

Forced Migration of Nicaraguans to Costa Rica



OAS

More rights for more people

OEA/Ser.L/V/II.

Doc. 150

7 September 2019

Original: Spanish

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The Forced Migration of Nicaraguans to Costa Rica

OAS Cataloging-in-Publication Data

Inter-American Commission on Human Rights.

The forced migration of Nicaraguans to Costa Rica : Approved by the Inter-American Commission on Human Rights on September 8, 2019.

p. ; cm. (OAS. Official records ; OEA/Ser.L/V/II)

ISBN 978-0-8270-6932-9

1. Human rights--Nicaragua. 2. Civil rights--Nicaragua. 3. Nicaraguans--Costa Rica.
4. Forced migration--Nicaragua.

I. Title. II. Series.

OEA/Ser.L/V/II. Doc.150/19

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Members

Esmeralda Arosemena de Troitiño

Joel Hernández García

Antonia Urrejola

Margarette May Macaulay

Francisco José Eguiguren Praeli

Luis Ernesto Vargas Silva

Flávia Piovesan

Executive Secretary

Paulo Abrão

Assistant Executive Secretary for Monitoring, Promotion and Technical Cooperation

María Claudia Pulido

Chief of Staff of the Executive Secretariat of the IACHR

Marisol Blanchard Vera

In collaboration with:

Edison Lanza, Special Rapporteur for Freedom of Expression

Soledad García-Muñoz, Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (ESCER)

Approved by the Inter-American Commission on Human Rights on September 8, 2019

CONTENTS

EXECUTIVE SUMMARY	9
CHAPTER 1 INTRODUCTION	15
<i>A. Scope and Aims of the Report</i>	15
<i>B. Working Visit to Costa Rica</i>	17
<i>C. Structure and Methodology</i>	19
1. Methodology for the Collection of Testimonies	20
<i>D. Approval and Follow-Up of the Report</i>	20
CHAPTER 2 DINAMICS OF FORCED DISPLACEMENT IN NICARAGUA	25
<i>A. Profiles of Forced Migration</i>	25
1. Students Participating in the Demonstrations and Protests	28
2. Human rights defenders and social and peasant movement leaders	29
3. Individuals who participated in the protests and in guarding roadblocks (<i>tranques</i>)	32
4. Individuals who contributed and supported protesters through the provision of food, safe houses and medicines	33
5. Doctors, Paramedics and Health Workers	33
6. Complainants	35
7. Journalists	36
8. Former military and police officers who refused to participate in repressive acts ordered by the government	38
<i>B. Agents of the Persecution</i>	39
<i>C. Role of intermediaries in the face of threats through social networks</i>	41
CHAPTER 3 INTERNAL DISPLACEMENT IN NICARAGUA	47
<i>A. Reasons for Internal Displacement of Nicaraguans</i>	48
<i>B. Consequences of Internal Displacement on the Rights of Nicaraguans</i>	49
CHAPTER 4 FORCED MIGRATION FROM NICARAGUA TO COSTA RICA	53
<i>A. Departure from the State of Nicaragua</i>	55
<i>B. Forced Migration of Nicaraguans as Gross Violations of Human Rights</i>	58

**CHAPTER 5 | ENTERING COSTA RICA AND THE PROCESS FOR RECOGNIZING
REFUGEE STATUS 65**

<i>A. Entering the State of Costa Rica</i>	65
<i>B. Procedure for Recognizing Refugee Status in Costa Rica</i>	71
<i>C. Filing the Application for Recognition of Refugee Status</i>	73
<i>D. Interview with an Eligibility Officer</i>	76
<i>E. Appeal before the Administrative Court for Migrants</i>	78

CHAPTER 6 | INTERNATIONAL PROTECTION 83

<i>A. Asylum and Refugee Applicants based on the 1951 Convention Relating to the Status of Refugees</i>	83
<i>B. Broad Definition of the 1984 Cartagena Declaration on Refugees</i>	86
<i>C. Prima Facie and Group Recognition of Nicaraguans</i>	90
<i>D. Complimentary Protection</i>	91
<i>E. Refugees sur place</i>	94
<i>F. Conditions for Return</i>	96

CHAPTER 7 | ACCESS TO AND EFFECTIVE EXERCISE OF RIGHTS IN COSTA RICA 101

<i>A. Right to Work</i>	103
<i>B. Right to Housing</i>	110
1. Housing and accommodation for Children and Adolescents	115
<i>B. Right to Health</i>	118
1. The mental health of individuals subject to persecution	121
<i>D. Right to Education</i>	125
<i>E. Discrimination, Xenophobia and Security</i>	128

CHAPTER 8 | CONCLUSIONS AND RECOMMENDATIONS 133

<i>A. Recommendations to the State of Nicaragua</i>	133
<i>B. Recommendations to the State of Costa Rica</i>	134

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. This Report addresses the human rights situation of Nicaraguans who have been forced to migrate from Nicaragua and request international protection in Costa Rica. A year after the onset of the crisis, more than 70,000 individuals have been forced to flee Nicaragua, and of these, in Costa Rica alone, 55,500 have requested international protection. This forced migration has taken place due to the serious human rights crisis affecting Nicaragua as a result of the state sponsored repression of protests that began on April 18, 2018, and that, so far, has led to the death of 325 individuals; with 2,000 injured; 700 individuals detained and prosecuted; the dismissal of 300 health professionals; the expulsion of 144 students from the National Autonomous University of Nicaragua (UNAN); and the exile of at least 70 journalists and media workers. These events remain in impunity. In order to monitor this situation, the Inter-American Commission on Human Rights (IACHR) conducted a working visit to Costa Rica between October 14 and 18, 2018.
2. This Report is divided into eight chapters that address: 1) the introduction to the report; 2) the dynamics of forced displacement in Nicaragua; 3) internal displacement in Nicaragua; 4) forced migration to Costa Rica; 5) the procedure for the recognition of refugee status in Costa Rica; 6) international protection in Costa Rica; 7) access to and effective exercise of rights in Costa Rica; and 8) the IACHR's conclusions and recommendations to the States of Nicaragua and Costa Rica.
3. The IACHR recognizes the important role played by the State of Costa Rica in protecting the human rights of Nicaraguans in the wake of the violent repression of demonstrations, as well as the actions promoted within the framework of the Organization of States Americans for that purpose. The IACHR also highlights the leadership shown by Costa Rica in supporting the work of the organs of the Inter-American System for the Protection of Human Rights and the promotion of its underlying democratic values. The Commission also appreciates the information and support received from the United Nations High Commissioner for Refugees (UNHCR); and from Costa Rican, Nicaraguan and regional civil society organizations in the preparation of this Report. In particular, the IACHR wishes to give special recognition to the Nicaraguans who provided their testimonies, many of whom are victims of gross human rights violations.
4. During its visit, the IACHR delegation conducted 259 interviews and gathered 152 testimonies of Nicaraguan asylum-seekers with international protection needs. These contributed to establish the reasons that led to their abandonment of Nicaragua; the risks and obstacles faced when leaving their country; as well as their situation in Costa Rica where they currently live.

5. Based on an assessment of the testimonies, the IACHR was able to identify the profiles in percentage terms of the main groups of individuals who were forced to migrate from Nicaragua and request international protection in Costa Rica: (i) students who participated in the demonstrations and protests (23%); (ii) human rights defenders and social and peasant movement leaders (22%); (iii) people supporting the protestors by providing food, safe houses and medicines (18%); (iv) doctors (8%); (v) journalists (2%); and (vi) former military and police officers who refused to participate in repressive acts ordered by the Nicaraguan government (2%). Likewise, the IACHR identified the main perpetrators responsible for the persecution and forced displacement of these Nicaraguans: (i) para-police groups (46%); (ii) the National Police (37%); and (iii) surveillance and control groups, such as the Citizen Power Councils (17%).
6. The arrival of the majority of Nicaraguans in Costa Rica coincides with the beginning of “Cleanup Operation”, implemented by the National Police and armed para-police forces, whose aim was to clear away the roadblocks and to attack the protesters manning them, as well as those individuals identified by the Citizen Power Councils. At the same time, the persecution manifested itself in the criminalization of social protests through arbitrary detentions; the filing of criminal indictments; threats, harassment and attacks against individuals identified as government opponents; and the harassment of their relatives. In particular, it was apparent that between April and October, the increase in the number of individuals who were forced to move from Nicaragua to Costa Rica was directly related to the stages of repression previously identified in the IACHR’s Report *Gross Human Rights Violations in the Context of Social Protests in Nicaragua* and in the follow-up press releases to the human rights crisis.
7. The Commission observed that while social media networks (Facebook, Twitter and Instagram) played a fundamental role in documenting human rights violations, they were also used as a means to deliver threats and harassment as a new pattern of repression. In this regard, the report analyzes the use of social networks as a means of persecution, emphasizing the need to adopt policies and strategies based on human rights principles.
8. Accordingly, the testimonies gathered by the IACHR indicated that the main reasons causing Nicaraguans to flee from their country were: due to direct threats in 33% of cases; threats on social media networks (23%); accusations of criminal activity (11%); state repression (8%); acts of harassment and persecution (6%); arbitrary detention (7%); as a result of attacks (5%); as a result of injuries (5%); rape (1%); and for refusing to comply with orders (1%).
9. On the other hand, evidence from the testimonies shows that the majority of Nicaraguans were internally displaced before leaving their country, leaving their homes and sheltering in safe houses, or with friends or relatives. As a result of the intensification of the repression, the IACHR also determined that these individuals were forced to flee via irregular crossing points or “blind spots”, on the border with Costa Rica, and in some cases, were guided by migrant traffickers (“coyotes”), which increased their situation of vulnerability and the possibility of having their human rights violated. Many of them indicated that the regular border transit points were militarized and that Nicaraguan authorities have lists with names of individuals

identified as government opponents in order to detain them and prevent them from leaving the country.

