



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

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## Committee against Torture

### Provisional concluding observations on the second periodic report of Nicaragua\*

1. The Committee against Torture considered the second periodic report of Nicaragua<sup>1</sup> at its 1916th meeting,<sup>2</sup> held on 14 July 2022, and adopted these provisional concluding observations at its 1931st meeting, held on 26 July 2022.

#### A. Introduction

2. The Committee welcomes the submission of the periodic report, although it was received six years late. It regrets, however, the explicit refusal of the Nicaraguan authorities to submit written responses to the list of issues adopted in December 2020.<sup>3</sup> In this respect, the Committee strongly rejects the tenor of the letter dated 29 June 2022 addressed to the Chair of the Committee by the Ministry of Foreign Affairs, in which the legitimacy and integrity of the Committee and other international human rights mechanisms, such as the Office of the United Nations High Commissioner for Human Rights (OHCHR), are called into question. Moreover, despite repeated requests from the Committee, the State party did not send a single representative to the seventy-fourth session. In view of this situation and in accordance with its rules of procedure, the Committee decided to examine the periodic report and thereafter to adopt and submit to the State party provisional concluding observations for its written comments. The Committee will adopt final concluding observations at its seventy-fifth session, in accordance with rule 68 (2) (b) of its rules of procedure.

#### B. Positive aspects

3. The Committee welcomes the State party's ratification of or accession to the following instruments:

- (a) Convention on the Reduction of Statelessness, in 2013;
- (b) Convention relating to the Status of Stateless Persons, in 2013;
- (c) Optional Protocol to the Convention on the Rights of Persons with Disabilities, in February 2010.

4. The Committee also welcomes the State party's initiatives to amend its legislation in areas of relevance to the Convention, including the following:

- (a) The promulgation in 2015 of the Trafficking in Persons Act (No. 896);

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\* In accordance with rule 68 (2) (b) of the Committee's rules of procedure ([CAT/C/3/Rev.6](#)), the State party may submit written comments before the Committee adopts final concluding observations as final at its next session.

<sup>1</sup> [CAT/C/NIC/2](#).

<sup>2</sup> [CAT/C/SR.1916](#).

<sup>3</sup> [CAT/C/NIC/Q/2](#).



- (b) The promulgation in 2015 of the Family Code, which enshrines the obligation to prevent, punish and eradicate domestic or intrafamily violence;
- (c) The promulgation in 2012 of the Comprehensive Act on Combating Violence against Women (No. 779);
- (d) The promulgation in 2011 of the General Act on Migration (No. 761);
- (e) The promulgation in 2011 of the Act on Enforcement, Privileges and Judicial Oversight of Criminal Sanctions (No. 745).

5. The Committee also welcomes the State party's efforts to amend its policies and procedures with a view to affording greater human rights protection and applying the provisions of the Convention, in particular:

- (a) The adoption of the National Plan to Combat Trafficking in Persons (2012–2014);
- (b) The adoption of the National Human Development Plan (2012–2016);
- (c) The adoption of administrative measures to combat corporal punishment in schools under Ministerial Agreement No. 134-2009;
- (d) The designation of the Office of the Human Rights Advocate as the national mechanism for the prevention of torture under Presidential Decree No. 04-2012;
- (e) The recent construction and outfitting of the maximum security prison, the new integrated prison for women – both in the Department of Managua – and the Bluefields penitentiary establishment (in the autonomous region Costa Caribe Sur), as well as the construction of 28 cell blocks in the new penitentiary establishments with a capacity of 234 beds and the increase in the number of posts for prison staff.<sup>4</sup>

## C. Principal subjects of concern and recommendations

### Pending follow-up issues from the previous reporting cycle

6. In its previous concluding observations,<sup>5</sup> the Committee requested the State party to provide information on the measures taken in follow-up to the Committee's recommendations on the characterization and definition of the offence of torture;<sup>6</sup> the prosecution and punishment of alleged perpetrators of acts of torture or ill-treatment and compilations of statistical data on these acts;<sup>7</sup> the shortcomings in the administration of justice and the excessive use of pretrial detention;<sup>8</sup> violence against women;<sup>9</sup> and the mistreatment of children.<sup>10</sup> Although the rapporteur for follow-up to concluding observations sent a reminder to the State party on 28 March 2011, the Committee received no response from the State party within the framework for follow-up to concluding observations. In light of the information contained in the State party's second periodic report, the Committee is of the view that these recommendations have not been implemented (see paras. 7–8, 18–19, 11–12 and 25–28 below).

### Criminalization of torture and the statute of limitations

7. Although article 486 of the Criminal Code concerns the prohibition of torture, the Committee reiterates its concern that torture has still not been defined as in article 1 of the Convention.<sup>11</sup> In particular, the Committee notes that article 486 does not mention discrimination as one of the specific purposes of the criminal conduct or cover acts committed

<sup>4</sup> CAT/C/NIC/2, paras. 182–183, 192 and 197.

