



# The Republic of Nicaragua

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and

Nicaraguan Network for Democracy and Local Development

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## **1. (A) Introduction**

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.
- 1.2** The Nicaraguan Network for Democracy and Local Development (Red Local) is a forum for democratic dialogue with 45 members working since 1993 across the country to promote inclusive and equitable local development, public policy advocacy and active citizenship.
- 1.3** In this document, CIVICUS and Red Local outline urgent concerns related to the environment in which civil society activists and human rights defenders operate in the Republic of Nicaragua, and discuss threats faced in the exercise of the freedoms of expression, association and assembly.
- 1.4** CIVICUS and Red Local are troubled by the legislative and extra-legal measures taken by the Nicaraguan government that have effectively curbed the freedom of association and civil society activism.
- 1.5** CIVICUS and Red Local are deeply concerned by the use of judicial, financial and administrative channels, by the Nicaraguan authorities, to restrict freedom of expression, independence of the media and access to information.
- 1.6** CIVICUS and Red Local are alarmed by ongoing restrictions on the free exercise of the right to freedom of assembly - a concern which extends to the selective action, on the part of security forces, to fulfill their obligation to protect all citizens, regardless of political affiliation.
  - In Section B, CIVICUS and Red Local highlight concerns related to the freedom of association and restrictions on civil society activities.
  - In Section C, CIVICUS and Red Local express concerns involving harassment and arbitrary detention of human rights defenders.
  - In section D, CIVICUS and Red Local highlight concerns relating to the freedom of expression, independence of the media and restrictions on access to information.
  - In section E, CIVICUS and Red Local highlight concerns regarding the freedom of assembly.
  - In section F, CIVICUS and Red Local make a number of recommendations to address the concerns listed.

## **2. (B) Restrictions on freedom of association and impediments to civil society activities**

- 2.1** Article 55 of the 1987 Constitution of the Republic of Nicaragua guarantees the right to freedom of association. Moreover, article 22 of the ICCPR, to which Nicaragua is a state party, also guarantees freedom of association. However, in practice, a number of policy and legal obstacles to the effective realisation of this right persist.
- 2.2** The General Law of non-profit Legal Entities (Law No. 147 – 1992) maintains a number of worrying deficits and contradictions leaving CSOs susceptible to discriminatory application of the law. The law, lacking clear procedures and requirements for organizational authorization, operation and termination, allows for broad discretion in its implementation. A number of CSOs have reported that the Ministry of the Interior, the administrative agency charged with overseeing the operations of not-for-profit entities, has utilized the law to unwarrantedly obstruct the registration of CSOs and insist on changes to CSOs’ by-laws not specified by legislation.
- 2.3** Moreover, under the ‘Law to Create the Unit of Financial Analysis (UAF)’ the government is endowed with wide powers to interfere in the internal affairs of CSOs. Though the law purports to be aimed at countering the funding of terrorist activities and the practice of money laundering, its ambiguous language allows the UAF, under Article 4, to investigate all aspects of CSOs’ operations. Furthermore, Article 9 stipulates that any natural or legal person may be obligated to report to the Bureau of Economic Investigations (DIE) of the National Police regarding their actions or the handling of data or resources deemed relevant to the investigations of the UAF. Such provisions permit the DIE to investigate “all citizens”, including CSOs, under suspicion of committing money laundering operations.<sup>1</sup>
- 2.4** Worryingly, the government also continues to promote discussion of new administrative guidelines (*Procedimientos De Una Ventanilla Unica Para La Atencion A Las Asociaciones Y Fundaciones Internacionales Y Extranjeras Sin Fines De Lucro*), which aim to regulate CSO’s interaction with international donors, through the Ministry of Governance (MIGOB). The objective of administrative guidelines is to restrict foreign funding for CSOs from foreign entities for alleged partisan political activities (the parameters of which are not defined). However, serious concerns persist that the guidelines, which, if approved, could be used to suppress the advocacy efforts of civil society by blocking access to international resources apportioned to the promotion of democratic governance in Nicaragua.<sup>2</sup>