10. As of May 2019, more than 70,000 individuals have been forced to flee Nicaragua. Information gathered by the IACHR indicates that as of the same period, a total of 55,500 individuals were registered as claiming international protection in Costa Rica. According to the information received from the State of Costa Rica, from January to September 2018, approximately 52,000 Nicaraguans entered Costa Rica and remained in the country. Of these - from January to September 2018 - 13,697 individuals formalized their asylum application through an interview with the immigration authorities. The IACHR observed that the months receiving the highest number of applications for recognition of refugee status were June with 3,344, July with 5,279, and August with 4,055 - the months coinciding with the implementation of "Cleanup Operation".
11. In this regard, the Commission considered that both the internal and international forced migration of Nicaraguans represented a picture of gross human rights violations, whereby the civilian population viewed as Nicaraguan government opponents has been compelled by force to move arbitrarily on a large scale, as a consequence and continuation of a context of repression, persecution, abuse and systematic, widespread violence. The events provoking the forced migration of these individuals were conceived and endorsed by the highest authorities in the country, including the President of the Republic. Consequently, in accordance with international law, there is an obligation to duly investigate, prosecute, judge and punish these events, as well as to provide comprehensive reparations to the victims.
12. During its visit, the IACHR verified and welcomed the measures adopted by the State of Costa Rica to provide protection to Nicaraguans, such as the open border policy, which has protected thousands of individuals who have been forced to flee from Nicaragua. Likewise, the IACHR recognizes the progressive laws regarding international protection adopted by the State of Costa Rica; the promulgation of the Guidelines on a Comprehensive Response to Migration; the formulation of a Plan for Migratory Inflow; as well as the upcoming incorporation of the concept of complementary protection to Costa Rica's legal protection system. The IACHR also highlights the importance of Costa Rica's Administrative Migration Court, as Latin America's sole specialized jurisdictional body in the area of migration and asylum.
13. The Report also focuses on the pending challenges for the effective enjoyment of human rights of those Nicaraguans with international protection needs. At the forefront of these challenges are: the significant cost for applicants to access protection of the asylum procedure through the call system; the long duration of the procedures, which can extend for over a year and a half without receiving a response to the request; the lack of further information regarding their rights and the asylum procedure; the lack of legal advice and representation; and the rejection of some Nicaraguans at the border without assessment of their need for international protection or situations of vulnerability.
14. Based on the information gathered during the preparation of this report, the Commission observed that the specific situation of many of the individual

interviewees could entitle them to receive international protection. In this regard, the report analyzes the possibility of recognizing refugee status under the classic definition of refugee in the 1951 Convention Relating to the Status of Refugees, particularly as regards the causes of political persecution and belonging to a certain social group, as provided for in Article 106 of Costa Rica's General Law on Migration and Foreign Nationals. The report also reviews the possibility of recognizing refugee status under the expanded definition of refugee as set out in the 1984 Cartagena Declaration on Refugees, which is not part of Costa Rican domestic legislation; as well as the possibility of granting them additional protection, once it is incorporated. Regarding the voluntary return of Nicaraguans, the IACHR considered that this could only take place once the State of Nicaragua offers genuine guarantees that the life and personal integrity of these individuals will not be at risk.

15. This Report also examines in full the meaning and scope of the economic, social and cultural rights of asylum seekers. Regarding the right to work, the IACHR considered that work permits should be granted from the moment the asylum application is made, guaranteeing the same labor rights as nationals. Regarding the right to education, the IACHR observed that many of the individuals who fled Nicaragua were university students, and therefore analyzes the need to make application requirements more flexible. On the right to health, the Commission established the need to guarantee the highest possible level of physical and mental health for Nicaraguans. Finally, regarding the right to adequate housing, the Commission highlighted the setting-up of facilities such as the North Migrant Assistance Center (CATEM) located in La Cruz and the National Children's Patronage (PANI) shelter for unaccompanied migrant children and adolescents in Upala, while highlighting the need to improve their conditions.
16. In view of the mass migration of Nicaraguans fleeing to other countries, mainly to Costa Rica due to the geographical proximity and historical migrations of Nicaraguans to that country, the IACHR recognized the importance of addressing the situation regionally and internationally. In this regard, the IACHR reiterated its call to the States of the region and the international community to implement a regional and international response based on shared responsibility and respect and guarantee of human rights, so that the State of Costa Rica can count on the necessary resources to respond adequately and effectively to this humanitarian emergency.
17. Finally, the Report includes a chapter of Conclusions and Recommendations. The IACHR makes recommendations that State of Nicaragua cease the persecution leading to the forced displacement; respects the rights to leave Nicaraguan territory and seek and receive asylum; as well as to provide humanitarian assistance to displaced persons. In addition, the IACHR made recommendations to the State of Costa Rica regarding measures for the protection of Nicaraguans, especially in connection with its asylum procedure, as well as guaranteeing the rights of Nicaraguans in their territory, such as the right to non-discrimination and economic, social and cultural rights.

CHAPTER 1
INTRODUCTION

INTRODUCTION

A. *Scope and Aims of the Report*

18. Pursuant to Article 41 of the American Convention on Human Rights (hereinafter “the American Convention”) and Article 58 of its Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission”, or “the IACHR”) presents this report in order to assess the human rights situation of Nicaraguans who have been forced to migrate to Costa Rica, and to make recommendations addressed to the State of Nicaragua, the State of Costa Rica and the other OAS Member States to ensure that the rights of Nicaraguan migrants and refugees are guaranteed.
19. The Inter-American Commission on Human Rights (“the Commission”, “the Inter-American Commission” or “the IACHR”) has paid particular attention to the progressive deterioration of the human rights situation in Nicaragua, especially since the beginning of the acts of violence that occurred on April 18, 2018, in the framework of state repression of protests. Between May 17 and 21, 2018, the Commission conducted a working visit to the country, and issued its preliminary observations with 15 initial recommendations addressed to the State.
20. On June 21, 2018, the IACHR approved its report *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, concluding that the State’s response was geared at all times to violently deter participation in the demonstrations. In that report, the findings of the IACHR’s working visit showed that state violence was aimed at discouraging participation in demonstrations and stifling this expression of political dissent by following a common pattern, characterized by: (a) the excessive and arbitrary use of police force, (b) the use of para-police groups or shock groups with the acquiescence, tolerance and collaboration of state authorities, (c) intimidation and threats against leaders of social movements, (d) a pattern of arbitrary detentions of young people and adolescents participating in protests, (e) irregularities in the initiation of investigations into murders and injuries, (f) obstacles in accessing emergency medical treatment for the injured, as a reprisal for their participation in the demonstrations, (g) the dissemination of propaganda and smear campaigns, as well as direct and indirect censorship measures.
21. In its report *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, the IACHR also addressed the situation of individuals who were forced to relocate to other neighborhoods within their municipalities, or move to other cities due to the resurgence and prolongation of the violence that occurred after the repression began in April 2018. Likewise, the Commission observed how a large number of Nicaraguans were forced to migrate to other countries in the region on

account of their political opinions and gross human rights violations.¹ The IACHR repeated the 15 recommendations made in its preliminary observations to the working visit and issued some additional ones, among others, by requesting, that the State: immediately cease the repression of protesters and the arbitrary detention of participants; respect and guarantee the full enjoyment of the right to protest, freedom of expression, and the people's right to peaceful assembly and political participation; create an international investigation mechanism into the acts of violence, with guarantees of autonomy and independence to ensure the right to the truth and duly identify those responsible, among others.²

22. On June 24, 2018, at the invitation of the National Dialogue transmitted by the government, the IACHR deployed its Special Monitoring Mechanism for Nicaragua (MESENI) in Managua, Nicaragua, with the aim of monitoring the human rights situation, to follow up on the recommendations issued by the IACHR in its report and the precautionary measures granted, and support the strengthening of civil society capacities. Since its inception, MESENI has initially been in contact with state authorities, and permanently in contact with civil society organizations, social movements and victims of human rights violations. Likewise, through information gathered locally, it has been able to monitor and highlight the intensification of state repression in Nicaragua. As from the date of the Government of Nicaragua's communication on December 19, 2018, to temporarily suspend the presence of MESENI in the country, as well as the visits of the IACHR, the MESENI currently operates from the headquarters of the IACHR in Washington, D.C.³
23. Through the MESENI, the IACHR has gathered information on a large number of individuals, including students, protesters, victims and their families, witnesses, human rights defenders, religious leaders, medical and health personnel, indigenous peoples, among others, who have been forced to flee their homes and in some cases hide in safe houses. In the most serious cases, individuals have been forced to migrate to other countries to seek international protection as a result of various forms of judicial prosecution and criminalization aimed against them. After the onset of the state repression of the protests, the IACHR has observed a significant increase in departures to other countries and in the asylum applications of Nicaraguans, especially in countries such as Costa Rica, Panama, Mexico and the United States.⁴
24. On May 30, 2018, the Commission announced the creation of the Interdisciplinary Group of Independent Experts (GIEI) under an agreement signed with the Nicaraguan government and the OAS General Secretariat for a period of six months, charged with contributing and supporting the investigations into deaths in the context of violent

¹ IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*. OEA/Ser.L/V/II, Doc. 86 (2018), paras. 220-230.

² IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*. OEA/Ser.L/V/II, Doc. 86 (2018).

³ IACHR, Press Release No. 274/18, *Press Release on Nicaragua*, December 19, 2018.

⁴ IACHR, Press Release No. 183/18, *IACHR expresses concern about the situation of Nicaraguan migrants and refugees and calls on the States of the region to adopt measures for their protection*, August 15, 2018.

events in the country.⁵ On December 21, 2018, the GIEI presented its Report on the acts of violence that occurred between April 18 and May 30, 2018, where it provided 23 recommendations, on which the IACHR will follow up.⁶

B. Working Visit to Costa Rica

25. Based on the information received during and after the visit to Nicaragua concerning the situation of Nicaraguans who were forced to leave their country, the Inter-American Commission carried out a working visit to Costa Rica from October 14 to 18, 2018. Its objective was to monitor the situation of Nicaraguan asylum-seekers in need of international protection.
26. The delegation responsible for the visit was composed of Commissioner Luis Ernesto Vargas Silva, Rapporteur on the Rights of Migrants; Assistant Executive Secretary, María Claudia Pulido; as well as Mónica Oehler Toca and Daniel Caballero, Specialists of the Rapporteurship on the Rights of Migrants; Alexandro Álvarez and Adrián Perez, Specialists of the IACHR's Special Monitoring Mechanism for Nicaragua (MESENI) and Thiago Dezan of the IACHR's press office.
27. The Inter-American Commission held meetings with the President of the Republic, Carlos Alvarado Quesada; the Director of the General Directorate of Migration and Non-Nationals, Raquel Vargas Jaubert; the Vice Minister of Foreign Affairs and Worship, Lorena Aguilar Revelo; the judges of the Administrative Migration Court, Esteban Lemus Laporte, Gabriela Richard Rodríguez and Richard Calderón Agüero; as well as the Deputy Minister of the Health Department, Denis Angulo Alguera; the Deputy Minister of the Interior, Víctor Barrantes Marín; the Deputy Minister of the Labor and Social Security Ministry, Natalia Álvarez Rojas; Shelter Units and Migration Bureau staff; and the Director of Legal Affairs of the Ministry of Public Education, Mario López Benavides. During its visit, the IACHR also met with groups of Nicaraguans, such as the United Nations High Commissioner for Refugees (the UNHCR); the Welfare and Migration Collective, formed by the Association of Domestic Workers (ASTRADOMES), the Network of Nicaraguan women in Costa Rica, the Cáritas Social Ministry of the Diocese of Ciudad Quesada, the Workers Party, the Migrants Social Rights Center (CENDEROS), the Jesuit Service for Migrants of Costa Rica, the Center for Research on Culture and Development, the Feminist Center for Information and Action (CEFEMINA), the Association for Snacks and Shoes, the Education and Youth Promotion Services (SEPREJOVEN) and the Scalabrinian Sisters of Costa Rica; the Permanent Forum on Migrant and Refugee Population of the Ombudsman's Office; and the Center for Justice and International Law (CEJIL).

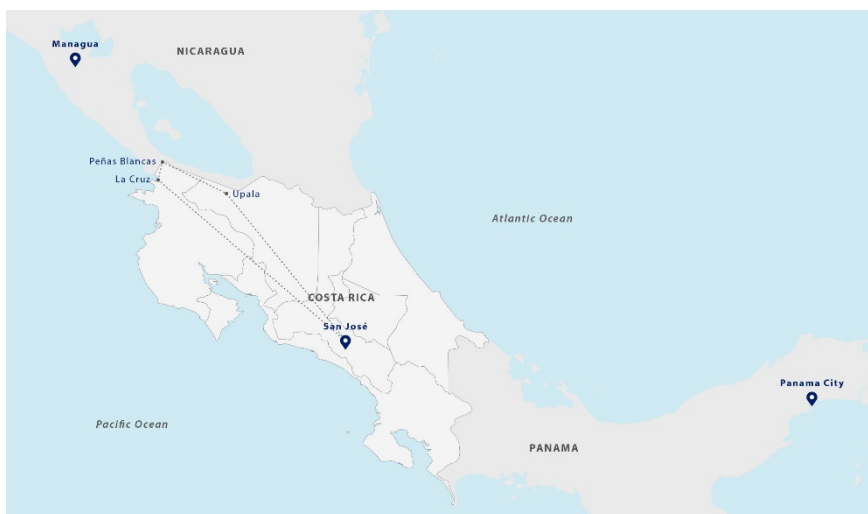
⁵ IACHR, Press Release No. 121/2018, [IACHR to Create Interdisciplinary Group of Independent Experts to Help Investigate Recent violence in Nicaragua](#), May 30, 2018. The GIEI Nicaragua is composed of independent experts selected by the IACHR and designated by the OAS General Secretary, composed of: Amerigo Incalcaterra, Sofia Macher, Pablo Parenti and Claudia Paz and Paz Bailey, persons of high technical level and recognized trajectory in the protection of human rights.

⁶ GIEI Nicaragua, *Report on the violent events that took place in Nicaragua between April 18th and May 30th, 2018*, December 2018.

28. In addition, the Commission gathered testimonies from Nicaraguan asylum-seekers with international protection needs in San José and other parts of the country. It also toured the border town of Peñas Blancas; and visited the Temporary Migrant Assistance Center (CATEM), located in the municipality of La Cruz, the National Children's Board Shelter (PANI) for unaccompanied migrant children and adolescents, and the migrant shelter at the Migrant Social Rights Center, both located in Upala.

Map of Working Visit to Costa Rica (October 14 to 18, 2018)

Source: IACHR



29. The Inter-American Commission wishes to express its gratitude once again to President Carlos Alvarado Quesada and his government for the invitation to visit, as well as for the openness and support of the authorities in addressing issues of interest to the IACHR and for the information provided. Likewise, the IACHR recognizes the important role played by the State of Costa Rica within the OAS in promoting various initiatives for the protection of the human rights of the Nicaraguan population after the violent repression of the April protests last year. The IACHR also highlights the State of Costa Rica's leadership in supporting the work of the organs of the Inter-American Human Rights System and in promoting its underlying democratic values.
30. The IACHR also appreciates the information and support received from civil society organizations in Costa Rica, Nicaragua and in the region, as well as the United Nations High Commissioner for Refugees (the UNHCR). In particular, the Commission wishes to draw special attention to the individual Nicaraguans, many of them victims of serious human rights violations, who, during its visit, approached the IACHR delegation to offer their testimonies.
31. On conclusion of its working visit, the IACHR issued its *Preliminary Observations*, reaffirming the four recommendations to be implemented by the State of Nicaragua regarding individuals who are in a situation of persecution and risk, and established

ten initial recommendations for implementation by the State of Costa Rica in order to respect and guarantee the rights of Nicaraguans who have been forced to leave their country and request international protection in Costa Rica.⁷

C. *Structure and Methodology*

32. The Inter-American Commission has drafted this report in order to provide a detailed analysis of the human rights situation of Nicaraguans who were forced to migrate from Nicaragua and request international protection in Costa Rica. This report is divided into seven chapters, preceded by a constitution. Chapter 1 deals with the dynamics of forced displacement in Nicaragua, where the profiles and agents of persecution are identified, the effects on the mental health of persecuted individuals, the role of intermediaries vis- a- vis threats through social media platforms and forced deportation as gross violations of human rights. Chapter 2 assesses internal displacement in Nicaragua. Chapter 3 considers forced migration to Costa Rica, addressing both departure from Nicaragua and the entry into Costa Rica. Chapter 4 analyzes the procedure for the recognition of refugee status in Costa Rica in accordance with applicable international standards. Chapter 5 addresses the possibilities of international protection for Nicaraguans. Chapter 6 analyzes the access and effective exercise of rights, including the rights to work, housing, health and education of Nicaraguans in Costa Rica. Finally, in Chapter 8, the Commission presents a series of conclusions and recommendations in order to assist the States of Nicaragua and Costa Rica to comply with their international human rights obligations.
33. This report is the outcome of the IACHR's follow-up on the human rights situation of migrants, asylum-seekers, refugees and others in the context of human mobility in Costa Rica and Nicaragua. The information presented in this report is based on primary and secondary sources. As to primary sources, consideration was given to the information and testimonies collected by the IACHR during and after its working visit to Costa Rica, the information generated by the MESENI and the GIEI, as well as in multiple hearings and requests for information on the human rights situation in Nicaragua. The IACHR has also received information from asylum-seekers, refugees and their families, as well as officials from different levels of the governments of Nicaragua and Costa Rica, civil society organizations, human rights defenders, academics and other international organizations who work with migrants forced to move as a result of the violent repression in Nicaragua since mid-April 2018. However, as a measure to protect victims and family members who provided information or gave testimony during its working visit to Costa Rica, the IACHR has decided to avoid mentioning their names as a way to protect their identity. As to secondary sources, for the preparation of this report the Commission has used various reports, documents and academic publications of recognized authority, as well as publically circulated newspaper articles that address different aspects of the forced migration of Nicaraguans, both internally and internationally, focusing in particular on the situation of Nicaraguans with international protection needs in Costa Rica.