<sup>5</sup> CAT/C/NIC/CO/1, para. 30.

<sup>6</sup> Ibid., para. 10.

<sup>7</sup> Ibid., para. 11.

<sup>8</sup> Ibid., para. 14.

<sup>9</sup> Ibid., para. 15.

<sup>10</sup> Ibid., para. 17.

<sup>11</sup> CAT/C/NIC/CO/1, para. 10.

by a person, other than a public official, acting in an official capacity, at the instigation of that person or with his or her consent or acquiescence. In this regard, the Committee notes the State party's explanation in its periodic report that responsibility for acts of torture committed by or at the instigation of or with the consent or acquiescence of a person other than a public official is covered by the degrees of participation in offences (part II of the Criminal Code, sole chapter), but it remains concerned, as these provisions do not expressly cover acts of consent or acquiescence. The Committee is also concerned about the failure to include the crime of torture in article 16 of the Criminal Code, which, if read in conjunction with article 131 of the Code, provides for criminal prosecutions that cannot be disallowed on the grounds that a time limit has expired. The Committee is also concerned about the failure of the Military Criminal Code to cover the crime of torture and regrets the lack of information regarding the application of article 486 of the Criminal Code where acts of torture are committed by members of the armed forces (arts. 1 and 4).

**8. The Committee reiterates its previous recommendation in which it urged the State party to bring article 486 of the Criminal Code into line with article 1 of the Convention. In this regard, the Committee draws the State party's attention to its general comment No. 2 (2007) on the implementation of article 2, which states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity (para. 9). The State party should ensure that the offence of torture is not subject to any statute of limitations, in order to preclude any risk of impunity in relation to the investigation of acts of torture and the prosecution and punishment of perpetrators. The State party should include the offence of torture in the Military Criminal Code and bring it into line with articles 1 and 4 of the Convention.**

#### **Fundamental legal safeguards**

9. The Committee is still concerned about consistent reports that the procedural safeguards set out in the State party's legislation are not, in practice, effective, in particular for persons detained during and in the aftermath of the April 2018 protests.<sup>12</sup> In this respect, the Committee is concerned about:

(a) The statements made by various bodies,<sup>13</sup> including the opinions of the Working Group on Arbitrary Detention,<sup>14</sup> documenting (i) instances of arbitrary detention without the presentation of an arrest warrant and/or without informing the detainee of the reasons for the detention; (ii) the lack of information about people who are taken into custody<sup>15</sup> and problems providing prompt access to counsel; (iii) incommunicado detention for up to 90 days; (iv) hearings in the absence of counsel,<sup>16</sup> with beatings, threats and sleep deprivation;<sup>17</sup> (v) the lack of access to an independent medical examination, as well as (vi) the ineffectiveness of habeas corpus remedies;<sup>18</sup>

(b) The promulgation in 2021 of Act No. 1060, under which the Code of Criminal Procedure (Act No. 406) was amended and supplemented, to increase the time by which detained persons must be released or placed at the disposal of the competent authority from 48 hours, as established in article 33 (2.2) of the Constitution, to 90 days when, at the request of the Public Prosecution Service, the increase is authorized by a court, with no need to conduct a preliminary investigation, present evidence against the detainee, file charges or

<sup>12</sup> OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", paras. 69–78.

<sup>13</sup> [A/HRC/49/23](#), para. 30, and [A/HRC/46/21](#), paras. 38–42.

<sup>14</sup> See, for example, opinions No. 39/2020, No. 21/2020, No. 43/2019, No. 19/2019 and No. 16/2019.

<sup>15</sup> [A/HRC/WG.6/33/NIC/2](#), para. 24.

<sup>16</sup> [A/HRC/49/23](#), para. 24.

<sup>17</sup> [A/HRC/42/18](#), para. 31.

<sup>18</sup> [A/HRC/49/23](#), para. 23, and [A/HRC/42/18](#), para. 26.

consider the necessity or proportionality of detention<sup>19</sup> – also of concern is the indiscriminate application of the Act;<sup>20</sup>

(c) The shortcomings of the system used by the police to keep records of cases of detention, including brief arrests of persons who are released without having been brought before a judge;<sup>21</sup>

(d) The lack of information on the disciplinary measures taken during the period under review against law enforcement personnel who did not immediately allow persons deprived of their liberty to benefit from fundamental legal safeguards (arts. 2 and 16).

