



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: Restricted  
23 December 2020  
English  
Original: Spanish  
English, French and Spanish only

## Committee against Torture

### List of issues in relation to the second periodic report of Nicaragua\*

#### Issues identified for follow-up in the previous concluding observations

1. In its previous concluding observations (CAT/C/NIC/CO/1, para. 30), the Committee requested the State party to provide information on the measures it had taken in follow-up to the recommendations on the following issues: the amendment to the characterization of torture and the inclusion of the amended characterization in the Criminal Code (para. 10); the prosecution and punishment of alleged perpetrators of acts of torture or ill-treatment and the provision of statistical data on these acts (para. 11); the steps that had been taken to remedy shortcomings in the administration of justice and the excessive use of pretrial detention (para. 14); the measures that had been adopted to combat violence against women (para. 15); and the strengthening of mechanisms to combat the ill-treatment of children (para. 17). The Committee regrets that, despite the reminder sent on 28 March 2011 by the Rapporteur for follow-up to concluding observations, the State party has not provided this information. In the light of the information contained in the second periodic report (CAT/C/NIC/2), the Committee is of the view that effect has not been given (see paras. 2, 15, 19–21 and 27) to the recommendations made in paragraphs 10, 11, 14, 15 and 17 of the previous concluding observations.

#### Articles 1 and 4

2. With reference to the Committee's previous concluding observations (para. 10) and the State party's position on the conformity of the definition of torture contained in article 486 of the Criminal Code with the definition in article 1 of the Convention,<sup>1</sup> please indicate whether the State party would be willing to consider a legislative amendment both to limit this offence specifically to acts committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity and to identify discrimination as one of the specific reasons for the offence. As torture is not one of the crimes listed in article 16 of the Criminal Code, an article wherein the crimes for which prosecution and punishment are not time barred are listed, please state whether the criminal and civil proceedings for and punishment of the crime of torture can be barred by the passage of time. Please indicate whether the State party intends to make anyone who has committed the crime of torture ineligible for amnesty and whether Amnesty Act No. 996 of 9 June 2019 applies to acts of torture committed between 18 April 2018 and the entry into force of the Act. Please also explain whether article 486 of the Criminal Code would apply to acts of torture committed by members of the armed forces.

\* Adopted by the Committee intersessionally on 2 December 2020.

<sup>1</sup> CAT/C/NIC/2, paras. 29–30.



## Article 2<sup>2</sup>

3. In view of the mass arrests that were made against the backdrop of the anti-government protests that began in April 2018<sup>3</sup> and the cases, documented by the Office of the United Nations High Commissioner for Human Rights (OHCHR),<sup>4</sup> in which the police failed to inform the persons they arrested of the reason for the arrest<sup>5</sup> or of their rights,<sup>6</sup> avoided notifying the families of the arrested person,<sup>7</sup> denied arrested persons access to a lawyer of their choice<sup>8</sup> and held them for weeks without bringing them before a judge,<sup>9</sup> please provide information on the police oversight and accountability measures that have been taken since 2018. Please include information on any instances of disciplinary action that has been taken to ensure that all persons deprived of their liberty enjoy, from the outset of detention, all fundamental safeguards,<sup>10</sup> in particular with regard to their rights: (a) to be informed of their rights and the reasons for the arrest; (b) to receive competent legal assistance from a public defender or other lawyer of their choosing;<sup>11</sup> (c) to have a person of their choosing be notified of the detention (and the manner of and deadline for this notification); (d) to be brought before a judge within the 48-hour period established by the Constitution; and (e) to request and receive a medical examination from independent medical personnel, in accordance with the principles of confidentiality and privacy, on arrival at a police station or detention centre, and to have access, on request, to an independent doctor or a doctor of their choice. Please also indicate how many applications for writs of habeas corpus have been lodged since April 2018, what the outcome of these applications was and whether sanctions were handed down in cases where fundamental legal guarantees were not observed.<sup>12</sup> In the light of allegations that people are subjected to torture and ill-treatment when they are arrested and in their first few days in detention,<sup>13</sup> please also indicate whether the State party has installed or is considering installing video surveillance systems in places of detention.