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<sup>1</sup>Gibson, Ramon Garcia, “Se perdería un orden, un control” con una UAF discrecional, *El Nuevo Diario.com.ni*, <http://www.elnuevodiario.com.ni/economia/254375-se-perderia-orden-control-uaf-discrecional>

<sup>2</sup> UN OHCHR, ANEXO: Preguntas sobre las prácticas más adecuadas para promover y proteger el derecho a la libertad de reunión y asociación pacíficas, [http://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/NGOs\\_and\\_other\\_stakeholders/Nicaragua-a-CoordinadoraCivil.pdf](http://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/NGOs_and_other_stakeholders/Nicaragua-a-CoordinadoraCivil.pdf)

**2.5** Under the current administration, dominated by the Frente Sandinista de Liberación Nacional (FSLN) party, the creation of formalised partisan structures between civil society and the state has come at the expense of existing civil society organisations and networks. Specific mass organizations and government sponsored groups aligned with the FSLN party including the Citizen Power Councils (CPCs) and Citizen Power Cabinets (CPGs) are reported to receive disproportionate support in the form of funding and official cooperation.”<sup>3</sup> This model of support for CPCs and CPGs drastically limits the diversity of citizen participation – exemplified by the CPCs and CPGs noted as the sole representatives of Nicaraguan civil society in the government’s 2007-2012 Human Development Plan. The increasing political polarisation in Nicaragua has created fractious tensions within CSOs and networks which threaten to undermine the work of civil society as a whole.<sup>4</sup>

**2.4** The right to form unions and the right to strike are recognised under articles 83 and 87 of the constitution. However, according to the Labour Code, unions are required to meet onerous criteria before a strike is considered official, including explicit approval from the Ministry of Labour and acquiring approval from more than 50% of voting members in an extraordinary meeting. In practice, unfair dismissals relating to union activities are common place, including the dismissal of 800 General Revenue Department (DGI) workers, with the intention of dismantling the Public Employees Union of the DGI-Grenada in late 2011. Moreover, there is little recourse available when labour laws are violated, with the Constitutional Chamber of the Supreme Court of Justice often ruling against appeals lodged by trade union leaders and their workers.<sup>5</sup>

### **3 (C) Concerns involving harassment, intimidation and attacks against human rights defenders and civil society activists**

**3.1** The environment for human rights defenders and civil rights activists in Nicaragua remains hostile despite the protection of fundamental freedoms afforded under the constitution and international law under the UN Declaration on Human Rights Defenders. By means of legal and extra-legal harassment the Nicaraguan authorities and FSLN party members have sought to intimidate activists campaigning for fundamental freedoms and civil society space.

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<sup>3</sup>McKinley Jr, James: ‘Nicaraguan Councils Stir Fear of Dictatorship’, *The New York Times*, (May 4, 2008) [http://www.nytimes.com/2008/05/04/world/americas/04nicaragua.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/05/04/world/americas/04nicaragua.html?pagewanted=all&_r=0)

<sup>4</sup>CIVICUS, *Restrictions and Politicisation of Civic Space: Challenges for Civil Society in Nicaragua*, 2011, <http://civicus.org/downloads/CSI/Nicaragua.pdf>

<sup>5</sup> International Trade Union Confederation, Annual Survey of Violations of Trade Union Rights Nicaragua, 6 June 2012, <http://www.refworld.org/topic.50ffbce582.50ffbce5b8.4fd889328.0...NIC.html>

- 3.2** Persecution of civil society activists commonly takes the form of harassment and intimidation carried out by pro-government media. Media campaigns, aimed at discrediting CSOs and human rights activists, are supported by the government at the highest level. Throughout 2012, and the beginning of 2013, the CSO Centro Nicaragüense de los Derechos Humanos (CENIDH), reported a systematic smear campaign directed at the organisation, and in particular its President, Dr. Vilma Núñez de Escorcia, by state-owned radio stations and publications. There is concern that such slander is designed not only to undermine the work of activists but to encourage individuals to attack human rights defenders.
- 3.3** Despite a reduction in the number of attacks on activists reported since 2010, past assaults continue to be treated with impunity. In April 2011, investigations were suspended into the case of Leonor Martínez - a member of the Nicaraguan Youth Coalition, who was brutally attacked on 22 October 2009 and threatened as a result of her involvement with the Coalition. Moreover women human rights defenders, who campaign against Nicaragua's total ban on abortion, are particularly vulnerable to campaigns of intimidation, harassment and defamation, as a result of their advocacy. Though instances of direct police harassment have been less numerous since 2010, a culture of impunity still surrounds such abuses and stands to further discourage the important work of these campaigners.