10. **The State party should:**

(a) **Ensure that all arrested persons are afforded, by law and in practice, all fundamental legal safeguards against torture from the very outset of their deprivation of liberty, including the rights to be assisted by a lawyer without delay, particularly during the investigation and interrogation stages; to request and receive an independent medical examination; to be informed of their rights, the reason for their arrest and the charges against them; to immediately notify family members or any other person of their choosing of their detention and whereabouts; to be brought before a judge without delay; and to have effective means of challenging the lawfulness of their detention;**

(b) **Ensure that information on all persons in police custody or pretrial detention is kept in the register of the place of detention and that the registers contain information on all stages of the deprivation of liberty, including transfers to other facilities. The State party should establish a centralized and standardized register that is accessible to the family members and legal representatives of persons in police custody or pretrial detention;**

(c) **Take the necessary legislative and other measures to ensure that time in police custody does not exceed 48 hours, a period renewable no more than once, in exceptional circumstances, if justified by tangible evidence, and only after a judicial organ has made an individualized assessment of the necessity and proportionality of the extension of the deprivation of liberty in each case and as a measure of last resort;**

(d) **Ensure, too, that the officials responsible are punished when persons deprived of their liberty are not allowed to benefit from these fundamental safeguards.**

**Administration of justice**

11. Although it notes the information in the periodic report on the Judicial Branch Modernization Project and other measures taken during the period under review,<sup>22</sup> the Committee reiterates its concern about the judicial authorities' lack of impartiality and independence vis-à-vis the executive authorities.<sup>23</sup> In addition, although it takes into account the constitutional provisions on the independence of the Public Prosecution Service (article 138 (9) (b)), the Committee is concerned about concurring reports that the use of the Service for partisan ends facilitates the efforts to interfere and exert control made by the executive authorities. In this regard, the Committee is troubled by reports that the current lack of a separation of powers in the State party facilitates efforts to make dissent a crime, leads to violations of the rules of due process and contributes to impunity (arts. 2 (1), 12 and 13).<sup>24</sup>

12. **The State party should ensure that the judicial system and the Attorney General's Office are fully independent, impartial and effective, including through**

<sup>19</sup> [A/HRC/49/23](#), para. 23. See also the oral update on the situation of human rights in Nicaragua by Michelle Bachelet, United Nations High Commissioner for Human Rights, at the forty-seventh session of the Human Rights Council, Geneva, 22 June 2021.

<sup>20</sup> [A/HRC/42/18](#), para. 25, and [A/HRC/49/23](#), para. 18.

<sup>21</sup> [A/HRC/46/21](#), para. 38.

<sup>22</sup> [CAT/C/NIC/2](#), paras. 72–79.

<sup>23</sup> [A/HRC/WG.6/33/NIC/3](#), paras. 28–30 and 33, [A/HRC/WG.6/33/NIC/2](#), paras. 30–36, [A/HRC/42/16](#), paras. 125.39, 125.95 and 125.105, and [A/HRC/42/16/Add.1](#).

<sup>24</sup> [A/HRC/42/18](#), para. 64. See also OHCHR, “Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018”, p. 8.

**reform undertaken in line with international standards, such as the Basic Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors.**

**Conditions of detention**

13. While noting the information provided by the State party on investments made in new prison infrastructure,<sup>25</sup> the Committee regrets that it does not have current information on the implementation of the plan to build five new prisons.<sup>26</sup> The Committee also notes the information provided by the State party on occupancy rates in police cells (3.38 per cent)<sup>27</sup> but regrets the lack of official and up-to-date statistical data, broken down by place of detention and occupancy rate, on the prison population. The Committee is also concerned about:

(a) Reports of appalling conditions of detention, including the situation of women, in correctional facilities, particularly La Modelo and La Esperanza in Tipitapa, as well as at the Legal Cooperation Directorate in Managua (known as El Chipote) and the Evaristo Vásquez Sánchez Judicial Complex of the National Police (known as Nuevo Chipote),<sup>28</sup> where convicted persons and those in pretrial detention share cells. Of particular concern are reports of overcrowding, unsanitary conditions, lack of ventilation and access to natural light, malnutrition and limited access to drinking water and medicines in these prisons;<sup>29</sup>

(b) Reports of the difficulty of obtaining adequate medical care, particularly in the case of persons deprived of their liberty who have chronic diseases or coronavirus disease (COVID-19) symptoms;<sup>30</sup>

(c) Reports of assault and sexual violence in detention facilities, with a particularly high incidence in the case of detained women,<sup>31</sup> including transgender women incarcerated in men's prisons;<sup>32</sup>

(d) The lack of information on the results of investigations into all deaths in custody during the period under review,<sup>33</sup> as well as on the specific measures that have been taken to prevent such deaths;

(e) The refusal to give representatives of OHCHR and other international organizations, as well as humanitarian and human rights non-governmental organizations (NGOs), access to places of deprivation of liberty (arts. 2, 11 and 16).