4. In connection with paragraphs 163 to 180 of the periodic report, on the different records kept in respect of detained persons, please state: (a) whether relatives of detained persons or the persons' legal representatives have access to these records; and (b) whether the State party has plans to replace the various police logs and registers with an integrated and standardized system of custody records that contains all the information set out in the previous concluding observations (para. 20), in particular the name of the arresting officer, the date and time on which the Public Prosecution Service, the detainees' families and defending counsel were notified of their arrest, the date and time on which they were

<sup>2</sup> The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also section V of the same general comment.

<sup>3</sup> A/HRC/42/18, para. 22.

<sup>4</sup> *Ibid.*, paras. 24–25, and OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", paras. 72–78.

<sup>5</sup> A/HRC/42/18, para. 24.

<sup>6</sup> OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", para. 74.

<sup>7</sup> A/HRC/42/18, para. 24, and OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", paras. 74 and 77.

<sup>8</sup> A/HRC/42/18, para. 25, and OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", para. 74.

<sup>9</sup> A/HRC/42/18, para. 25, and OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", paras. 72–78.

<sup>10</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.37–125.59.

<sup>11</sup> OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", paras. 85–86.

<sup>12</sup> A/HRC/42/18, para. 26.

<sup>13</sup> OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", para. 74.

physically brought before a judge and the date and time on which they left the police station, and the authority into whose charge they were handed.

5. In view of the designation of the Office of the Human Rights Ombudsman as the national mechanism for the prevention of torture and the decision of the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions to downgrade the status of the Office from A to B, please indicate what measures have been taken or are planned to act on the recommendations made by the Global Alliance and to ensure that the Office is sufficiently independent to fulfil its mandate,<sup>14</sup> including as the national mechanism for the prevention of torture, in accordance with the Optional Protocol to the Convention. Please also indicate whether the State party is considering seeking the advice of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other relevant human rights organizations to address the problems that led to the status downgrade.<sup>15</sup> With regard to paragraphs 45 and 46 of the periodic report, please note whether the 1,409 complaints received by the Office between 2005 and 2018, which concerned violations of detainees' right to integrity of the person committed by the police, and the 93 complaints of violations of that right by prison officials were referred to and investigated by the Public Prosecution Service. Please also indicate what the remaining 10,782 complaints against police and prison officers were about. In addition, please provide additional statistical data on the complaints received by the Office since 2018. The data should be broken down by year, the complainant's sex, age group (minor/adult) and ethnic origin and the agency of which the accused person is a member, and there should be an indication of whether the complaints were referred to and investigated by the Public Prosecution Service and, if so, what the outcome was.

6. With regard to paragraph 60 of the periodic report, please indicate whether there is a plan to follow up on the recommendations made by international and regional human rights organizations that visited the country in 2018, such as OHCHR,<sup>16</sup> the Inter-American Commission on Human Rights and both the Commission's Special Monitoring Mechanism for Nicaragua and its Interdisciplinary Group of Independent Experts for Nicaragua. Please explain why the State party has not allowed OHCHR, the Commission and the Commission's Special Monitoring Mechanism access to the country since 2019 and whether it would consider allowing such access again, in particular to places of deprivation of liberty.<sup>17</sup> Please also indicate whether it would consider granting requests for visits to such places made by non-governmental human rights organizations.

### Article 3

7. Please indicate whether the State party, in accordance with article 3 of the Convention, would consider making a legislative amendment to explicitly include the principle of non-refoulement in laws on extradition, expulsion, deportation and applications for asylum.<sup>18</sup> Please clarify whether the authorities responsible for decisions in this regard are required to consider in each case the personal and foreseeable risk that the person concerned faces of being subjected to torture in the country of destination. If so, please explain how compliance with this requirement is ensured in practice and on the basis of which criteria compliance is determined. Please also state whether it is possible to appeal an extradition, expulsion or deportation decision and, if so, indicate with which authority appeals are lodged, which procedure is applicable and whether the effect of appeals and applications for asylum is to suspend expulsion, deportation and extradition decisions.<sup>19</sup> In addition, please indicate whether persons awaiting expulsion, deportation or extradition are informed of their right to seek asylum or lodge an appeal (or both). Please also indicate how asylum seekers are

<sup>14</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.37–125.38 and 125.40–125.41. See also A/HRC/42/18, paras. 38 and 66 (a) and (b), and CMW/C/NIC/CO/1, para. 40 (c).