⁷ IACHR, [Press Release No. 233/18, Preliminary Observations on the working visit to monitor the situation of Nicaraguans forced to flee to Costa Rica](#), November 1, 2018.

1. Methodology for the Collection of Testimonies

34. For the preparation of this report, during its working visit to Costa Rica, the IACHR interviewed 259 individuals, collecting testimonies from 152; some individuals provided their testimonies individually, by family groups and by social movements, all indicating their need for international protection. The testimonies gathered allowed the IACHR to identify the main causes of the forced migration from Nicaragua, the risks and obstacles individuals faced when leaving the country, as well as the human rights situation of life currently in Costa Rica. The interviews were focused on Nicaraguans who were forced to flee Nicaragua from April 2018, and included newcomers, individuals with a certificate of having submitted an asylum application, as well as individuals already in possession of a provisional asylum-seeker status document.
35. The Inter-American Commission distributed a notice to civil society organizations that work with Nicaraguan asylum-seekers and refugees in Costa Rica, so that anyone interested in sharing their testimony could do so voluntarily through these organizations. In gathering these testimonies, the Commission also had the support of the Migrants Social Rights Center (CENDEROS), which also provided psychosocial support to those who gave their testimonies. The design and implementation of the survey was guided by the principles of confidentiality and informed, voluntary participation.
36. The interview process included, firstly, a comprehensive informed consent process to outline the mandate of the Inter-American Commission and the reason for its working visit to Costa Rica, the purpose of the survey, and the rights of interviewees; and secondly, an personal interview by the above-mentioned staff. The questionnaire was divided into two main sections: one regarding the reasons for displacement in Nicaragua, and another section on the refugee status application and access to rights in Costa Rica.
37. In this regard, the information contained in this report is largely based on the 152 systematized and individually gathered testimonies. All the interviewees are Nicaraguan nationals, coming mainly from Masaya, Managua and Jinotepe. In 81% of the testimonies, individuals had submitted an asylum application in Costa Rica, of which 54% had already been interviewed and were awaiting the provisional applicant certificate, while 45% of interviewees were awaiting an interview with an eligibility officer. At the time of the working visit, the State of Costa Rica had recognized none of the interviewees as a refugee. The Commission was aware of only one individual whose testimony indicated that his or her asylum application had been denied by the Costa Rican authorities.

D. Approval and Follow-Up of the Report

38. The Commission assessed and adopted the draft of this report on June 21, 2019. In accordance with Article 60(a) of its Rules of Procedure, it forwarded the report to the

State of Nicaragua on July 3, 2019, and to the State of Costa Rica on July 3, 2019, and asked them to submit their observations within 30 days of reception.

39. On July 29, 2019, the IACHR received the observations of the State of Nicaragua, which were incorporated, where relevant, in the final version approved by the Commission. In its observations on the draft, the State indicated that, as of April 18, 2018, it faced an attempt against the constitution and institutions to overthrow the legitimately elected authorities and to oust the legitimately constituted government. In that regard, the State informed the IACHR that 198 people had been killed, including twenty two National Police officers. In addition, 252 buildings were vandalized and damaged, 209 km of streets and roads were destroyed, 278 pieces of heavy machinery were vandalized and burned and 398 vehicles destroyed.⁸
40. The State of Nicaragua concluded that this report “is a compendium of partial, unbalanced and biased information against the Government of Reconciliation and National Unity of Nicaragua” that, in its view, had been prepared without methodological rigor.⁹
41. On August 9, 2019, the State of Costa Rica sent its observations to the IACHR on the draft of this report, which were reflected where relevant in the final version approved by the IACHR. In its observations, the State expressed its appreciation for the visit conducted in October 2018, while emphasizing the high quality and detailed analysis of the draft report. Likewise, the State of Costa Rica reiterated its willingness to continue collaborating with the Inter-American Commission on Human Rights.¹⁰ For its part, the IACHR welcomes the information presented by the State of Costa Rica regarding the actions taken to comply with the recommendations made in this report.
42. The Inter-American Commission on Human Rights and its Rapporteurship on the Rights of Migrants will continue to strictly monitor the situation in Nicaragua and Costa Rica in relation to the human rights of migrants, asylum-seekers, refugees and others in the context of human mobility, and will pay special attention to the measures taken by both States to implement the recommendations made in this report. In this regard, the IACHR urges the States of Nicaragua and Costa Rica, as well as civil society organizations, and human rights defenders to avail themselves of the different mechanisms provided by the Inter-American System to continue supplying all relevant information in relation to compliance with the recommendations of this report.

⁸ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, pp. 1-4.

⁹ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, p.33.

¹⁰ Communication from the State of Costa Rica. DM-DV-1480-2019. Observations of the State of Costa Rica on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019.

CHAPTER 2

DINAMICS OF FORCED
DISPLACEMENT IN NICARAGUA

DINAMICS OF FORCED DISPLACEMENT IN NICARAGUA

A. Profiles of Forced Migration

43. The Commission gathered 152 testimonies, 67.7% obtained from males and 32.3% from women, predominantly young. In the case of the interviewed males, 22.4% ranged between 26 to 35 years old; 17.8% of them 18 to 25 years old; 12.5% of them 36 to 45 years old; 9.9% were between 46 and 55; 2%, 56 to 65 years old; and 1.3% of them 65 and older. Also, 3 males, who represent 2%, were under 18. In relation to the women, 11% of respondents ranged between 18 to 25 years old; 9.9% from 26 to 35 years old; 7.2% between 36 to 45; 2.6%, were 46 to 55; 0.7% of them 56 to 65, and 0.7% of them 65 years and older.

Age Range of Individuals interviewed by the IACHR during its working visit to Costa Rica

Age	Women	Men
Under 18		3
18-25	17	27
26-35	15	34
36-45	11	19
46-55	4	15
56-65	1	3
65 and up	1	2

Source: IACHR

44. The IACHR interviewed individuals from 35 municipalities. The majority came from Masaya (13.8%), Managua (11.2%) and Jinotepe (7.9%), places where there were high levels of repression and violence. Likewise, individuals interviewed from Sebaco represented 6.6%, Los Chiles (5.9%), Matagalpa (5.3%), La Concepción (4.6%), Estelí (3.9%), Diriomo (3.9%), New Guinea (3.9%), Acoyapa (3.9%), Tipitapa (2.6%), Granada (2.6%), Juigalpa (2%), Muelle de los Bueyes (2%), Morritos (2%) and León (2%). Regarding their municipality of origin, there were also individuals interviewed from Almendro, Bluefields, Carazo, Chichigalpa, Chinandega, Chontales, Ciudad Sandino, Diria, Diriamba, Kukra Hill, La Libertad, Nindirí, Niquinohomo, Ocotal, San Juan de Oriente, Santo Tomas, Trinidad and Zelaya, with 1% representing each of these municipalities.

Places of Origin of Individuals interviewed by the IACHR during its working visit to Costa Rica

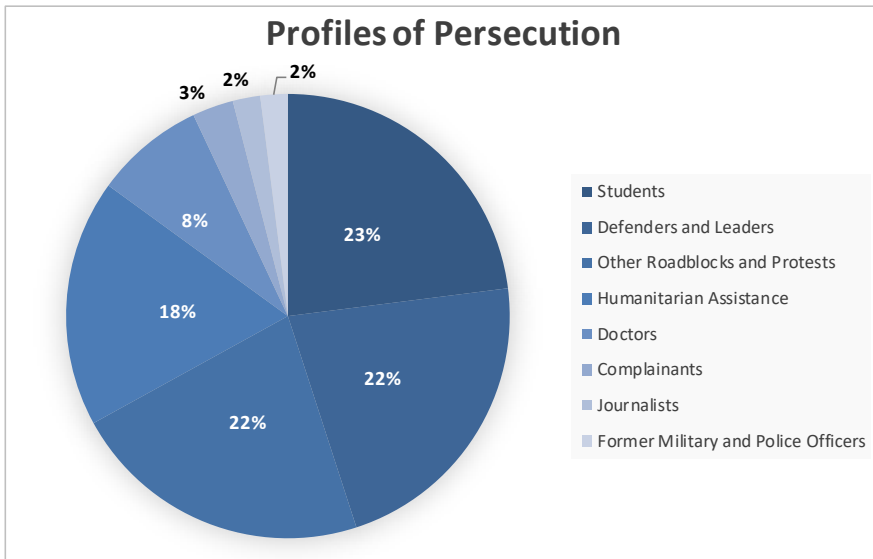


Source: IACHR

45. The Commission observed that from mid-April to October 2018, the main profile of migrants forced to leave Nicaragua and request international protection in Costa Rica were: (i) students who participated in the demonstrations and protests (23%); (ii) human rights defenders and social and peasant movement leaders (22%); (iii) individuals participating in the protests and in guarding roadblocks (*tranques*) (22%); (iv) individuals providing support to the former via the provision of food, safe houses and medicines (18%); (v) doctors (8%); (vi) complainants (3%); (vii) journalists (2%); and (viii) former military and police officers who refused to participate in repressive acts ordered by the Nicaraguan government (2%).¹¹

¹¹ IACHR, [Press Release No. 233/18, Preliminary Observations on the working visit to monitor the situation of Nicaraguans forced to flee to Costa Rica](#), November 1, 2018.