**14. The Committee urges the State party to:**

(a) **Ensure that conditions of detention are in full compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), while seeing to proper nutrition and medical care for persons deprived of their liberty;**

(b) **Ensure that persons in pretrial detention and those serving sentences are strictly separated. In mixed-sex prisons, the women's wing should be completely separate from the men's wing;**

(c) **Ensure that all cases of death in custody are promptly and impartially investigated by an independent body, with due regard for the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and, where appropriate, duly punish those responsible, while providing fair and adequate compensation to the next of kin.**

<sup>25</sup> CAT/C/NIC/2, para. 198.

<sup>26</sup> Ibid., para. 196.

<sup>27</sup> Ibid., para. 201.

<sup>28</sup> A/HRC/49/23, paras. 25–26.

<sup>29</sup> Ibid., para. 25.

<sup>30</sup> Ibid. and A/HRC/42/18, para. 37.

<sup>31</sup> See OHCHR, “Nicaragua must stop repression of human rights – UN experts”, press release, 22 November 2018, and “Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018”, para. 80.

<sup>32</sup> A/HRC/46/21, para. 42.

<sup>33</sup> A/HRC/42/18, para. 32.

**The effectiveness of suicide and violence prevention strategies and programmes in prisons should also be reviewed. The State party should provide the Committee with detailed information on cases of death in custody and the causes of those deaths;**

**(d) Allow independent monitoring, without prior notification, of places of detention by national agencies and international organizations, without hindrance and without requiring advance notice. The State party should also allow humanitarian and human rights NGOs to monitor all places of detention;**

**(e) Collect and publish data on the maximum capacity and occupancy rate, as well as on the number of persons serving sentences and those in pretrial detention, for all places of detention in the State party.**

#### **Solitary confinement, disciplinary sanctions and punishment**

15. The Committee takes note of the adoption of the Act on Enforcement, Privileges and Judicial Oversight of Criminal Sanctions (No. 745 of 2010), the aim of which is to regulate court oversight of criminal sanctions, including solitary confinement for more than 48 hours (art. 26 of the Act) and prison supervision in general (art. 23). The Committee regrets the absence of information on the visits made by enforcement judges during the period under review and on the impact of the remedial measures that have been taken. Also of concern are reports that solitary confinement for periods of more than 15 days is used as a disciplinary measure.<sup>34</sup> In addition, the Committee is troubled by documented cases of collective punishment of inmates<sup>35</sup> and by reports of unjustified restrictions such as the suspension of contact with family members, especially with minors, and the prohibition of any type of correspondence or reading material. It is also troubled by reports of invasive body searches and undue pressure put on relatives of persons deprived of their liberty during visits (arts. 11 and 16).<sup>36</sup>

**16. The State party should ensure that solitary confinement is used only in exceptional cases as a last resort, for as short a time as possible (no more than 15 consecutive days) and subject to independent review, and only pursuant to the authorization by a competent authority, in accordance with rules 43 to 46 of the Nelson Mandela Rules. The State party should also respect the prohibition on imposing solitary confinement and similar measures on minors (see also rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty). In addition, rule 43 (3) of the Nelson Mandela Rules provides that disciplinary sanctions or restrictive measures must not include the prohibition of family contact and that the means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order, and never as a disciplinary measure. There must also be a clear distinction between involuntary separation from the general prison population for administrative reasons and such separation on disciplinary grounds. The State party should investigate arbitrary or unjustified restrictions of the rights of detained persons. It should also ensure that strip searches are done only in exceptional cases, in the least invasive way possible, by trained staff of the same sex as the person being searched and while fully respecting the person's dignity.**

#### **Office of the Human Rights Advocate**

17. The Committee is concerned about the Office of the Human Rights Advocate's limited effectiveness in its capacity as the national mechanism that seeks to prevent torture and ill-treatment by periodically visiting places of deprivation of liberty and about the lack of information on the steps taken in follow-up to the Office's recommendations.<sup>37</sup> The Committee is also concerned about the Office's lack of independence as a national human

<sup>34</sup> A/HRC/42/18, para. 36, and A/HRC/49/23, para. 26.

<sup>35</sup> A/HRC/42/18, para. 32.

<sup>36</sup> A/HRC/46/21, para. 43.

