April 2018. The repressive strategy coordinated by the executive branch against social protests was legalized by the legislative branch with approval of laws such as the law against asset laundering, the financing of terrorism, and the financing of the proliferation of weapons of mass destruction (July 16, 2018). This law has been a tool for criminalizing peaceful social protests, canceling the legal status of human rights organizations and members of the media, stripping the same of their assets, and incarcerating defenders, social movement leaders, and those considered government opponents or who dare to exercise their right to protest. This repression has also extended to the independent press, as tax and legal pressure is used against journalists, directors, and owners of media organizations who are sued for slander and libel.

In addition to the constant deterioration of electoral processes, which generates greater polarization among citizens, the country has experienced a growing debilitation of democratic institutions and the rule of law. By instrumentalizing the other state powers and public entities, extending and ratifying their roles via presidential decrees to magistrates of the Supreme Electoral Council and the judicial branch, the presidential couple have repeatedly invaded the functions of the legislative branch. They have done so based on their interests, reforming and approving laws to legalize abuses of power in order to remain in power and elude the impact of sanctions imposed by the governments of the United States, Canada, Sweden, and the European Union. Such sanctions have been applied to more than 20 officials for their participation in serious human rights violations during the state-driven repression of protests.

Another important element is the configuration of parallel structures of the public forces and state entities since Ortega assumed power in 2007. These structures act in a coordinated, articulated fashion and under the acquiescence of public forces in joint or individual operations and missions for intelligence, intimidation, and repression. Some of these structures have been coated in legality and have allowed the government access to a broad apparatus of social control and repression.

Today, Nicaragua has a sustained policy of multiple human rights violations. To date, the prohibition of any type of public demonstration, assembly, or mobilization is upheld, and these are repressed by heavily armed police, who use canine and paramilitary techniques, sowing fear, self-censorship, and greater levels of citizen insecurity.

Violation of the right to freedom of expression, the right to demonstration, association, and press freedom is constant, and cruelty against human rights defenders, journalists, and communications media is being recorded at higher and higher levels. Several journalists are facing legal proceedings for practicing their work,² and the assets of communications media confiscated in December 2018 remain in the hands of the national police—the same with assets seized from civil society organizations whose legal classifications were canceled that same day. The CENIDH (Centro Nicaragüense de Derechos Humanos, or Nicaraguan Center for Human Rights) is among those organizations. On December 23, 2020, the government placed large signs in the offices where these organizations were operating, indicating that they were to become the property of the Ministry of Health, abusing power and going above the judicial branch. To date, the Supreme Court of Justice has not enacted any resolution with respect to the unconstitutionality appeals filed by the affected organizations over these actions.

There is a progressive trend toward stigmatization and unjustified restrictions on access to funding and resources allocated to the civil society organizations, preserving a pattern of repression through different methods of reducing civic space. Among them are the cancellation of legal classifications, obstacles for registering organizations, defamation campaigns, implementation of regulations that restrict foreign funding and limit its operations, and even the approval of new repressive and unconstitutional laws that impact individuals. Through these measures, the Ortega administration seeks to suppress all criticism, specifically silencing all of those who carry out development activities, as well as those aimed at strengthening transparency, democratic change, and the establishment of liability for human rights violations. Specific measures recently approved include the Law on Regulation of Foreign Agents,³ Law of Cybercrimes, and Law Reforming Article 37 of the Constitution. The latter is to establish life in prison, with the intention of punishing the opposition, as stated by Ortega in his speech on September 15, 2020.⁴

As for the COVID-19 pandemic, unlike the protocols adopted by the majority of countries in the world, Nicaraguan authorities rejected ordering quarantine, border closures, or suspending classes. On the contrary, it promoted mass activities such as tourist events, marches, religious processions, and sports competitions,



exposing Nicaraguans to risks to their health and lives; to date, the true magnitude of the pandemic in the country is unknown. As of November 3, 2020, the COVID-19 Citizen Observatory–Nicaragua reported 10,979 suspected verified cases and 2,786 deaths from pneumonia or suspected COVID-19; for its part, the Ministry of Health reported 5,591 cases and 157 such deaths.

The government secrecy in handling the pandemic was imposed as a state policy, to the point that the police and armed paramilitary forces were mobilized to guard public hospitals and cemeteries so as to prevent the press and general citizens from documenting cases of infection and death caused by COVID-19. To silence the information, the government again resorted to repressive structures.

Although civil society organizations have always indistinctly faced limitations on operating and have historically faced repression by governments, the closure of civic spaces has become a serious threat to civil liberties and political rights through restrictions on foreign funding, obstacles to registering organizations, arbitrary detentions, and defamation campaigns against nongovernmental organizations (NGOs).

Recommendations

- Guarantee exercise of the freedoms of peaceful assembly, expression, and association; end arbitrary detentions; release all individuals illegally detained; disband and disarm armed civil groups (paramilitaries); cease attacks and intimidation against human rights defenders, community leaders, journalists, independent communications media, and anyone who is critical of the government.
 - Respect all components related to the right to access funding, which includes the right to apply for, receive, and use funding, and publicly support the right of human rights defenders and NGOs to take advantage of international support and networks, which would include repealing recently approved laws (i.e., Law on Regulation of Foreign Agents and Law of Cybercrimes).
 - Rejoin the dialogue table and fulfill its international obligations on the matter of human rights.
- Hold free and unbiased elections that allow the Nicaraguan people to determine the future of their country. To do this, electoral reforms that guarantee fair and transparent elections are urgently needed.

Endnotes

- ¹ Fabián Medina, “Diez datos para entender el pacto Alemán–Ortega” [Ten points for understanding the Alemán–Ortega pact], *Magazine–La Prensa Nicaragua* (blog), April 13, 2019, <https://www.laprensa.com.ni/magazine/reportaje/pacto/>.
- ² Geovanny Shiffman, “Declaran culpable por el delito de calumnias a periodista de radio La Costeñísima Kalúa Salazar,” [Radio journalist La Costeñísima Kalúa Salazar declared guilty for the crime of slander], *La Prensa*, September 23, 2020, <https://www.laprensa.com.ni/2020/09/23/nacionales/2724177-declaran-culpable-por-el-delito-de-calumnias-a-periodista-de-radio-la-costenisima-kalua-salazar>; <https://confidencial.com.ni/nacion/veronica-chavez-sale-de-cuidados-intensivos/>; “Juez ordena otro embargo contra Mariano Valle, propietario de Canal 12” [Judge orders another embargo against Mariano Valle, owner of Channel 12], *Noticias 12*, October 6, 2020, <http://www.canal12.com.ni/noticias-12/6597/juez-ordena-otro-embargo-contra-mariano-valle-propietario-de-canal-12>.
- ³ Law No. 192, Law on Regulation of Foreign Agents, <https://www.lagaceta.gob.ni/2020/10/192/>.
- ⁴ “Palabras del Presidente–Comandante Daniel en el Acto de Conmemoración del 199 Aniversario de la Independencia de Centroamérica” [Remarks by the President–Commander Daniel on the commemoration of the 199th Anniversary of the Independence of Central America], *El 19 Digital*, September 12, 2020, <https://www.el19digital.com/articulos/ver/titulo:107385-palabras-del-presidente-comandante-daniel-en-el-acto-de-conmemoracion-del-199-aniversario-de-la-independencia-de-centroamerica->.



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