<sup>15</sup> A/HRC/42/18, para. 66 (b).

<sup>16</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, para. 125.9.

<sup>17</sup> A/HRC/42/18, para. 67 (a) and (b).

<sup>18</sup> CAT/C/NIC/1, paras. 96–112.

<sup>19</sup> CMW/C/NIC/CO/1, para. 42.

guaranteed access to legal aid and interpretation services throughout the asylum procedure and whether these services are provided free of charge by an independent provider.

8. Please provide information on existing mechanisms or protocols for the identification and immediate referral of vulnerable asylum seekers, including victims of torture, trafficking in persons<sup>20</sup> and/or gender-based violence, and whether these mechanisms involve an independent medical examination. Please also indicate what steps have been taken to ensure that unaccompanied or separated minors<sup>21</sup> and victims of torture or trauma who are seeking asylum are treated in a manner consistent with their specific needs.

9. Please provide detailed statistical information for the past five years, broken down by the sex, country of origin or nationality and age group (minor/adult) of the victim, on: (a) the number of applications for asylum; (b) the number of applications for asylum or other forms of humanitarian protection that were accepted, including the number of applications that were accepted because the applicant had been tortured or ran the risk of being tortured if he or she was returned; (c) the number of persons who were deported, extradited or expelled (including the reasons for thus proceeding and a list of the countries of destination); and (d) the number of appeals of expulsion, deportation or extradition decisions that were lodged because the applicants were at risk of torture or ill-treatment in their countries of origin, and the results of those appeals.

10. Please indicate the number of refoulements, extraditions and expulsions that the State party, after receiving diplomatic assurances or the equivalent thereof, has carried out over the past five years, as well as the number of cases in which the State party has provided such assurances or guarantees. Please describe what, at a minimum, these assurances or guarantees, whether given or received, must involve and what arrangements are made for subsequent monitoring in these cases.

#### **Articles 5 to 9**

11. Please indicate whether the State party has for any reason refused another State's request for the extradition of an individual suspected of having committed acts of torture and whether it has initiated prosecution proceedings against this individual as a result. If so, please provide information on the outcome of the proceedings. Please also indicate whether torture and the related offences mentioned in article 4 of the Convention are covered in extradition treaties concluded with other States parties. In addition, please state what mutual legal and judicial assistance treaties or agreements the State party has entered into and whether, in application of these treaties or agreements, evidence related to prosecutions for torture and ill-treatment has actually been shared. Please provide examples.

#### **Article 10**

12. With reference to the previous concluding observations (para. 23) and paragraphs 214 to 225 of the periodic report, please provide further details on the training programmes for police officers, members of the armed forces, prison officials and immigration and border personnel that address or include: (a) the provisions of the Convention, with particular emphasis on the idea that there is zero tolerance for acts of torture or ill-treatment, that such acts will be investigated and that offenders will be prosecuted; (b) specific instruction on gender issues and the treatment of minors and members of other groups in situations of vulnerability, as recommended by the Committee in its previous concluding observations (paras. 22 and 24); (c) the principle of non-refoulement and the practices that make it possible to identify asylum seekers who may be victims of torture, gender-based violence or trafficking in persons; and (d) the principles of precaution, proportionality and necessity that govern the use of force, and non-coercive techniques of investigation and prisoner management. Please indicate whether the training programmes that cover these topics are compulsory or optional, how often such training is provided, what percentage of all officials have received such training and what plans there are to train the remainder. Please also clarify whether the State party has developed a method of assessing the effectiveness and impact of

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<sup>20</sup> Ibid., para. 64.

<sup>21</sup> Ibid., para. 40 (b).

its training programmes when it comes to reducing the incidence of torture and ill-treatment. If so, please provide information on that method.