<sup>37</sup> CAT/C/NIC/2, para. 54.

rights institution and its failure to respond to allegations of human rights violations in the State party (art. 2).<sup>38</sup>

18. **The State party should ensure that the Office of the Human Rights Advocate is functionally independent by providing it with the resources it needs to fulfil its mandate effectively, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and the guidelines on national preventive mechanisms issued by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>39</sup> The State party should also take measures to improve the effectiveness of the national preventive mechanism's monitoring activities and allow it to make periodic visits, without advance notice, to all places of detention, while making public its findings and recommendations to the authorities. The State party should consider allowing the Subcommittee to publish its report on its 2014 visit; it should also seek support from the Special Fund established by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to act on the recommendations of the Subcommittee and cooperate fully with it during its next visit, planned for 2023.<sup>40</sup>**

#### **Impunity: complaints mechanism, investigations and amnesties**

19. The Committee is gravely concerned about:

(a) The numerous cases of torture and ill-treatment in prisons and police stations documented by various international mechanisms and NGOs during the period under review,<sup>41</sup> as well as the lack of information on the steps taken by the authorities in follow-up, which call into question the State party's assertion in its submission of 29 June 2022 that torture is not a custom of the country;

(b) The 12,284 complaints against police officers and prison officials registered by the Office of the Human Rights Advocate between 2005 and 2018<sup>42</sup> and the lack of information on the competent authorities' response to those complaints, as well as the absence of data on the complaints that have been submitted and investigated since then;

(c) The scant information provided by the State party<sup>43</sup> on the complaints of human rights violations and alleged ill-treatment received in the period 2008–2018 by the National Police, the Public Prosecution Service and the Ministry of the Interior; the lack of up-to-date information on complaints that have been received since then, the few prosecutions of cases of torture and ill-treatment, as well as reports that officials who are responsible for acts of torture and/or ill-treatment are subject to disciplinary rather than criminal sanctions;

(d) The State party's failure to take measures to reform the National Police in response to the serious human rights violations that have occurred since April 2018 and the move to put the National Police under the command of the President, in accordance with Act No. 872 on the Organization, Functions, Profession and Special Social Security Regime of the National Police (2014);

(e) The absence of information regarding the requirements, conditions and procedures for the release of prisoners, including by presidential pardon or in accordance with the Amnesty Act (No. 996 of 2019). The Committee is concerned both about the provisions of the Act and about reports that persons convicted of femicide and sex crimes, as

<sup>38</sup> [A/HRC/WG.6/33/NIC/3](#), paras. 9 and 10, [A/HRC/42/16](#), paras. 125.37–125.38, 125.40–125.41, 125.43 and 125.45, [A/HRC/42/16/Add.1](#), [E/C.12/NIC/CO/5](#), paras. 7–8, and [CMW/C/NIC/CO/1](#), paras. 27–28.

<sup>39</sup> [CAT/OP/12/5](#).

<sup>40</sup> See United Nations, "UN torture prevention body announces visits for 2023", press release, 30 June 2022 (in English only). Available at [www.ohchr.org/en/press-releases/2022/06/un-torture-prevention-body-announces-visits-2023](http://www.ohchr.org/en/press-releases/2022/06/un-torture-prevention-body-announces-visits-2023).

<sup>41</sup> [A/HRC/42/18](#), paras. 30–32, [A/HRC/WG.6/33/NIC/3](#), paras. 31–32, and OHCHR, "Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018", p. 7.

<sup>42</sup> [CAT/C/NIC/2](#), para. 45.

<sup>43</sup> *Ibid.*, paras. 31–46.

well as acts of torture and excessive or lethal use of force committed during the protests that began in April 2018, have been granted amnesty under the Act;

(f) The lack of detailed information on the investigations that have been conducted of serious human rights violations, including torture, the criminal proceedings that have been instituted, the punishments that have been handed down or the comprehensive redress that the victims have obtained, leading to a general climate of impunity (arts. 1, 2, 4, 12–14 and 16).

20. **The Committee urges the State party to:**

(a) **Ensure both that the authorities conduct an investigation whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed and that persons deprived of their liberty have access to effective, independent and accessible complaints mechanisms and do not suffer reprisals for lodging complaints;**

(b) **Compile and publish comprehensive disaggregated statistical information relevant to all complaints and reports of torture or ill-treatment – specifying whether the complaints led to investigations and, if so, by which authority, whether the investigations led to disciplinary sanctions and/or prosecutions, what kind of punishment was handed down and whether the victims obtained redress – in a manner that will enable the State party to provide such information to the Committee and other relevant monitoring bodies in the future;**

(c) **Take the necessary legislative and other measures to reform the National Police and strengthen the independence of the Public Prosecution Service and consider setting up a special unit in the Service to take charge of investigations, which the unit should be able to initiate on its own motion, into the allegations of torture and ill-treatment made since 18 April 2018, as recommended by OHCHR in its report submitted pursuant to Human Rights Council resolution 40/2;<sup>44</sup>**

(d) **Ensure that the alleged perpetrators of acts of torture or ill-treatment, including sexual violence, are suspended from duty immediately for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, take reprisals or obstruct the investigation. Protection and assistance for victims and witnesses must also be guaranteed;**

(e) **Refrain from granting amnesties or pardons to persons convicted of acts of torture, as they are incompatible with States parties' obligations in respect of the absolute and non-derogable nature of the prohibition of torture;**

