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U.S. Department of State

Nicaragua Country Report on Human Rights Practices for 1997

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NICARAGUA

Nicaragua is a constitutional democracy, with a directly elected president, vice president, and unicameral legislature. President Arnaldo Aleman was elected in a free and fair election in 1996, defeating his closest competitor, Daniel Ortega of the Sandinista National Liberation Front (FSLN). Aleman took office on January 10. The Supreme Electoral Council is an independent fourth branch of government. The judiciary is independent but continues to be susceptible to political influence.

The President is the supreme chief of national defense and security forces. President Aleman named a civilian to be Defense Minister to head a first-ever civilian Defense Ministry. The Ministry of Government oversees the National Police, which is formally charged with internal security. However, the police share this responsibility with the army in rural areas. Reflecting enhanced civilian control, the security forces' conduct improved, although some members continued to commit human rights abuses.

Nicaragua is an extremely poor country, with an estimated per capita income of \$465. The economy is predominantly agricultural, dependent on sugar, beef, coffee, and seafood exports, with some light manufacturing. The economy grew an estimated 5 percent in 1997--the fourth year of growth after a decade of contraction. The inflation rate was about 8 percent. The unemployment rate was officially estimated at 14 percent, with underemployment reaching 35 percent. Private investment increased, but was hindered by the slow resolution of long-standing property disputes stemming from massive confiscations by the Sandinista government of the 1980's. In November the National Assembly passed a new property law intended to resolve confiscated property claims. The country continued to have a precarious balance of payments position and remained heavily dependent on foreign assistance.

The Government's human rights record improved measurably, but some serious problems remain. Soldiers were ill-prepared for the law enforcement duties they regularly performed in rural areas and sometimes killed criminal suspects instead of detaining them. Police beat and otherwise abused detainees, often to obtain confessions. There were few allegations, and no confirmed cases, of torture by the authorities. Prison and police holding cell conditions are poor. Security forces arbitrarily arrested and detained citizens. The judiciary is sometimes subject to political influence and corruption. Large case backlogs, long delays in trials, and lengthy pretrial detention are problems. In response to these problems, the Supreme Court and National Assembly launched a series of comprehensive structural reforms of the judicial system. However, the weak judiciary continued to hamper prosecution of human rights abusers. Discrimination against women and indigenous people is a problem. Violence against women, including rape and domestic abuse, remained a serious problem. Child labor is also a problem.

The Government, through its Ministry of Defense, disarmed 1,200 members of loosely associated rural criminal bands at the end of July. Many were former members of the Nicaraguan Resistance (RN, or contras). The Government also disarmed 423 members of a pro-Sandinista group on December 25 and declared that any remaining members of armed bands would be treated as criminals. Nonetheless, murder and kidnaping in northern rural areas were common. The opposition FSLN staged a series of mostly nonviolent road blocks and strikes in April and instigated violent student protests in June and July in an attempt to pressure the Aleman Government into concessions. The police reacted responsibly in using appropriate nonlethal means to confront the Sandinista-backed students, who used potentially lethal homemade weapons against the police.

The Tripartite Commission, composed of the Government, the Catholic Church, and OAS/CIACV (the OAS International Support and Verification Commission), formally ended its work on October 18, after finishing a 4-year-long review of slayings early in the decade of ex-RN members, other demobilized combatants, and of impunity enjoyed by their killers. The Commission sent 83 cases involving 164 murders, as well as 181 specific recommendations, to the Government for followup. In August the military judicial system, which is charged with investigating abuses committed in the course of performance of official duties by soldiers and police, reported that it had complied with all but 1 of the 62 recommendations under its jurisdiction. However, only one soldier and five policemen cited by the Commission ever served a prison sentence.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political killings by government officials.

The army killed five members of a criminal band as they slept June 18 at La Patriota. Due to lack of local police presence, residents had asked the army to act against the bandits, who had terrorized the town. The army justified the attack saying that the group was outside its corresponding "peace enclave," in which the members of the bandit group were supposed to have gathered in preparation for disarming. Human rights organizations suggested that the group's presence outside of the enclave may have been due to the Government's failure to deliver sufficient food to the enclave. Human rights groups criticized the army's action, but La Patriota residents applauded it. The army undertook no investigation of the killings.

Members of an army patrol reportedly shot 16-year-old Irma Lopez in the head at point-blank range at

Wamblan on December 23, 1996, after a firefight between the patrol and a rearmed bandit group led by her boyfriend, "Sanate." Members of the Wamblan Peace Commission (a grass-roots human rights organization) claimed that Lopez may have been raped before being murdered. The Tripartite Commission had previously cited the army patrol's leader, captain Gabino Gomez, for homicide when he was still a lieutenant in 1991. Although an army investigation found no evidence of wrongdoing, a military court turned the case over to the Jinotega department prosecutor's office for followup by the civilian judiciary.