Profiles of Persecution of Individuals Interviewed by the IACHR during its Working Visit to Costa Rica



Source: IACHR

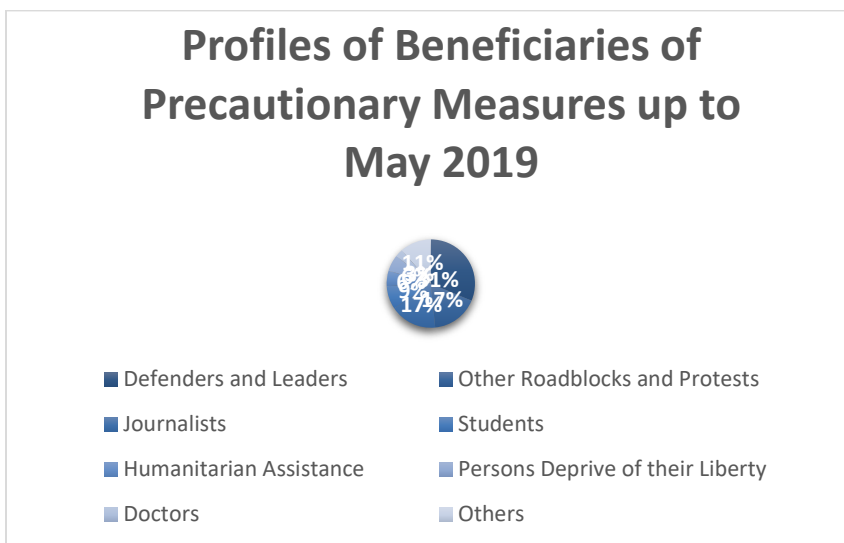
46. The main profiles of forced migration of persecuted individuals who left their country in search of international protection interviewed by the IACHR coincide the groups previously identified by the Commission as victims of gross human rights violations in Nicaragua during the different stages of the repression, including students, doctors, journalists and human rights defenders.¹² Likewise, the profiles of the beneficiaries of precautionary measures granted by the Commission until May 2019, match the profiles of persecuted persons, since they are mostly human rights defenders and peasant leaders, individuals who participated in the protests and roadblocks, individuals who provided support during the protests, journalists, students and doctors. In this regard, the IACHR received testimony which demonstrates the various forms of persecution experienced:

“[...] We needed to leave, as a family to protect ourselves from repression. I tell you: since our son’s murder we have been harassed, we have been followed in vehicles, motorcycles pass by and travel up and down the streets surrounding our house; they shot from the corner of our house with guns. We all became afraid and moved to several houses in Managua, until finally leaving the country. At the bottom of this was that we made public our complaint that our son’s murder was not being investigated correctly. We denounced, additionally, the reasons why our son was murdered. We no longer return to Bluefields. We participate in marches raising our voices. I must add that we were also threatened by social networks to stop us from talking in the media. In one of those threats, they indicated that they were going to kill my

¹² IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, OEA/Ser.L/V/II, Doc. 86 (2018), para. 279.

husband, due to all the complaints I made to the police, the Public Ministry, the CENIDH and the IACHR. We believe that in Nicaragua our life is in danger. That is why we took long to request refugee status because we intended to return, but then we saw that things got worse and then we wanted to ask for refugee status. ”

Profiles of Beneficiaries of Precautionary Measures granted by the IACHR up to June 2019



Source: IACHR

1. Students Participating in the Demonstrations and Protests

47. With respect to the students who participated in the protests and demonstrations, the IACHR observed that this group of individuals consisted of both leaders and students who belonged to the National Autonomous University of Nicaragua (UNAN) in Managua, the National University of Engineering (UNI), the National Agrarian University (UNA) and the Polytechnic University of Nicaragua (UPOLI).¹³ Most of them were identified from photographs circulating in the different sectors and neighborhoods of Nicaragua, and were disseminated by members of the Citizen Power Councils (CPC), as well as by social media. In this regard, the Commission received the testimony of a student persecuted for publishing an anti-government opinion on a social network:

¹³ In this sense, the IACHR had already reported the abrupt entrance of “shock forces” to Universities to prevent student demonstrations, as well as the disproportionate use of force against them, including the use of incendiary weapons. [IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, OEA/Ser.L/V.II (2018), para. 42].

“I founded a clandestine student movement. On June 1 a vote of no confidence took place in Spain, so I posted on Facebook that how could it be possible that in Spain this vote took place, but nothing happened in Nicaragua after 60 deaths. That same day, the police warned me that I had to leave. I quit my job and left my home [...]. Being an opponent has put me in a very vulnerable situation [...].they have sent the posters of the events that I organize in San José to my family as a warning.”¹⁴

48. The Commission also received the testimony of a father who lost his son when he demonstrated at the UNAN:

“My eldest son was killed at UNAN Managua. He was barricaded in for four months. Since that time, we had no contact with him [...]. He was 20 years old and asked us to respect his decision [...]. On CENIDH’s advice, I took my son’s body to the Institute of Legal Medicine where they saw me. Everything was very strange [...]. They told me that I would have to sign a document, but they didn’t make me sign anything in the end. They returned my son’s body as if it had been mistreated and not in the state when I took him: made up and looking well. The death certificate was correct, it certified that death was due to a gunshot wound to the head [...]. After the burial, I learned that they had said on all official channels that my son was a criminal and not a student. I denied it [...]. From that moment, I began to be persecuted by “individuals dressed as civilians” [...]. I believe that in Nicaragua my life is in danger, because I complained to the international media. Then I learned that the mayoress and the CPC offered a house and money for the death of my son [...].”¹⁵

2. Human rights defenders and social and peasant movement leaders

49. With respect to human rights defenders and peasant leaders, the testimonies refer to the persecution affecting them,¹⁶ as well as to the grave risk to their lives and integrity during the performance of their work:

“Since 2012, I have suffered persecution for opposing the Interoceanic Canal Construction Law along with the peasant movement [...]. I have been the victim of kidnapping attempts, serious threats, police and army raids [...]. In Nicaragua, I could not access documents, health services, education, or driver’s licenses, simply for being a relative of a peasant leader [...]. The farmers were the ones who protected me [...].

¹⁴ Testimony of an individual who founded a student movement and participated in the demonstrations from April 8, 2018, received by the IACHR in San José, October 16, 2018.

¹⁵ Testimony of the father of a student who participated in the demonstrations, received by the IACHR in San José, October 16, 2018.

¹⁶ See also, IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*. OEA/Ser.L/V/II, Doc. 86 (2018), Chapter 4.

My name appears on the lists published in official government channels, which circulate on the networks [...]. I have received direct threats at home from the police and military, as well as attacks on my vehicles and registrations [...]. The police watched me outside my house [...]. I received threats through text messages and social media [...]. My name is on the lists in the hands of the military, and there is a reward for whoever finds me.¹⁷

50. After its working visit to Nicaragua held in May 2018, the Commission expressed concern about the escalation of repressive measures and activities aimed at weakening the role of human rights defenders and civil society organizations in Nicaragua. On October 14, the IACHR highlighted the arbitrary detention of Haydeé Castillo, director of the Segovias Leadership Institute (ILLS), at Managua City Airport.¹⁸ Also, on November 28, the Commission denounced the arbitrary expulsion of Ana Quirós, a naturalized Nicaraguan citizen and director of the Center for Information and Health Advisory Services (CISAS).¹⁹ Subsequently, the IACHR was informed about the National Assembly of Nicaragua's approval of a decree revoking the legal personalities of the Institute for Strategic and Public Policy Studies (IEEPP), the *Hagamos Democracia* Association (HADEMO), Center for Information and Health Advisory Services (CISAS) and the Nicaraguan Center for Human Rights (CENIDH).²⁰ The Commission also received information about the presentation of draft bills to revoke the legal personality of other organizations, including the Segovias Leadership Institute (ILLS), the Institute for the Development of Democracy (IPADE), the Foundation for Conservation and Development of South-East Nicaragua (Fundación del Río), the Communication Research Center (FIVE) and the Popol Na Foundation for the Promotion and Municipal Development.
51. The Commission became aware of the temporary closure of the headquarters of the Nicaraguan Association for Human Rights (ANPDH) and the departure of several of its members from Nicaragua to Costa Rica because of threats and intimidation by armed groups.²¹ In December 2018, the Commission learned through the MESENI, that agents of the National Police had forcibly occupied the offices of all proscribed organizations, without a court order, stealing property, information and documents. Also, on December 14, the Ministry of the Interior announced that movable and immovable property and any other assets of the sanctioned organizations would be

¹⁷ Testimony of a peasant leader and family member of peasant movement coordinators, received by the IACHR in San José, October 16, 2018.

¹⁸ IACHR, Press Release No. 223/18, [IACHR warns of new wave of repression in Nicaragua](#), October 18, 2018.

¹⁹ IACHR, Press Release No. 255/18, [IACHR condemns the arbitrary expulsion of human rights defender in Nicaragua](#), November 28, 2018.

²⁰ IACHR, Press Release No. 265/18, [IACHR condemns the Cancellation of the Legal Personality of Human Rights Organizations in Nicaragua](#), December 13, 2018.