13. Please provide information on the training programmes offered both to judges, prosecutors, medical examiners and other medical personnel who deal with persons deprived of their liberty and to the staff members of the Office of the Human Rights Ombudsman and the Office of the Special Ombudsman for Prisons to enable them to identify and document the physical and psychological effects of torture, improve the quality of investigations, properly classify acts of torture and avoid revictimization during investigations. Please indicate whether these programmes include specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

#### Article 11

14. In the light of the previous concluding observations (para. 21) and paragraphs 181 to 203 of the periodic report, please comment on the poor conditions of detention in the prisons La Modelo and La Esperanza, which, as documented by OHCHR, included access to sunlight for but 30 minutes a week<sup>22</sup> and insufficient access to water (and water of poor quality at that).<sup>23</sup> Please indicate whether the State party has taken any measures to solve these problems, including as they relate to the quality of food. Please also provide information on the steps that have been taken to ensure that persons in detention, in particular those who have chronic diseases or are HIV positive, receive adequate medical care, not least in view of documented cases of insufficient access (or a lack of access altogether) to medical care and medication<sup>24</sup> and the vulnerability of these persons to the coronavirus disease (COVID-19).

15. As for the measures taken to reduce overcrowding in the prison system and police lock-ups, please provide updated statistical data – if possible, for the most recent five-year period and broken down by place of detention and gender, age group (minor/adult), ethnicity and nationality of the detained person – on the capacity and occupancy rate of all places of detention (prisons and police lock-ups), specifying the number of persons in pretrial detention and those serving sentences. In view of the recent release, facilitated by the family reunification programme,<sup>25</sup> of 4,515 persons who had been deprived of their liberty, including sex offenders and perpetrators of femicides, please indicate what the reasons for the releases were, what criteria the authorities used to authorize the releases, what procedure was followed and what the conditions of release were. Please also assess the impact of initiatives to promote the use of alternatives to pretrial detention and imprisonment. Please indicate what percentage of all punishments such alternatives have accounted for over the course of the past five years, especially in relation to adolescents in conflict with the law (see paragraph 24 of the previous concluding observations), pregnant women, women with children and persons accused or convicted of non-violent crimes. In this respect, please also indicate whether the State party is planning to make the necessary legislative amendments to eliminate mandatory pretrial detention for certain crimes<sup>26</sup> and ensure that pretrial detention is imposed only if, given the personal circumstances of the accused persons, it is deemed necessary and proportionate.<sup>27</sup>

16. In connection with the previous concluding observations (paras. 22 and 24) and paragraphs 204 to 213, 228 and 229 of the periodic report, please clarify whether the State party intends, as required by domestic law, to establish separate correctional facilities for women and adolescents in addition to those it already has. Please also indicate what steps have been taken to eliminate the practice of holding convicted and accused persons in police

<sup>22</sup> CAT/C/NIC/2, paras. 51–53.

<sup>23</sup> A/HRC/42/18, para. 37.

<sup>24</sup> Ibid. and CAT/C/NIC/2, paras. 51–54 and 56–58.

<sup>25</sup> OHCHR, Update on the situation of human rights in Nicaragua, forty-fourth session of the Human Rights Council (2 July 2020).

<sup>26</sup> See, for example, article 44 of Act No. 745 on Enforcement, Privileges and Judicial Oversight of Criminal Sanctions.

<sup>27</sup> A/HRC/42/18, paras. 40 and 65 (g).

lock-ups.<sup>28</sup> As transgender women deprived of their liberty are held in the same cells as men – transgender persons’ gender identity is not recognized under the laws on the prison system<sup>29</sup> – and as degrading treatment of transgender women during strip searches in wards with men has been documented, please indicate whether the State party has taken the necessary measures, including legislative ones, to ensure that lesbian, gay, bisexual and transgender persons in detention are treated in accordance with international standards<sup>30</sup> and without discrimination.