The army attempted to impede judicial authorities' investigations of the case. Sixth military district officials reported a false location of Lopez's body to the prosecutor handling the case, apparently to thwart her efforts to exhume it. The defense counsel representing the army moved to recuse the Jinotega department criminal judge who had been handling the case, citing a visit by a foreign diplomat as having "influenced her objectivity." In a familiar ploy to hinder the prosecutor's investigation, the army reported that all nine members of Gomez's patrol, including a lieutenant, had deserted and were therefore unavailable to provide testimony. In spite of other advances toward professionalization, the army demonstrated in this case a penchant for shielding officers and soldiers accused of involvement in human rights abuses.

In September 1996, policeman Juan Isidro Flores shot and killed peasant Mario Amador Duarte in Nueva Segovia department while the latter was in detention on suspicion of having stolen vegetables. Flores claimed that he was attempting to disarm Duarte when he accidentally discharged the round that killed the suspect. The police detained Flores immediately afterward. Subsequently, however, the police were unable to provide any information regarding the case, and the police inspector general's office claimed that it had no record of the case.

The Nicaraguan Pro-Human Rights Association (ANPDH) concluded in April that the June 2, 1996, deaths of bandit leader Sergio Palacios and his associate Ricardo Guzman near Waslala were not due to a firefight with an army patrol, as the army claimed. Rather, ANPDH and some other observers concluded that Palacios was killed when soldiers detonated a booby-trapped radio. It was revealed in June that a forged letter, purportedly from the U.S. Ambassador, had been used to lure Palacios to his death. The ANPDH's efforts to reopen the official investigation of this incident were unsuccessful.

The disarming of members of rural criminal bands on July 21 at Ayapal successfully brought to an end the Government's efforts, through its Ministry of Defense, to disband members of the "Northern Front 3-80." Approximately 1,200 men belonging to this loose umbrella organization of ex-RN members were disarmed and given food, clothing, seed for planting, and small plots of land. The Government also completed disarmament of 423 members of the pro-Sandinista Andres Castro United Front (FUAC) on December 25. With the conclusion of the FUAC disarmament, the Government declared the disarmament campaign at an end and said that any remaining members of irregular armed groups would be treated as common criminals and would be subject to attack by the army. In spite of the disarmament campaign, armed bands engaged in murder, robbery, and kidnaping for ransom in the northern and north-central zones.

The civil war formally concluded in June 1990 with the demobilization of the Nicaraguan Resistance; however, society continued to be politically polarized and, despite the Government's disarmament campaigns, heavily armed. In particular, the rule of law, basic infrastructure, and conditions to guarantee personal security and economic opportunity did not extend to all rural areas. Reflecting these sources of instability, the level of violence, primarily criminal in nature, has remained high in the traditionally conflictive, poverty-stricken northern and north-central zones. During 1997 there was an average of one murder every 2 days in these areas, according to the press. Although there were no confirmed cases of politically motivated murders of either demobilized former RN members or former members of the

Sandinista Popular Army (EPS), criminally motivated murders of members of both groups were common.

In response to coffee producers' concerns, the Government continued to deploy soldiers and police to guard coffee transport routes and to protect farmers from extortion or kidnaping during the harvest seasons. The deployment effectively reduced the level of criminal violence in the affected areas.

To address the issue of unresolved ex-RN deaths, President Chamorro established the Tripartite Commission in September 1992. The Commission concluded its review in October 1996 and turned 83 human rights cases involving 164 allegedly murdered ex-combatants, as well as 181 specific recommendations, over to the Government for followup. In August the military judicial system, which is charged with investigating abuses committed in the course of performance of official duties by soldiers and police, reported that it had complied with all but one of the 62 recommendations (from 42 cases) corresponding to its jurisdiction. However, only one soldier and five policemen cited by the Commission ever served a partial or whole sentence. Some human rights observers described the military judicial system's findings as an effort to maintain impunity of human rights abusers within the ranks of the army and police.

In September the army promoted Rodrigo Gonzalez from lieutenant colonel to colonel. Gonzalez, the former head of the sixth military region that covers the departments of Matagalpa and Jinotega, was cited by the Tripartite Commission for negligence and obstruction of justice in the case of the 1991 killing at Wamblan of former RN member Heliodoro Splinger.