²¹ IACHR, Press Release No. 183/18, [IACHR expresses concern about the situation of Nicaraguan migrants and refugees and calls on the States of the region to adopt measures for their protection](#), August 15, 2018.

passed on to the administration of the State of Nicaragua for the creation of the Comprehensive Attention and Reparation Fund for Victims of Terrorism.²²

52. In its observations on the draft of this report, the State of Nicaragua indicated that the aforementioned organizations (CISAS, IEEP, IPADE, HADEMO, FIVE, CENIDH, POPOL NA, ILLS and Fundación del Río) acted against their legal personalities when carrying out activities that failed to fulfill the ends and objectives for which they were constituted. In particular, these organizations used “their organizational structure to manage, receive, channel and facilitate funds to alter public order and take actions to destabilize the country,”²³ in a manner contrary to Article 24 of Law 147 on Non-Profit Legal Persons. In turn, with regards to the liquidation proceedings of said organizations, the State indicated that it proceeded in accordance with the provisions of Article 25 of the same law. The State of Nicaragua added that there is freedom of association within Nicaragua because 7,135 non-profit organizations are operating in the country.²⁴
53. Regarding the detention of Haydeé Castillo, the State of Nicaragua indicated that an order preventing her from leaving the country had been issued against her by the National Police due to the pending investigation into the alleged offense of financing terrorism, among others. In this sense, the Migration and Non-National authorities enforced the order not leave on the basis of the powers established in Article 212.7(b) of Law 761 (General Law on the Directorate General of Migration and Non-Nationals). On the other hand, in the case of Mrs. Ana Quirós, the State indicated that the revocation of her Nicaraguan nationality was notified on November 26, 2018, through Ministerial Resolution number 196-2018, on the grounds that she had failed as a compulsory prerequisite to renounce her nationality of origin (Mexican). Likewise, the State of Nicaragua indicated that, through Ministerial Resolution number 197-2018, she was subjected to an administrative expulsion from the country on the grounds that, in 2018, “she carried out activities of political, economic and social destabilization of the country, through dissemination of false information, in violation of the Political Constitution of Nicaragua”.²⁵
54. The Commission was able to identify a higher level of state repression, mainly against peasant leaders who participated in the National Dialogue convened by the Government, with the participation of the Catholic Church as a mediator. Several leaders and peasants stated that news and dissemination of information on violent events is concentrated in Managua, while information on violence against peasants was not widely disseminated or known. The IACHR also received information on how some farmers received a payment by local authorities to support the state repression.

²² IACHR, Press Release No. 273/18, [IACHR denounces aggravation of the repression and the closure of democratic spaces in Nicaragua](#), December 19, 2018.

²³ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, para. 7.

²⁴ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, para. 8.

²⁵ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, paras. 9 and 10.

3. Individuals who participated in the protests and in guarding roadblocks (*tranques*)

55. With regard to those who participated in the protests or guarded the roadblocks (*tranques*), and who do not belong to other persecuted groups, the IACHR observed that most of the violations of the right to life in Nicaragua were a consequence of the excessive and arbitrary use of force by state agents, or by third parties with the acquiescence or tolerance of state authorities.²⁶ In turn, MESENI has expressed concern about the strategy of the State of Nicaragua to impede social protest,²⁷ as well as the State's initiation of criminal charges on unjustified and disproportionate grounds.²⁸ In this regard, the IACHR collected the testimony of a 52-year-old man, who conducted business in Nicaragua, and who was forced to flee to Costa Rica after being persecuted for protesting:

"I left Nicaragua because of the repression. I led a group of 30 youths. I was in charge of leading the protests, trenches, roadblocks, food and a safe house. As leader of the group, I began to receive death threats on my phone and through social media [...]. The repression was gradually intensified. First, there were rubber bullets; then tear gas; and, now they use high caliber weapons [...]. I was sentenced to 20 years in prison for terrorism, organized crime, theft and arson of houses [...]. My mother continues to be a victim of intimidation by the paramilitaries. They ask for information about me, and have told her that there are 16 indictments against me."²⁹

56. Similarly, the Commission received the testimony of a woman who was subjected to acts of torture, as a result of her participation in guarding a roadblock:

"In the first confrontation with the roadblock, I was tortured by the police in the institution for three days. They hit me in the face. They cut off my hair. They beat me on the back and abdomen. They asked me about weapons and financing for the roadblocks [...]. The hardest part was seeing how they raped a friend of mine, and then threatened me. To see how they tortured my friends. To see how they bled to death because they were not given attention [...]. Of the 21 who participated in a roadblock, 6 were killed, 3 are detained, 6 are refugees and the other 6 are hiding in Nicaragua [...]. I want to work and return to

²⁶ IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, OEA/Ser.L/V/II (2018), para. 88.

²⁷ IACHR, Press Release No. 248/18, *IACHR's MESENI expresses concern over Nicaragua's strategy to prevent social protest*, December 20, 2018.

²⁸ IACHR, Press Release No. 187/18, *IACHR calls on the State of Nicaragua to Cease the Criminalization of Protest and Respect Persons Deprived of Liberty and Their Families*, August 24, 2018.

²⁹ Testimony of an individual who participated in the demonstrations from April 8, 2018, received by the IACHR in San José, October 16, 2018.

Nicaragua. I want to return to my country when it is free of dictators. I want to go back to my house.³⁰

4. Individuals who contributed and supported protesters through the provision of food, safe houses and medicines

57. With respect to those individuals who contributed and supported both the individuals at the roadblocks (tranques) – of streets and roads - as well as the protesters, by providing transportation, food, provisions, safe houses and medicines, the IACHR ascertained that, in many cases, they were identified by the National Police, the CPCs, and government supporters, even though they had not participated in the protests or the roadblocks. The above corresponds to the first phase of state repression, which has been gradually spreading, and was characterized by obstruction of humanitarian work to assist protesters and help the injured in the context of acts of violence.³¹
58. Social networks were used to identify these people, through messages containing their personal data, and calling them "coup-mongers" or "terrorists." There were constant threats on social media platforms, but some individuals also told the IACHR that they had received direct calls from withheld numbers. In this regard, one of the testimonies gathered by the IACHR evidenced the threats and harassment faced by individuals who carried out support actions:

“The reason I left Nicaragua was because at the start of May 2018, I sent food and drinks to the young university students at the roadblocks. After the police cleared these roadblocks, I appeared on a list of persecuted persons. I received threats. On more than two occasions, Sandinista Front activists threw stones at my house. I had to quit my job. To save my life I had to travel to Costa Rica.”³²

5. Doctors, Paramedics and Health Workers

59. Another group of individuals are doctors, paramedics and health personnel who have been forced out of Nicaragua due to the threats they received for providing medical treatment to individuals injured in the protests and roadblocks, both in public hospitals, in their private offices and makeshift triage areas with the support of medical students and volunteers. In this regard, on June 7, 2018, doctors of the Bertha Calderón Roque Hospital issued a statement expressing their commitment to continue assisting the population and to providing first aid to anyone in need, while demanding

³⁰ Testimony of an individual who participated in the defense of a road block, received by the IACHR in San José, October 16, 2018.

³¹ IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*. OEA/Ser.L/V/II, Doc. 86 (2018), para. 2.

³² Testimony of a person who provided food to individuals who participated in the demonstrations from April 8, 2018, received by the IACHR in San José, October 16, 2018.

respect for the dignity and life of medical staff, paramedics, medical students and the general population.³³

60. However, the IACHR established in its Report on the visit that the denial of medical treatment to injured protestors and those at roadblocks came from a government order. One of the most emblematic cases concerns the murder of Álvaro Conrado, a 15-year old adolescent, who died from a bullet wound. According to his parents, he was denied treatment by personnel of the Cruz Azul Hospital while he was still alive.³⁴ In this same sense, the IACHR obtained the testimony of a woman whose husband died due to lack of medical attention:

“I had to leave because of death threats against me after my husband was murdered. We were persecuted for protesting against the government. We had been identified by photos [...]. 400 meters from my house, they murdered my husband with a gun. He had a bullet hole in the left part of the thorax. We took him to the clinic and after half an hour, they came out to tell us there was nothing to be done. My brother-in-law can verify that they did not do any procedure. He was alive, but he was not treated in time. They let him die [...]. I had to leave because of that. They kept harassing me, even on the day of his funeral. Paramilitaries besieged my house. Pick-up trucks passed all the time. I was afraid because I had gone through so much pain.”³⁵

61. The doctors who continued to provide treatment became fresh targets. Many professionals were dismissed from their employment and some had to leave the country for fear of reprisals. In this regard, the IACHR received the following testimony:

“After the protests began on April 18, I joined in providing medical treatment. I worked in a hospital that decided to take care of the wounded, thereby becoming a target for the government [...]. From my work you could hear the paramilitaries’ gunfire [...]. On one occasion, my license plate was stolen, I filed the complaint and they told me to report it as a loss. On another occasion, I passed near a CPC house that had paramilitaries and they followed me home. One day, the lady who took care of my daughters called me indicating that there was a van with individuals in front of my house. I felt that they were threatening my daughters, so I decided to leave the country. I fear for my life if I return to Nicaragua.”³⁶

³³ IACHR, Press Release No. 128/18, [IACHR condemns increased violence in Nicaragua](#), June 13, 2018.

³⁴ IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), OEA/Ser.L/V/II (2018), para. 142; El Nuevo Diario, [Colegio Salesiano Don Bosco sirve como hospital en Masaya](#), June 6, 2018; El Nuevo Diario, [Paramilitares asedian parroquia San Cristóbal en Managua](#), June 12, 2018.

³⁵ Testimony of the widow of a man who participated in the demonstrations from April 8, 2018, received by the IACHR in San José, October 16, 2018.

³⁶ Testimony of a doctor who treated people who participated in the demonstrations from April 8, 2018, received by the IACHR in San José, October 16, 2018.