17. Please comment – with regard to paragraph 6 of the periodic report, on solitary confinement – on the cases, documented by OHCHR, of solitary confinement for more than 15 consecutive days in maximum security cells, which are teeming with insects, lack sunlight and are inadequately ventilated, in the prisons La Modelo and La Esperanza.<sup>31</sup> Please indicate what measures have been adopted in response to these findings<sup>32</sup> and how long, in practice, a person may remain in solitary confinement. Please also indicate whether these measures apply to children and adolescents in conflict with the law or to persons with psychosocial disabilities. In addition, please provide information on the monitoring mechanisms and accountability measures adopted by the State party to eliminate the collective punishment of prisoners. This information would be welcome in view of documented beatings with batons, such as the alleged beatings of women held in La Esperanza on 26 October 2018 and 7 February 2019, the use of pepper spray on men’s genitals, the arbitrary confiscation of women’s personal belongings and the unjustified cancellation of family visits.<sup>33</sup> As there is evidence of unwarranted and degrading visual inspections of the body cavities of detained persons during routine strip searches, please indicate what preventive measures have been taken to ensure that procedures for body searches and for entry to detention facilities are regulated, subject to strict oversight and thus not degrading for detainees or visitors.<sup>34</sup>

18. Please provide statistics on the number of deaths of persons deprived of their liberty over the past five years, including in mental health institutions and police lock-ups. Please ensure that these statistics are broken down by year and by place of detention, sex, age group (minor/adult), ethnic origin or nationality of the deceased and cause of death. Please also indicate the number of deaths attributed to assaults committed or tolerated by public officials, excessive use of force or a lack of timely medical assistance and treatment. Please specify in how many of these cases administrative inquiries and/or judicial investigations were opened to determine whether public officials were responsible, in how many forensic scientists authorized by family members performed independent medical examinations, what the outcomes of the investigations were and what measures have been taken to prevent similar cases in the future. Please indicate whether the family members of the deceased received compensation in any of these cases. Please describe the outcome of the investigations into the death of a person at the hands of a police officer on 16 May 2019, amid protests in La Modelo.<sup>35</sup>

### Articles 12 and 13

19. With reference to the previous concluding observations (para. 11) and the statistical data provided in paragraphs 31 to 46 of the periodic report, please add the data from 2018 to date, including as regards progress in the investigations into the cases of torture reported to the Public Prosecution Service in March 2019. Please break all data down by year and by sex, age group (minor/adult) of the victim and agency or department of which the accused person is a member. In addition: (a) with regard to the data provided by the Directorate of Internal Affairs of the National Police, please indicate whether the 1,470 cases in which 2,006 officials were found liable in disciplinary proceedings for excessive use of force, improper use of firearms and bodily injury led to criminal investigations by the Public Prosecution

<sup>28</sup> CAT/C/NIC/2, para. 203.

<sup>29</sup> A/HRC/42/18, para. 34.

<sup>30</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.37–125.59 and 125.66.

<sup>31</sup> A/HRC/42/18, para. 36.

<sup>32</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.37–125.59.

<sup>33</sup> A/HRC/42/18, paras. 32 and 37.

<sup>34</sup> *Ibid.*, para. 33.

<sup>35</sup> *Ibid.*, para. 32.

Service and, if so, what sentences or other criminal penalties were handed down – please also explain what offences were alleged in the 26,572 other complaints submitted between 2008 and 2018; and (b) in connection with the data from the Ministry of the Interior, please indicate whether the five sets of administrative proceedings in which 13 prison officials were found liable for violations of prisoners’ human rights also gave rise to criminal investigations by the Public Prosecution Service and, if so, what sentences or other criminal penalties were handed down.

20. As the Public Prosecution Service did not institute any proceedings in connection with complaints of torture, as noted in paragraphs 38 and 39 of the periodic report, and in view of public complaints of torture dating from 2012 and consistent reports from reliable sources of numerous acts of torture and ill-treatment, including sexual violence, beatings and electric shocks, committed by the police, prison officials and others with the acquiescence of public officials after the arrests made against the backdrop of the protests that began in April 2018, especially in El Chipote<sup>36</sup> – a facility run by the Legal Cooperation Directorate – and in La Modelo and La Esperanza,<sup>37</sup> please explain whether the Public Prosecution Service is required to: (a) initiate a criminal investigation as a matter of course in these cases, regardless of the ongoing disciplinary investigation, and how the Service ensures that there are no hierarchical or institutional ties between the alleged perpetrators (police officers, prison officials or members of the armed forces) and the investigators; (b) request a forensic medical examination of the victim; and (c) request the automatic suspension or the transfer of the alleged perpetrator while the investigation is under way.