On the recommendation of a special commission created to investigate the killings of a university worker and a student and the wounding of scores of other students during the December 1995 student riots, a Managua criminal court tried 16 policemen. In October 1996, the court exonerated the accused of all charges. However, the National Police administratively sanctioned the 16 to 30 days' confinement to barracks.

There were no new developments related to the February 1991 killing of former RN commander Enrique Bermudez.

In February the Supreme Court let stand a 1994 military court ruling that absolved then-general Humberto Ortega and his bodyguards in the death of 16-year-old Jean Paul Genie (Genie was slain in 1990 during an incident involving members of General Ortega's motorcade.) Genie's parents had sought recourse through the Supreme Court, arguing that the military court had no jurisdiction and that the case should be remanded to a civilian court. The Supreme Court found that the Genie appeal lacked a specific, actionable complaint and that the military tribunal had followed proper procedures. The Genies' appeal had been pending since 1994. The Supreme Court's decision followed a January verdict by the Inter-American Court of Human Rights against the Government for "unreasonable delay and obstruction of justice" in the Genie case. The Government complied with the Inter-American Court's order to pay the Genie family \$20,000 in damages.

In February the Supreme Court reaffirmed a lower court finding that a previous political amnesty granted to fugitive murderer and former army major Frank Ibarra did not apply and reaffirmed his 1993 sentence in absentia to 20 years' imprisonment for the November 1992 murder of Dr. Arges Sequeira Mangas, president of the Association of Nicaraguan Confiscated Property Owners. A warrant for Ibarra's arrest was issued in March, but Ibarra was believed to have already fled the country. He has remained a fugitive from justice since Sequeira's murder.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Use of torture is a punishable crime under the law; however, there were a few allegations of torture by the authorities. There were credible reports that police beat and otherwise physically mistreated detainees, often to obtain confessions. Human rights groups attributed these abuses in part to the prevailing state of impunity. The police lack professional training in sophisticated investigative techniques and often resort to brutal methods to solve cases. Inadequate budget support for professional training, salaries and benefits, and proper equipment and supplies also hampered efforts to improve police performance.

Police, including members of a newly created riot control unit, responded with tear gas and other nonlethal means to violent Sandinista-instigated student protesters in June and July. The FSLN-organized student protests opposed the Government's interpretation of a constitutional provision that 6 percent of the national budget be dedicated to the universities. Many of the students employed potentially lethal homemade firearms. Although clashes between police and students resulted in numerous injuries on both sides, all major local human rights organizations (except the Sandinista-affiliated CENIDH) characterized police use of force as proportionate and appropriate in most instances. One policeman, Ricardo Romero Bonilla, was arrested for excessive use of force after he was filmed by a television cameraman beating university rector Adrian Meza Soza during a confrontation with students. Because Romero committed the abuse while performing official duties, he was charged in the military justice system. A military court tried, convicted, and sentenced him to 18 months' imprisonment in September. Another series of road blocks and strikes by the FSLN in April was resolved through negotiation. During those disturbances, police engaged protesters in only a few isolated instances.

The ANPDH reported in 1996 that the police beat 15-year-olds Marco Antonio Gonzalez and Abelardo Rodriguez while in custody, the latter in Boaco department by police lieutenant Venancio Obando, and that police subjected 14-year-old Juan Carlos Garcia to electrical shocks while in detention on Corn Island. According to the ANPDH, Captain Luciano Hurtado Escobar was involved in the latter incident. The police inspector general's office reported in September that it had no record of complaints that the ANPDH claimed it filed and had no record of investigations undertaken in any of the alleged incidents.

The Office of Civil Inspection for Professional Responsibility of the Ministry of Government is responsible for monitoring allegations of illegal detention and police abuse. During the year, the office received 360 formal complaints involving 449 police officers. The office concluded that, of the 323 complaints it had investigated, 42 were human rights cases. Of 56 policemen determined to be responsible for human rights violations, the authorities had administratively sanctioned 53 by year's end. The unit's small budget and staff hampered effective investigations and publicity.

The police inspector general's office reported in September that six police officers had been discharged dishonorably between January and September for unspecified abusive conduct. The National Police issued new standards for ethical conduct and discipline in an effort to improved police human rights performance.