#### **4 (D) Concerns regarding freedom of expression and access to information**

- 4.1** Article 19 of the ICCPR guarantees freedom of expression. However, the Nicaraguan Constitution includes troubling qualifications to the free exercise of this right. Principally, article 52 of the constitution provides for citizens to make only "*constructive*" criticism of the government. Such limitations on the constitution leaves open to judicial interpretation the nature of the criticism and therefore the legal protection it is owed under the law. Moreover, while protection of the media and access to information are guaranteed under the Nicaraguan Constitution under articles 30, 68 and 66, the government continues to use administrative, judicial and financial means to restrict the exercise of this right.<sup>6</sup>
- 4.2** Despite firm recommendations to remove defamation from the Criminal Code made during the 7<sup>th</sup> Session of the UN UPR Working Group, defamation, including libel and slander, remains a criminal offence. Under articles 202 and 203 of the Criminal Code large fines can be administered to offenders. Such legislation represents a significant infringement to the freedom of expression in Nicaragua as the threat of criminal

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<sup>6</sup> Organization of American States (OAS), Committee of Experts of the Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption, [http://www.oas.org/juridico/english/mec\\_rep\\_nic.pdf](http://www.oas.org/juridico/english/mec_rep_nic.pdf)

prosecution has been used to intimidate individuals, particularly those who have been publically critical of official corruption.

- 4.3** Intimidation of journalists is not limited to judicial harassment, with the press facing media, political and extra-legal persecution as part of President Ortega's administration's apparent attempt to marginalize and discredit critics in the press. In February 2011, following the publication of several articles highlighting government corruption, Silvia González and Luis Galeano, of *El Nuevo Diario* newspaper received death threats, attributed to FSLN party sympathisers, leading to González eventually fleeing the country. On 1 June 2012, the television station Channel 13 was forcibly closed, following a campaign of intimidation and harassment against the station owner, Juan Carlos Pineda. Efforts at intimidating journalists run parallel to defamation campaigns designed to undermine the reputation and public perception of journalists who are openly critical of the government. For example, recently on 11 December 2012 the spokesman of the Supreme Court of Justice publically accused *Confidential*, an online newsweekly, of being financed by drug trafficking organisations.

## **5 (E) Concerns regarding freedom of assembly**

- 5.1** Article 53 of the Constitution of Nicaragua guarantees the right to peaceful assembly, while article 54 protects the right to assemble publically. In addition article 21 of the ICCPR also protects the right to freedom of peaceful assembly. However, though public demonstrations are not generally prohibited, there have been accusations from opposition members of partisan behaviour on the part of the police in their failure to protect protestors in opposition to the government. Moreover, no charge or complaint filed against pro-government groups involved in suppressing civil society demonstrations has been successful.
- 5.2** A culture of impunity surrounding attacks on government critics remains common in Nicaragua. During the violent protests that followed the municipal elections of November 2012, citizen groups and the media accused security forces of firing only at opposition protestors in Ciudad Dario, effectively protecting government supporters. Of 50 protestors detained by the police in Nueva Guinea, on November 18<sup>th</sup>, only 2 were reported to be FSLN sympathisers. Human rights groups further reported the ill-treatment in custody of many of the opposition supporters, including beatings and threats of sexual violence against women.<sup>7</sup>

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<sup>7</sup> Global Post, "Nicaragua Rewind: Ortega, same as the old boss?" 12 December 2012, <http://www.globalpost.com/dispatch/news/regions/americas/121211/nicaragua-rewind-daniel-ortega-sandinista-one-party-rule>