21. With reference to the previous concluding observations (para. 14), and given that persons at the highest level of the Public Prosecution Service held senior police positions and that public recruitment competitions have been eliminated, thereby undermining the institution’s independence, please indicate whether the State party has plans to reform the Service, including by making reappointments in a manner consistent with the Guidelines on the Role of Prosecutors<sup>38</sup> and setting up a special unit to investigate all allegations of human rights violations and abuses, torture and sexual violence in particular, that have been made since 18 April 2018, as recommended by OHCHR in its report submitted pursuant to Human Rights Council resolution 40/2,<sup>39</sup> and in line with the recommendations of other regional human rights mechanisms, as well as those accepted by the State party within the framework of the universal periodic review.<sup>40</sup> Please also provide data on: (a) the number of allegations of torture received by investigating judges since 2018 and the number of cases in which, on receiving such allegations, they requested the Public Prosecution Service to open an investigation; (b) the number of complaints filed since 2018 by the judicial authorities who, as a result of bodily injuries and other risks to the security of detained persons, issued writs of habeas corpus; and (c) the number of allegations or findings of torture and ill-treatment received since 2018 by sentence enforcement and prison supervision judges during the inspections they conducted or during judicial oversight of solitary confinement, and the number of cases for which they requested the Public Prosecution Service to open an investigation.

22. Please describe the remedies that are available to persons who claim to have been subjected to torture or ill-treatment, especially persons deprived of their liberty, and to those whose claims the authorities refuse to investigate. Please state whether the Office of the Human Rights Ombudsman has brought any court cases in this regard. Please also explain how the State party guarantees the confidentiality and independence of the system for submitting complaints of torture and ill-treatment in cases where the victims are deprived of their liberty and indicate whether there is a protocol to protect victims of torture and ill-treatment, members of their families, witnesses and investigators or doctors who examine them from all forms of intimidation or reprisals prompted by the submission of complaints.

<sup>36</sup> OHCHR, “Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018”, paras. 79–80, and A/HRC/42/18, para. 31.

<sup>37</sup> A/HRC/42/18, para. 32.

<sup>38</sup> See A/CONF.144/28/Rev.1. See also A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.37–125.39.

<sup>39</sup> A/HRC/42/18, para. 65 (d) (i) and (ii).

<sup>40</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.37–125.90.

In addition, please state whether there is a mechanism for ensuring that doctors in contact with persons who are in detention can, in confidence and without fear of reprisals, report evidence of torture or ill-treatment, or make allegations thereof, to an independent investigating authority.

#### **Article 14**

23. With reference to the previous concluding observations (para. 25) and article 81 of the Code of Criminal Procedure, under which civil proceedings for torture cannot be instituted unless a conviction that cannot be appealed has been handed down, please indicate whether the State party is considering amending current legislation to enable victims of torture to make civil claims for redress even when there has not been a related criminal conviction.

24. In view of the lack of prosecutions of cases of torture and the entry into force of Amnesty Act No. 996 of 2019, please explain what criminal and civil remedies and reparation measures are available to persons claiming to be victims of acts of torture and ill-treatment committed since 18 April 2018 either by police and prison officers or by backers of the Government or other persons with the consent of law enforcement officials. Please also explain how – with a view to applying Act No. 994 on Comprehensive Assistance for Victims – victims are identified and whether persons who were or claim to be victims of human rights violations committed by State agents or of abuses committed by backers of the Government during the protests that began in April 2018 are eligible to apply for such assistance. Please describe the cases in which such assistance was provided to such persons and what it consisted of.

25. Please indicate whether the State party has plans to provide means of rehabilitation for victims of torture, as required under the Convention. Please also indicate whether the State party is considering developing and taking a set of measures to ensure access to justice and reparation (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) for all the victims, regardless of their political affiliation, of the acts of torture and other human rights violations that have been committed since 18 April 2018, as recommended by OHCHR in its report submitted pursuant to Human Rights Council resolution 40/2<sup>41</sup> and in line with the recommendations accepted by the State party as part of the universal periodic review of its human rights record.<sup>42</sup>

#### **Article 15**

26. Please provide information on (a) the number of cases in which accused persons (or their lawyers) invoked article 16 of the Code of Criminal Procedure when claiming that their (or their clients') statements were obtained under torture and (b) the number of such claims that have led to investigations ex officio and the outcome of any such investigations.