(f) **Develop mandatory initial and in-service training programmes to ensure that all public officials, in particular members of the security forces, prison officials, judicial officials and lawyers are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations of these provisions will not be tolerated and will be investigated and that those responsible will be prosecuted and, on conviction, appropriately punished. In addition, the State party should ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).**

#### **Coerced confessions**

21. While taking note of the guarantees set forth in article 16 of the Code of Criminal Procedure regarding the inadmissibility of unlawfully obtained evidence, the Committee regrets that the State party has not provided it with examples of cases dismissed by the courts because of the submission of evidence or testimony obtained by means of torture or ill-

<sup>44</sup> [A/HRC/42/18](#), para. 65 (d) (i).



treatment. The Committee is concerned about consistent reports of the use of coercive methods of interrogation,<sup>45</sup> including threats, beatings and suffocation (arts. 2, 11, 15 and 16).

**22. The State party should take immediate action to put an end to coercive interrogations and ensure in practice that any statements obtained through torture are inadmissible, except against a person accused of torture as evidence that the statement was made.**

### **Criminalization of protest and acts of repression**

23. The Committee is concerned about:

(a) Reports from the United Nations and other reliable sources documenting the use of lethal force against peaceful protesters,<sup>46</sup> including minors, and ill-treatment upon arrest in the context of the protests that began in April 2018 and during the electoral period in 2021. These reports also allege the arbitrary detention of between 170 and 190 people for political reasons, acts of physical and psychological torture and ill-treatment, enforced disappearances, threats and reprisals by officers of the National Police and the Special Operations Directorate, plain-clothes officers and, in some cases, by non-governmental actors in the service of the State;<sup>47</sup>

(b) Reports of attacks on human rights defenders,<sup>48</sup> journalists,<sup>49</sup> social leaders, representatives of religious denominations and members of the opposition;<sup>50</sup> the arbitrary revocation of the legal registration of civil society organizations and universities,<sup>51</sup> including those that provide assistance to victims of torture and sexual violence; and the flight of more than 150,000 Nicaraguan asylum-seekers to Costa Rica and an unprecedented increase in the number of Nicaraguans intercepted on the border of the United States of America as a result of this clampdown;<sup>52</sup>

(c) Reports indicating that persons detained against the backdrop of the protests that began in April 2018 or for running for office in 2021 were facing charges of terrorism and organized crime and prosecuted without due process.<sup>53</sup> In this regard, the Committee is concerned about the vagueness of the definitions of terrorism under Act No. 977 of 2018 on Combating Money Laundering, the Financing of Terrorism and Financing for the Proliferation of Weapons of Mass Destruction<sup>54</sup> and by the broad scope of Act No. 1055 of 2020 on the Rights of People to Independence, Sovereignty and Self-Determination for Peace,

<sup>45</sup> [A/HRC/46/21](#), para. 40.

<sup>46</sup> [A/HRC/WG.6/33/NIC/2](#), paras. 19–23. See also communications NIC 3/2018 and NIC 1/2018. All the communications referenced in the present document are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>47</sup> See OHCHR, “Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018”; [A/HRC/40/L.8](#); OHCHR, “Nicaragua must stop repression of human rights – UN experts”, press release, 22 November 2018; Nada al-Nashif, United Nations Deputy High Commissioner for Human Rights, “Interactive dialogue on the interim oral update by the High Commissioner on the situation of human rights in Nicaragua”, 14 December 2021; and [A/HRC/WG.6/33/NIC/3](#), paras. 20–26.

<sup>48</sup> [E/C.12/NIC/CO/5](#), paras. 9–10. See communications NIC 6/2021, NIC 4/2021, NIC 3/2021, NIC 1/2020, NIC 5/2018 and NIC 4/2018.

<sup>49</sup> [A/HRC/49/23](#), paras. 40–44, communication NIC 2/2020, [A/HRC/WG.6/33/NIC/2](#), paras. 49–50, [A/HRC/42/16](#), paras. 125.85 and 125.121, and [A/HRC/42/16/Add.1](#).

<sup>50</sup> See OHCHR, “Bachelet concerned about criminalization of dissent in Nicaragua”, press release, 22 February 2019; communication NIC 5/2021; [A/HRC/42/16](#), paras. 125.145, 125.164 and 125.166–125.167; and [A/HRC/42/16/Add.1](#).

<sup>51</sup> [CMW/C/NIC/CO/1](#), para. 32, [A/HRC/49/23](#), paras. 45–52, communication NIC 1/2022, [A/HRC/WG.6/33/NIC/3](#), paras. 34–50, [A/HRC/42/16](#), paras. 125.110–125.113, 125.118, 125.124 and 125–151, and [A/HRC/42/16/Add.1](#).