- 5.3** Acts of violence and intimidation performed by supporters of the Sandinista National Liberation Front (SNLF) during popular demonstrations were regularly reported in areas known for support of opposition parties. The targeting of opposition protestors by pro-government groups continued in July 2012, when youth protestors were violently attacked by approximately 100 government supporters, in front of the Supreme Electoral Council while demonstrating against claims of electoral fraud. Many of the attackers were reported to be wearing municipal government employee uniforms.
- 5.4** In early February 2013, excessive force, including rubber bullets and tear gas, was employed to disperse a peaceful ‘sit-in’ organised by a small miners association, in protest to the expansion plans of a Canadian mining company (B2Gold) in the central region of the country. Over 40 protestors were subsequently arrested, 12 of who were only released after an end to protests was promised, following more than a month of incarceration. The brutal crackdown and judicial intimidation employed by the authorities demonstrates the intolerance of the FSLN government of dissent, particularly protests that stand in opposition to the commercial interests of the state.<sup>8</sup>

## **6 (F) Recommendations to the Government of the Republic of Nicaragua**

CIVICUS and the Nicaraguan Network for Democracy and Local Development (Red Local) call on the Government of the Republic of Nicaragua to facilitate an enabling environment for civil society to operate, in accordance with the rights ensured by the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state’s duty to protect. In light of this, the following specific recommendations are made:

### **6.1 Regarding restrictions on the freedom of association**

- Civil society organisations and networks, outside the Citizen Power Councils and Citizen Power Cabinets should be formally recognised by the State, as representatives of civil society.
- The procedures and requirements that CSOs must follow for their constitution, authorization, operation and termination should be clarified under Law No 147, removing ambiguity and possibility of broad discretionary interpretation.

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<sup>8</sup> Santo Domingo miners released from jail, the Nicaragua Dispatch, 19 March 2013, <http://www.nicaraguadispatch.com/news/2013/03/santo-domingo-miners-released-from-jail/7077>

- Articles 4 and 9 of the ‘Law to Create the Unit of Financial Analysis’ should be amended or removed so as to limit arbitrary investigations of CSOs or individuals.
- The rights of non-FSNL affiliated unions should be guaranteed and measures should be taken to ensure adequate recourse is afforded when labour laws are infringed.

## **6.2 Regarding the arbitrary detention and harassment of civil society activists**

- The specific targeting of women human rights defenders (WHRDs) should be publically recognised as a form of violence against women and measures should be adopted to end the culture of impunity that surrounds instances of abuse or intimidation of WHRDs.
- The State of Nicaragua should investigate and bring to justice perpetrators of violence against human rights defenders.
- Formal investigations, currently on hold, into attacks, harassment and intimidation of activists should be re-launched.

## **6.3 Regarding restrictions on freedom of expression and access to information, and intimidation, harassment and attacks on journalists**

- Article 52 of the Constitution should be amended to remove the caveat ‘constructive’ from the licence to criticise government policy, thus ensuring that CSOs and individuals may express their opinions freely.
- The offence of defamation should be removed from the Penal Code, allowing for prosecution, instead, under civil law.
- The routine persecution of journalists, including campaigns of harassment, intimidation and slander, should be condemned by senior government officials, ensuring proper protection by law enforcement agencies.
- Efforts should be made to ensure the independence of the media, including investigations into the manipulation of state advertising funds and access to information in favour of pro-government media outlets.

#### **6.4 Regarding restrictions on freedom of assembly**

- Measures should be taken to ensure that law enforcement offers adequate protection to all citizens, regardless of political affiliation.
- All reported cases of injury to protestors by security forces should be subjected to mandatory and transparent investigation by an independent commission.
- The use of excessive force in the dispersal of protests should be publically condemned and a formal investigation into such instances should be launched.
- Security forces in charge of crowd control should be equipped with nonlethal weapons and provided training across the board on humane means of crowd control as well as on the UN Basic Principles on the Use of Force and Firearms.