Prison conditions are poor. The prison system remained overcrowded and underfunded, with medical attention virtually nonexistent and malnutrition a constant problem. According to government statistics, prisons had a total inmate population of 3,946 as of July, an average of 28 percent over capacity. Prison

officials calculated that the daily expenditure per prisoner for food was \$1.00 and reported that the annual budget for food remained constant in spite of the growing prison population. Average daily caloric intake therefore fell to 750-800 calories, well below the 1,800 calories per day recommended by the United Nations. However, many prisoners received additional food from visiting family and friends. Medical care available to prisoners fell far short of basic needs. Lack of available medical care led prisons to release ill prisoners convicted of lesser offenses. Some prisons and many police holding cells were dark, poorly ventilated, and unhygienic. At the Bluefields prison, there were only 4 showers and 4 toilets for 97 prisoners.

As of August, 10.4 percent of the prison population was between the ages of 15 and 18. Youths were housed in the same prisons as adults for lack of juvenile detention centers, although in different wings of the prisons. While only Managua has a separate prison for women, there have been no reports of problems ensuing from mixed facilities. Women were also housed in separate wings in facilities outside the Managua area and were guarded by female custodians. Self-declared homosexuals were housed separately at the Managua prison. Police station holding cells were overcrowded by an average of 30 percent. Officials claimed that suspects were often left in these cells during their trials, as budgetary shortfalls often restricted the use of fuel for frequent transfers from prison to distant courtrooms.

Ministry of Government, police, and penitentiary officials met with the international donor community in August to issue an urgent call for increased budgets to build more facilities and increase food purchases. Several churches and national and international nongovernmental organizations (NGO's) donated foodstuffs, beds, and medicine to the prison system to help alleviate shortfalls, which remained severe.

Prison guards received human rights training from nongovernmental organizations and the Catholic Church, and generally treated prisoners well. However, there were isolated instances of abuse. For example, the ANPDH reported 32 minor incidents of abuse in the police holding cells at Esteli.

The Government permits prison visits by independent human rights monitors.

d. Arbitrary Arrest, Detention, or Exile

Arbitrary arrest and detention by the police were common. The Police Functions Law requires police to obtain a warrant prior to detaining a suspect and to notify family members within 24 hours of the detainee's whereabouts. However, the police rarely complied with this law. Detainees do not have the right to an attorney until they have been formally charged with a crime. Local human rights groups criticized the law for providing inadequate judicial oversight of police arrests.

The constitutional reforms enacted in July 1995 reduced from 72 to 48 hours the time police may legally hold a suspect before they must bring him before a judge to decide if charges should be brought. The judge must then either order the accused released or transferred to prison. Due to lack of prison space, there were over 1,000 prisoners in badly overcrowded police holding cells, most of whom were being held illegally beyond the 48-hour deadline.

Lengthy pretrial detention also remained a problem. Contrary to law, 35.6 percent of prisoners had been jailed for 6 months or more without a trial. Many prisoners spend more than a year in jail without a trial.

The ANPDH recorded 94 complaints of illegal or arbitrary detention by the National Police and army from January through July, a slight increase from 1996. As in past years, incidents of arbitrary detention were most common in the rural northern and north-central regions, where much of the civil war was

fought.

Exile is not practiced. There were no reports of political violence against any citizens returning from civil war era self-imposed exile.

e. Denial of Fair Public Trial

The judiciary is independent but continues to be susceptible to political influence. Human rights and lawyers' groups complained about the delay of justice caused by judicial inaction, sometimes for years. Judicial actions and findings were reportedly often influenced by judges' political sympathies or acceptance of bribes. It is estimated that only 12 percent of trials resulted in convictions.

The judicial system comprises both civil and military courts. The 12-member Supreme Court of Justice is the system's highest court and is also responsible for nominating all appellate and lower court judges. The Court is divided into specialized chambers on administrative, criminal, constitutional, and civil matters.

A multiyear administration of justice reform program was begun during 1997. In June the National Assembly passed a new Judicial Organic Law which is intended to overhaul the current archaic structure of the court system. However, the President had not signed the bill into law by year's end, due to differences over technical points. Enactment of the law was expected in early 1998. The Government submitted to the Assembly a draft judicial career bill that would establish minimum professional standards for judicial appointees. The Government also appointed a commission to supervise revision of the country's outdated and ineffective criminal codes and procedures. Eventual reform of these codes is expected to reduce judicial delays and resulting excessive pretrial detention.

The 1994 Military Code requires the civilian court system to try members of the military charged with common crimes. From January to August the Attorney General for Penal Affairs' office received 136 complaints from civilians against members of the military. It referred 72 of these to civilian courts for trial. At the end of August, courts had sentenced members of the military to prison in 10 of the cases and found those involved in 6 cases innocent. The other 56 cases were in stages of judicial processing, which the Attorney General for Penal Affairs called "evidence of the worsening problem of backlog in the judicial system."