62. In its observations on this report, the State of Nicaragua denied that obstacles existed in accessing emergency medical treatment for the injured as a form of reprisal for their participation in the demonstrations, as well as carrying out actions or dismissing health personnel for treating the injured. In addition, the State stressed that no clinic or polyclinic had been set on fire.³⁷

6. Complainants

63. With respect to those individuals who reported unlawful acts in Nicaragua to State institutions, non-governmental organizations or to the national and international media, the IACHR noted that the authorities used different methods in order to suppress the filing of complaints. In this regard, the Commission had already reported on the widespread atmosphere of distrust observed among victims, family members and representatives in filing complaints with the institutions responsible for investigating crimes committed in the context of the protests - as well as suffering retaliation from these institutions.³⁸
64. Additionally, given this lack of credibility in the State entities, the IACHR has observed that some individuals proceeded to denounce the violations in other public spaces, which increased the reprisals, and a growing fear in the population. In this regard, the IACHR received the testimony of a 25-year-old woman who was part of a theater organization, which denounced the excesses of the State of Nicaragua:

“We have a theater group, where we have been denouncing the situation in the country. In that context, for more or less than a year now, I have been receiving threats to harm my family and myself, including death threats. They have closed the NGOs and projects to us, and publicly discredited us. [...] Through fake Facebook profiles, they used images of the plays in order to smear us [...]. In May, I was run over by guys on a motorcycle, who threatened me once I was on the ground [...]. With that, my sisters decided to leave the country to Europe to seek refugee status. As for me, I came to Costa Rica to request refugee status.”³⁹

65. In its observations on the present report, the State of Nicaragua informed the IACHR that it dealt with each of the victims and processed the complaints presented at the prosecutor’s office. According to the State, the criminal charges filed for serious offenses such as murder, torture, grievous injuries, arson, terrorism, among others,

³⁷ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, paras. 16-20.

³⁸ IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, OEA/Ser.L/V/II (2018), para. 18.

³⁹ Testimony of a women who was a member of a women’s theatre organization, received by the IACHR in San José, October 16, 2018.

were based on probable cause evidence.⁴⁰ It added that, “in many cases the individuals who committed these serious crimes, tried to evade justice like any criminal, and moved to other countries requesting asylum or refugee status; however, the evidence presented is irrefutable since many times the same accused recorded their crimes and uploaded them to networks to instill terror in the population.”⁴¹

7. Journalists

66. Based on the gathered testimonies, the Commission was able to identify journalists covering the violent demonstrations and events in Nicaragua as a persecution profile. In this regard, after the violent events started in Nicaragua, the Commission has monitored how dozens of communicators have been subjected to both physical aggression, death threats, arbitrary detentions, surveillance by state security forces and para-police groups, as well as the looting, theft or destruction of their equipment⁴². According to data provided by civil society organizations, between October 20 and December 16, 2018, 117 attacks against freedom of expression were recorded in Nicaragua, including acts of aggression, threats, intimidation, and harassment, among others.⁴³ According to the reports of several organizations, there is a context of “aggression discrediting of journalists in different parts of the country such as Managua, Nindirí, San Rafael del Sur and León”.⁴⁴ An example documented by the Commission concerns the murder of journalist Ángel Eduardo Gahona López on April 21, in Bluefields. He was shot in the head while making a live broadcast on *Facebook Live*.⁴⁵ In addition, the IACHR has received testimonies detailing the attack perpetrated against dedicated journalists in the performance of their work:

“In a peaceful demonstration, they murdered a colleague in front of us. I made a complaint through national and international media. I said that it had to have been someone in uniform, because the evidence found that no civilian was armed, only the police. Because of the public complaint, they began to accuse me of planning the murder. They issued an arrest warrant against me. I had to leave the city and go to Costa Rica [...]. While here, I stopped publishing, so things calmed

⁴⁰ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, paras. 21-24.

⁴¹ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, para. 25.

⁴² IACHR, Press Release No. 273/18, [IACHR denounces aggravation of the repression and the closure of democratic spaces in Nicaragua](#), December 19, 2018.

⁴³ IACHR, Press Release No. 267/18, [Experts on freedom of expression of the UN and the Inter-American System condemn attacks and threats against journalists and the media in Nicaragua](#), December 14, 2018.

⁴⁴ Nicaraguan Human Rights Center (CENIDH), [Report No.3 CENIDH denounces systematic violations of the human rights of Nicaraguans by the dictatorial regime of Daniel Ortega and Rosario Murillo during the period May 16 to June 18 2018](#), June 29, 2018.

⁴⁵ IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), OEA/Ser.L/V.II (2018), para. 105.

down. I have remained unable to express myself, but they started to harass my family [...]”⁴⁶

67. The Commission has also expressed concern about state actions related to closing and censoring independent media, detaining and imprisoning journalists, and forcing the most prominent Nicaraguan journalists into exile. In this sense, since the beginning of the crisis, most obvious were attacks on *La Prensa*, *Confidencial*, *100% Noticias*, *Radio Darío*, *Radio Mi Voz*, *Canal 12* and the *Canal 10 of Nicaragua* news team (Communiqué R267 / 18). Consequently, on July 2, the IACHR granted a precautionary measure in favor of Aníbal Toruño, owner and director of *Radio Darío* of the city of León whose facilities were set on fire during the protests which started on April 18.⁴⁷ The precautionary measure was granted in favor of all workers of the radio station. In addition, on December 21, the IACHR granted precautionary measures in favor of Carlos Fernando Chamorro Barrios and other *Confidencial* news outlet workers, such as Desiree Elizondo, Wilfredo Miranda Aburto, Néstor Arce, Manyor Salazar, Enrique Gasteazoro, Pedro Molina, Arlen Cerda, Juan Carlos Ampié, Elmer Rivas, Franklin Villavicencio, Ricardo Salgado, Leonel Gutiérrez, Carlos Herrera and Yader Luna, and their families, since they are being subjected to threats, persecution, intimidation and harassment by the State of Nicaragua in the context of their employment as journalists.⁴⁸
68. The Commission also received information on the prosecution of Lucía Pineda Ubau and Miguel Mora, chief press officer and director of the television channel *100% Noticias*, who were arrested on December 21, 2018, and charged with “inciting and conspiring to commit acts of terrorism and inciting hate crimes”, along with three other press workers, Jaime Arellano, Jackson Orozco, and Luis Chavarría Galeano, who have left the country.⁴⁹ On December 13, 2018, the IACHR granted precautionary measures in favor of Miguel Mora and Leticia Gaitán Hernández - presenter and journalist of *100% Noticias* - and their families, and on February 11, 2019, the IACHR granted precautionary measures in favor of Lucía Pineda Ubau, press officer of *100% Noticias*, and her immediate family,⁵⁰ who was at risk of being deprived of her liberty.⁵¹
69. The IACHR also received information on the deportation of journalist Carl David Goette-Luciak, who reported for different foreign media outlets. Consequently, the

⁴⁶ Testimony of a journalist who was covering the demonstrations from April 8, 2018, received by the IACHR in San José, October 16, 2018.

⁴⁷ IACHR, Precautionary Measures 693/18, Anibal Toruño Jirón and other members of “Darío” Radio, Nicaragua, July 2, 2018.

⁴⁸ IACHR, Precautionary Measures 1606/18, Carlos Fernando Chamorro Barrios, Desiree Elizondo, Wilfredo Miranda Aburto, Néstor Arce, Manyor Salazar, Enrique Gasteazoro, Pedro Molina, Arlen Cerda, Juan Carlos Ampié, Elmer Rivas, Franklin Villavicencio, Ricardo Salgado, Leonel Gutiérrez, Carlos Herrera and Yader Luna, and their immediate families, Nicaragua, December 21, 2018.

⁴⁹ IACHR, Press Release No. 026/19, [IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua](#), February 6, 2019.

⁵⁰ IACHR, Precautionary Measures 873/18, Miguel Mora Barberena, Leticia Gaitán Hernández and their immediate families, Nicaragua, December 13, 2018.

⁵¹ IACHR, Amplification of Precautionary Measures 873/18, Lucía Pineda Ubau and her immediate family, Nicaragua, February 11, 2019.

IACHR and its Special Rapporteurship expressed their concern at his expulsion without any known charges.⁵² On the other hand, Carlos Pastora, manager of *Canal 10*, went into exile in the United States since December 3, 2018⁵³ after staying at the headquarters of the Honduran Embassy in Nicaragua since August 22, 2018, requesting diplomatic protection from this country, of which he is also national, due to the actions of the State of Nicaragua against him and the risks to his life and personal integrity, as a result of direct threats and surveillance.⁵⁴

8. Former military and police officers who refused to participate in repressive acts ordered by the government

70. According to the testimonies gathered from former military and police personnel who refused to participate in acts of repression ordered by the Government, the persecution against this group has extended to Costa Rica, mainly from the specific information and data available on high-ranking officers and the government orders on the arrest, detention, and, in some cases, even the disappearance of those individuals identified as dissidents and opponents. For example, some of these individuals were ordered to take over police force vehicles, mostly vans, known for carrying hooded individuals, para-police and armed civilians. The IACHR received information that in these vehicles – frequently travelling in convoys – individuals were kidnapped and taken to Chipote, which is corroborated by the testimonies collected from detainees. In relation to the above, the IACHR collected the following testimony from a man who had worked as a police officer in Nicaragua:

“I was a police officer for 21 years. Although I was an instructor, my boss assigned me to protect his family in Managua. On July 9, I was notified of the decision to reassign me to another place and that, on the General Commissioner’s orders, I had to take charge of one of the police force vehicles, that is, the Hilux vans. These vans are known for carrying hooded individuals, paramilitaries and armed civilians. They travel in long convoys to support kidnappings and take “the marked” individuals to Chipote. The individuals identified as leaders were “marked” for death. I did not want to be part of these kidnappings, arbitrary detentions and murders. On July 11, I made the formal delivery of the vehicles, cartridges, guns, projectiles, uniforms, and everything in my charge. They told me that I should hide and leave the country. When I was safe outside, they were going to hand over the goods to the Police [...]. I fear for my life [...]. I know that the General Commissioner ordered my disappearance.”⁵⁵

⁵² IACHR, Press Release No. 222/18, [IACHR and Special Rapporteurship on Freedom of Expression express deep concern over decision to declare protests illegal in Nicaragua](#), October 9, 2018.