<sup>52</sup> See the oral update on the situation of human rights in Nicaragua by Michelle Bachelet, United Nations High Commissioner for Human Rights, at the forty-seventh session of the Human Rights Council, Geneva, 22 June 2021.

<sup>53</sup> See OHCHR, “Human rights violations and abuses in the context of protests in Nicaragua, 18 April–18 August 2018”.

<sup>54</sup> Communication NIC 4/2020 and [A/HRC/WG.6/33/NIC/3](#), paras. 17 and 19.

as well as the Special Cybercrime Act (No. 1042 of 2020), Act No. 1040 of 2020 on the Regulation of Foreign Agents<sup>55</sup> and articles 410 and 412 of the Criminal Code, relating to collusion with a view to undermining national integrity, which are used to discourage protests or any form of opposition, and the arbitrary use of those provisions;

(d) Reports that releases from prison under the Amnesty Act have not benefited all those identified as political prisoners, including those in very poor health, that those who were released have allegedly been subjected to harassment, threats and renewed arbitrary detention and that nothing has been removed from their criminal records (arts. 2, 12–14 and 16).<sup>56</sup>

24. **The Committee urges the State party to:**

(a) **Adopt the necessary measures to prevent and put an end to arbitrary detention, acts of repression and violence against human rights defenders, journalists, social leaders, representatives of religious denominations, opposition politicians and the members of their families, release those arbitrarily detained and re-establish the legal personality of civil society organizations;**

(b) **Promptly, independently and thoroughly investigate acts of excessive use of force, torture and ill-treatment committed in the context of the protests that began in April 2018, and subsequently prosecute and punish those responsible, ensuring that the victims receive full and appropriate reparations, and publicly condemn such violations;**

(c) **Ensure that all persons are protected from the intimidation, reprisals and violence to which their activities or their defence of human rights and the exercise of their freedom of expression and opinion and their rights of association and peaceful assembly could expose them, and establish an independent national protection mechanism in this regard;**

(d) **Establish protocols that regulate the operations of the security forces, which played a leading role in the violent interventions and the acts of intimidation that took place during the protests, in accordance with international standards for the protection of human rights;**

(e) **Immediately dismantle and disarm pro-government armed groups;**

(f) **Repeal or amend the Acts mentioned in paragraph 23 (c) to ensure that the offences listed therein are defined precisely, clearly and narrowly, and refrain from using those Acts as a tool with which to persecute those who have participated in or supported social protests, sought to stand for office or expressed dissenting views.**

**Gender-based violence**

25. Although the State party indicates<sup>57</sup> that new jurisdictional bodies specialized in violence and family law have been established and that there have been several gender-based violence training initiatives, the Committee notes with concern an increase in femicide, including of girls, from 2020 to 2021 and regrets the failure to repeal article 9 of the Comprehensive Act on Combating Violence against Women and Amendments to Act No. 641 containing the Criminal Code (No. 779) of 2012, which defines femicide as the killing of a woman in the context of a relationship. It also regrets the introduction of mediation between the victim and the aggressor, which heightens the risk of impunity while exposing the victims to revictimization and reprisals.<sup>58</sup> In addition, the Committee takes note of the information provided by the State party according to which 62 per cent of the 69,605 criminal cases for violence against women registered during the period 2014–2018 were resolved, with 65 convictions on charges of femicide having been handed down during the same

<sup>55</sup> See communication NIC 3/2020.

<sup>56</sup> [A/HRC/48/55](#), p. 7.

<sup>57</sup> [CAT/C/NIC/2](#), paras. 9–10, 16–20, 25–28, 84–110 and 119.

<sup>58</sup> [A/HRC/46/21](#), paras. 3–36, [A/HRC/49/23](#), paras. 37–38, [A/HRC/WG.6/33/NIC/3](#), paras. 75–76, and [A/HRC/WG.6/33/NIC/2](#), para. 71.

period,<sup>59</sup> although it is concerned about the lack of complete information on the outcome of these criminal cases, with up-to-date disaggregated statistical data on gender-based violence in all its forms, and on the resolution of these cases, including prosecutions, sentences and convictions of the perpetrators and victim compensation awards (arts. 2, 14 and 16).