#### **Article 16**

27. With reference to the Committee's previous concluding observations (paras. 15–17) and paragraphs 9, 10, 16 to 20, 25 to 28 and 84 to 146 of the periodic report, on combating all forms of violence against women, children and adolescents,<sup>43</sup> please provide the following additional information, in particular in connection with actions or omissions by State authorities or other entities for which the State party incurs international responsibility under the Convention:

(a) Given the adoption in 2017 of Act No. 846, under which femicide is limited to relationships between couples and mediation is reintroduced as a means of settling some cases involving domestic violence, the increase in femicides, as noted by OHCHR in its oral update to the Human Rights Council in July 2020,<sup>44</sup> and reports of reprisals by aggressors

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<sup>41</sup> A/HRC/42/18, para. 65 (d) (iii).

<sup>42</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.37–125.90 and 125.103.

<sup>43</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.37–125.57.

<sup>44</sup> See OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018".

following agreements with victims, please indicate whether the State party, to ensure that crimes do not go unpunished and victims are not left defenceless, would consider repealing this amendment;

(b) Please state what steps have been taken to do away with the torture and ill-treatment of women in policing operations,<sup>45</sup> in particular as there have been reports of at least 25 cases of sexual violence against women in police lock-ups since April 2018;

(c) Statistical data for the past five years, broken down by year, type of crime or offence and by the age group (minor/adult), sex, ethnic origin or nationality of victims and the relationship between the victim and the perpetrator, on the number of registered cases, complaints, investigations, prosecutions, convictions and sentences in respect of gender-based violence and violence against children, including femicide, domestic violence,<sup>46</sup> trafficking in persons<sup>47</sup> and violence or abuse in educational institutions, and the measures of redress provided to victims during this period. Please indicate the number of State agents involved in cases of gender-based violence, trafficking in persons or violence against children and adolescents during the same period;

(d) Reports have shown that half of all pregnancies in girls and adolescents are the result of sexual violence and that 90 per cent of caesarean sections in girls and adolescents are the result of medical complications during childbirth. Please therefore indicate whether the State party has plans to amend the Criminal Code to guarantee legal, safe and effective access to voluntary termination of pregnancy when the life or health of the pregnant woman or girl is at risk and when her carrying the pregnancy to term against her will could cause her substantial harm or suffering, especially where the pregnancy is the result of rape or incest or is not viable. Please also state why the Supreme Court has not ruled on the 72 constitutional challenges to the provisions of the Criminal Code that have made therapeutic abortion illegal.

28. With regard to the previous concluding observations (para. 18) and the State party's assertion that "human rights defenders carried out their work unhindered",<sup>48</sup> please comment on the consistent reports, including from such sources as the Truth, Justice and Peace Commission<sup>49</sup> and, in its oral update of July 2020, OHCHR, of an upsurge in the harassment of critics of the Government against the backdrop of the protests that began in April 2018 – harassment, allegedly the work of State agents and pro-government groups, that takes the form of threats, arbitrary detention<sup>50</sup> and assaults and torture and ill-treatment while in detention of human rights defenders, journalists, other media workers and persons who expressed opinions critical of the Government or its actions.<sup>51</sup> Please indicate: (a) whether the State party has plans to publicly condemn these attacks and acts of intimidation and mete out punishment for them with a view to eradicating them<sup>52</sup> and developing, together with civil society, measures to reduce the exposure to risk of journalists and human rights defenders; (b) what protocols and initiatives have been developed to take, in agreement with the beneficiaries, the remaining precautionary measures requested since April 2018 by the Inter-American Commission on Human Rights and the provisional measures the Inter-American Court of Human Rights ordered the State party to take in October 2019; and (c) how many complaints of violence and intimidation have been filed, for every year since 2018, by human rights defenders, journalists and other media workers and persons considered opponents of the Government, and how many of those complaints allegedly involved a perpetrator who was an agent of the State. Please also provide detailed information on the outcome of the investigations and the reparations awarded to the victims or their families in relation to the following: (a) the harassment and threats to which the Reyes Alonso family

<sup>45</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.37–125.57.