In criminal cases, the accused has the right to legal counsel, and defendants are presumed innocent until proven guilty. The presiding judge appoints attorneys from a standard list to represent indigent defendants, but, because they are not paid by the State, many attorneys pay a \$1.50 fine rather than represent such clients. According to the ANPDH, approximately 90 percent of indigent defendants go to trial without an attorney to represent them. This contributes greatly to the slow pace of justice. Individuals without the means to contract private counsel are often forced to turn to law students or have no counsel at all. Under the Napoleonic legal system, a trial does not consist of a public hearing but rather a desk review by a magistrate of the accused person's file. An initial hearing is usually held within the constitutionally mandated 10 days. Although very simple cases or those with high profile or outside interest may be resolved quickly, many languish for months. Due to a lack of administrative coordination between judges and the penal system, many prisoners remained in prison after their release date.

Nicaragua lacks an effective civil law system. As a result, cases more properly handled in a civil proceeding are often transmuted into criminal proceedings. One party is then effectively blackmailed, being jailed due to action by the party wielding greater influence with the judge. In addition, this heavy

civil-based criminal caseload claims attention from an overburdened public prosecutor's office and diverts resources that could be directed toward genuine criminal matters.

The Supreme Court removed Managua judge German Vasquez from office in August after he had been widely criticized for incompetence and political bias. In January Vasquez sentenced FSLN activist Nestor Moncada Lau to 18 months' imprisonment after police arrested the latter on January 10, the day of President Aleman's inauguration, on charges of terrorism. Vasquez ordered Moncada released on parole March 21. Police suspected that Moncada, who was arrested near the headquarters of President Aleman's political party with 800 grams of explosives, had intended an inauguration day attack.

The Supreme Court undertook a generally successful campaign to punish and discourage corruption in the judiciary. By year's end, the court had removed 57 judges and magistrates for corruption, malfeasance, and incompetence.

There were no known political prisoners.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The Constitution provides that all persons have the right to privacy of their family and to the inviolability of their home, correspondence, and communications. It also requires warrants for searches of private homes and excludes from legal proceedings illegally seized letters, documents, and private papers. The Government generally respected these rights in practice.

In November the National Assembly passed a new property law intended to resolve long-standing property disputes stemming from massive confiscations by the Sandinista government of the 1980's. The law implements President Aleman's campaign promise that the poor would receive titles to properties received during Sandinista-era land redistributions, and that wealthier beneficiaries would either have to pay for such properties or return them. The law calls for strengthened judicial and arbitral procedures to expedite settlement of property disputes. The new law has been strongly criticized by some members of the claimant community.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and a free press, and the Government respects these rights in practice. The privately owned print media, the broadcast media, and academic circles freely and openly discussed diverse viewpoints in public discourse without government interference.

The news medium with the largest national audience is radio, but polls show that television is the primary source of news in the cities. Listeners receive a wide variety of political viewpoints, especially on Managua's 65 radio stations. There are six television stations, four of which carry news programming with partisan political content. There is no official state censorship, nor is self-censorship practiced.

Freedom of the press is potentially qualified, however, by several constitutional provisions. The 1987 Constitution stipulates that citizens have the right to "accurate information," thereby providing an exception by which the freedom to publish information that the Government deems inaccurate could be abridged. Although the right to information cannot be subject to censorship, there is retroactive liability established by law, defined as a "social responsibility," implying the potential for sanctions against irresponsibility by the press. The legislature did not modify these provisions in the 1995 constitutional

reforms, but neither did the Government invoke these provisions to suppress the media.

Although the National Assembly passed a bill in September 1996 which would have established a professional journalists' guild, it was never signed into law. The executive's reticence was due in part to the journalistic community's sharp division over whether such a law would improve the quality of journalism or merely restrict the freedom of speech. There was no movement in the National Assembly to revive the proposal.

The Government does not restrict academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution recognizes the right to peaceful assembly without prior permission. It also recognizes the right to public assembly, demonstration, and mobilization "in conformity with the law." The Government generally respects the right of assembly, although the law requires demonstrators to obtain permission for a rally or march by registering its planned size and location with the police. The authorities routinely granted such permission, but many groups chose not to register because, they claimed, the process was too cumbersome. With the exception of the violent June-July student protests (see Section I.c.), the Government took no action against demonstrations.

The Constitution provides for the right to organize or affiliate with political parties, and opposition and independent associations functioned freely without government interference or restriction. Private associations do not have legal status to conduct private fund raising or receive public financial support until they receive this authorization from the National Assembly, which it routinely confers