**26. The State party should:**

(a) **Ensure that all cases of gender-based violence, especially those involving actions or omissions by the authorities which engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately, and that the victims receive comprehensive redress;**

(b) **Provide protection and support services for women victims of violence, ensuring that the service providers have the needed infrastructure, equipment and specialized personnel and an adequate budget;**

(c) **Strengthen mandatory gender-based violence training for police, prosecutors and judicial authorities, campaigns and public outreach, as well as other prevention measures and means of evaluating them;**

(d) **Maintain statistics, disaggregated by age and ethnic origin or nationality of the victim, on complaints, investigations, prosecutions, convictions and sentences relating to gender-based violence.**

**Voluntary termination of pregnancy**

27. The Committee is concerned about the restrictions on access to voluntary termination of pregnancy,<sup>60</sup> especially for victims of sexual violence, including girls,<sup>61</sup> established in the State party's criminal laws, which do not allow any exceptions, not even for therapeutic reasons. The Committee fears that these restrictions will not only push women into having illegal abortions that endanger their lives and health but also expose them and their doctors to the risk of criminal penalties (arts. 2 and 16).<sup>62</sup>

**28. The State party should review its Criminal Code to decriminalize the voluntary termination of pregnancy when carrying the pregnancy to term would cause considerable suffering to the woman or when the pregnancy is the result of rape or incest, or when the fetus is not viable. It should also ensure that neither patients who resort to abortion nor their doctors face criminal penalties, and guarantee health care for women after they have had an abortion, regardless of whether they have done so legally or illegally.**

**Violence against indigenous peoples and people of African descent**

29. The Committee is concerned about reports of violent attacks, some resulting in death, against indigenous peoples and people of African descent and the alleged reluctance of the authorities to investigate these incidents. Also of concern are reported attempts to criminalize these groups and stigmatize defence organizations working to protect their rights,<sup>63</sup> as well as the lack of information on the status of the investigation of complaints filed with the police (arts. 2, 12 to 14 and 16).

**30. The State party should ensure that allegations of violent attacks against indigenous peoples and people of African descent are investigated. Their physical integrity must also be protected, and care must be taken to ensure that indigenous peoples, people of African descent and organizations that defend their rights are protected from threats and intimidation and are allowed the freedom that they need for**

<sup>59</sup> CAT/C/NIC/2, para. 111.

<sup>60</sup> CAT/C/NIC/2, paras. 113–116, A/HRC/42/16, para. 125.220, and A/HRC/42/16/Add.1.

<sup>61</sup> A/HRC/WG.6/33/NIC/3, paras. 78–80.

<sup>62</sup> E/C.12/NIC/CO/5, paras. 44–45, and A/HRC/WG.6/33/NIC/3, para. 64.

<sup>63</sup> A/HRC/46/21, paras. 49–53, A/HRC/49/23, paras. 32–34, communication NIC 1/2021, E/C.12/NIC/CO/5, paras. 11–12, and A/HRC/WG.6/33/NIC/3, para. 41.

**their work. The State party should also take measures to provide the victims with redress, including compensation and rehabilitation.**

#### **Redress, including compensation and rehabilitation**

31. While noting the adoption of Act No. 994 of 2019, under which the Comprehensive Care for Victims Plan was implemented, the Committee is concerned about the Act's failure to guarantee the right to comprehensive redress in accordance with article 14 of the Convention or to provide for any measures to guarantee access to justice for victims and members of their families.<sup>64</sup> In view of 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, the Committee regrets that the State party has not amended its legislation to ensure that victims of torture are able to make civil claims for redress even when there has not been a final criminal conviction (art. 14).<sup>65</sup>

**32. The State party should take the necessary legislative and administrative measures to ensure that victims of torture and ill-treatment have effective remedies to guarantee access to justice and obtain redress, including where the perpetrator of the crime has not been identified, in accordance with article 14 of the Convention and bearing in mind the Committee's general comment No. 3 (2012).**

#### **Follow-up procedure**

33. **The Committee requests the State party to provide it, by 29 July 2023 at the latest, with information on what it has done in follow-up to the Committee's recommendations concerning fundamental legal safeguards, conditions of detention and the criminalization of protest and acts of repression (see paras. 10 (a), 14 (a) and 24 (a)). In that context, the State party is invited to inform the Committee about its plans to implement, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

#### **Other issues**

34. **The Committee encourages the State party to consider making the declarations under article 22 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction.**

35. **The Committee requests the State party to grant access to the country to OHCHR, other international organizations and the special procedures of the Human Rights Council, in particular the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, that have asked to make official visits.**

36. **The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and NGOs and to inform the Committee of its efforts to disseminate them.**

37. **The Committee requests the State party to submit its next periodic report, which will be its third, by 29 July 2026. To that end, the Committee invites the State party to agree, by 29 July 2024, to use the simplified reporting procedure, whereby the Committee sends the State party a list of issues prior to submission of its periodic report. The replies of the State party to the list of issues will constitute its third periodic report under article 19 of the Convention.**

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<sup>64</sup> See Inter-American Commission on Human Rights (IACHR), "IACHR and OHCHR express concern over the passing of the Comprehensive Care for Victims Act in Nicaragua", press release, 3 June 2019.

<sup>65</sup> [A/HRC/42/16](#), paras. 125.90 and 125.103, and [A/HRC/42/16/Add.1](#).