<sup>46</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, para. 125.246.

<sup>47</sup> A/HRC/42/16/Add.1, section II, A/HRC/42/16, paras. 125.169–125.74 and CMW/C/NIC/CO/1, para. 64.

<sup>48</sup> CAT/C/NIC/2, para. 147; see also para.148.

<sup>49</sup> OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", paras. 92–93.

<sup>50</sup> *Ibid.*, para. 92, and A/HRC/42/18, para. 18.

<sup>51</sup> A/HRC/42/18, paras. 17–21.

<sup>52</sup> CAT/C/NIC/2, para. 153, A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.116, 125.124 and 125.166.

was subjected in its home by officers of the police force of León, according to video footage showing the family handcuffed and forced to repeat slogans in support of the ruling party; (b) the so-called express kidnappings of persons perceived to be critical of the Government, allegedly carried out by police or armed backers of the Government, including the kidnapping of Leonardo José Rivas Guevara on 10 June 2019 in Managua, who, six days later, after having been subjected to violence by hooded assailants and having had his back marked with the initials of the ruling party, was left by the side of the road; (c) the attack on and burning of the Radio Darío station in León on 20 April 2018, while the workers were inside, allegedly by a government squad led by a deputy from the ruling party; (d) the attacks on workers from *Confidencial*, a media outlet, allegedly by riot police, when, on 14 December 2018, the workers reported the occupation of their premises the previous day; (e) the attacks, allegedly committed by the police, on journalists Armando Amaya and Wilih Narváez as they were covering the news on 30 October 2019 and 23 January 2020, respectively; and (f) the death of journalist Ángel Eduardo Gahona on 21 April 2018, also while covering the news.<sup>53</sup>

29. In view of the large number of deaths and injuries in the context of the demonstrations that have taken place since April 2018, as confirmed by various sources, including the Truth, Justice and Peace Commission and the Office of the Human Rights Ombudsman,<sup>54</sup> and the documentation by international and regional human rights organizations of a pattern of excessive and disproportionate use of force, which is related to the use of lethal ammunition by the police against non-lethal threats and/or intervention by armed backers of the Government in a bid to clamp down on protests,<sup>55</sup> please indicate whether the State party is considering reforming the police, including by recruiting and retaining police officers in accordance with criteria established by law<sup>56</sup> and looking into police officers' records for evidence of past human rights violations, as recommended by OHCHR.<sup>57</sup> Please also indicate whether the State party is considering condemning, disbanding and disarming pro-government armed groups. In this respect, for every year since 2018, please provide data, broken down by type of crime and by sex, age group, ethnicity and nationality of the victim, on cases of excessive use of force and improper use of firearms, including homicides and extrajudicial killings, by State agents or by pro-government armed groups acting with the tacit approval of at least one public official. In addition, please state how many investigations there have been into such crimes, how many prosecutions, how many convictions and how many sentences.

### Other issues

30. As the prohibition of torture is absolute and non-derogable, including in the context of measures related to states of emergency and other exceptional circumstances, please provide information on the measures taken by the State party during the COVID-19 pandemic to ensure that the State party's policies and actions are compatible with its obligations under the Convention. In addition, please describe the measures that have been taken in relation to persons deprived of their liberty, including in places of confinement such as homes for older persons, hospitals or institutions for persons with intellectual or psychosocial disabilities.

31. Please provide information on any other legislative, administrative, judicial or other measures that have been taken to give effect to the provisions of the Convention or the Committee's recommendations since the submission of the periodic report in May 2019. This information may include information on institutional developments, plans or programmes and, in particular, information on resource allocations and statistical or any other data that the State party considers relevant.

<sup>53</sup> A/HRC/42/16/Add.1, section II, and A/HRC/42/16, paras. 125.37–125.85.

<sup>54</sup> OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", paras. 54 and 63.

<sup>55</sup> *Ibid.*, para. 63.

<sup>56</sup> See articles 47 and 48 of Act No. 872 on the Organization, Functions, Profession and Special Social Security Regime of the National Police.

<sup>57</sup> A/HRC/42/18, para. 65 (d) (iv).