⁵³ *El Nuevo Diario*, [Gerente de Canal 10 abandonó embajada de Honduras and voló a EEUU](#), December 4, 2018.

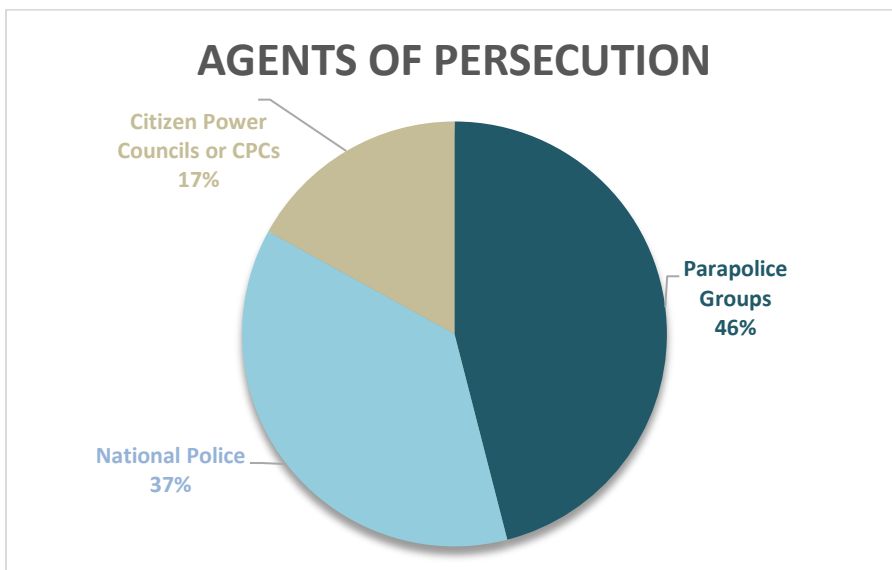
⁵⁴ IACHR, Press Release No. 201/18, [Special Rapporteurship Condemns Attacks, Political Pressure and Indirect Censorship Against Journalists and Media Outlets in Nicaragua](#), September 8, 2018.

⁵⁵ Testimony of a former police officer who left his post to avoid participating in human rights violations, received by the IACHR in San José, October 16, 2018.

B. Agents of the Persecution

71. Based on the analysis of the testimonies, the IACHR has been able to identify that the majority of Nicaraguans who were forced to flee their country were victims of persecution by: (i) para-statal groups (46%); (ii) the National Police (37%); and (iii) surveillance and control groups, such as the Citizen Power Councils (CPCs) (17%).

Agents of Persecution Identified by Interviewees during Working Visit to Costa Rica



Source: IACHR

72. With respect to the para-statal groups, the testimonies collected referred to parapoliice groups or “Sandinista mobs”. All these groups acted in coordination with the National Police and were armed with the support of the Nicaraguan government. The IACHR has identified these repressive structures as para-poliice groups precisely because state authorities, and specifically of the National Police acquiesced in, tolerated and collaborated with their activities.⁵⁶ Likewise, the United Nations High Commissioner for Human Rights warned of a pattern characterized by the intervention of armed pro-government elements.⁵⁷ For its part, the GIEI used the term “para-statal groups” to refer to the various groups of individuals who undertake repressive measures without identifying themselves as police or state officials, but

⁵⁶ IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, OEA/Ser.L/V/II (2018), para. 58; IACHR, Press Release No. 124/18, *IACHR urges Nicaragua to Dismantle Parapoliice Groups and Protect Right to Peaceful Protest*, June 1, 2018.

⁵⁷ OHCHR, *Human Rights Violations and Abuses in the Context of Protests in Nicaragua*, August 2018, pp. 36-38.

who act in coordination with the National Police.⁵⁸ For its part, the government characterized these groups as "voluntary police."

73. These third party groups that have acted with the acquiescence, tolerance and collaboration of the State of Nicaragua, have become the main perpetrators of repression of protests and roadblocks. They also have a high level of organization and preparation. Based on the testimonies received, these structures are composed of ex-military personnel as well as retired police officers. According to the GIEI, when the government reorganized its strategy of repression in the face of sustained mobilization and social protest, a group of traditional militants close to Ortega dedicated themselves to recruiting former soldiers, demobilized from the Patriotic Military Service, retired officers from the Ministry of Interior and other historical militants, to incorporate them into para-statal groups.⁵⁹ According to the information obtained from the testimonies, the "Sandinista mobs" were composed mostly of Nicaraguan youth co-opted by the CPCs.
74. In this regard, the IACHR observes that in an interview held on July 30, 2018, the President of Nicaragua, Mr. Daniel Ortega, when questioned about para-police statements claiming their collaboration with the Police, admitted their participation during the repression:

"Here we have what is called the voluntary police [...]. The voluntary police in special operations and the police themselves normally wear masks." ⁶⁰

75. Similarly, Nicaraguan Police Chief, Francisco Díaz, acknowledged the use of para-police:

"We have what we call the voluntary Police. That is not new. The Law on the National Police [...], establishes the voluntary Police, which has its specific missions and participates together with the Professional Police in preventive actions [...]. Not all of them were voluntary police. We also have our professional police. Legally, it establishes that we can use "balaclavas" to protect identities. Many of them in plain clothes were not voluntary police, they were our professional police. The majority were professional police in undercover work [...]"⁶¹

76. The CPCs are part of the Nicaraguan government surveillance and control system established since 2007. In this regard, the GIEI indicated in its Report that, together with the institutions and apparatus of repression, the government also has territorially organized surveillance and social control operatives: the Family Cabinets

⁵⁸ GIEI Nicaragua, Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018, December 2018, p. 55.

⁵⁹ GIEI Nicaragua, Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018, December 2018, p. 56.

⁶⁰ *Euronews*, [¿Qué quieres preguntar sobre la entrevista a Daniel Ortega? Euronews responde en directo](#), July 31, 2019.

⁶¹ *Dagbladet*, [Dagbladet-intervju vekker oppsikt: - En tilståelse fra politisjefen i Nicaragua](#), February 11, 2019.

– evolving out of former Citizen Power Councils (CPC) - and the Sandinista Leadership Committees (...) with a decentralized structure reaching the neighborhoods and integrating formal institutions with instances of local political power, which allows an important degree of territorial and population control.”⁶² Although the CPCs were initially formed as community structures to address issues of interest to the community, such as health, education, sanitation; they are now part of the Nicaraguan government’s surveillance and control system. Based on the testimonies gathered, the CPCs are in charge of surveillance over the individuals in their sector or neighborhood, and identifying those who participated in roadblocks or demonstrations, who somehow supported dissenters, as well as individuals who are not from a particular neighborhood and may be sheltering in safe houses or with friends. The CPCs reported all the information they collected both to the National Police, who in turn conducted searches for these individuals or sent in para-police groups, as well as to mayor’s offices and/or addresses of the official ruling party.

77. Finally, with regard to the National Police, the Commission identified them as the main perpetrators in the violent repression of demonstrations and citizen protests with the excessive, arbitrary and disproportionate use of force, using help from para-police, also known as ‘shock groups’. In this regard, the IACHR has determined that since the beginning of the protests in April 2018, state agents - mainly Nicaraguan National Police officers and its anti-riot squads, para-police groups acting in collusion with the Police - as well as mayors and pro-government political secretaries have orchestrated a repressive response aimed at deterring and punishing participation in demonstrations and stifling expressions of political dissent.⁶³

C. Role of intermediaries⁶⁴ in the face of threats through social networks

78. During the protests in Nicaragua, social networks such as Facebook, Twitter and Instagram exerted their role as an additional or alternative means of communication to inform society of the events during the various demonstrations. They allowed international visibility into these events, the sharing and dissemination of information on the calls to march, the repression, identification of victims, the insecurity, the presence of ‘shock groups’ and armed groups, as well as a tool to transmit social unrest on the part of the citizens.⁶⁵

⁶² GIEI Nicaragua, Report on the violent events that took place in Nicaragua between April 18th and May 30th, 2018, December 2018, pp. 56-57.

⁶³ IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, OEA/Ser.L/V/II (2018), paras. 58, 90 and 115.

⁶⁴ “Intermediaries” are generally defined as ‘any entity that enables the communication of information from one party to another’. However, the Special Rapporteur for Freedom of Expression understands that the legal definition of in “intermediary” may differ among jurisdictions or countries. [IACHR, Special Rapporteur for Freedom of Expression, *Standards for a Free, Open, and Inclusive Internet*, OEA/Ser.L/V/II, IACHR/RELE/INF.17/17 (2017), para. 102].

⁶⁵ GIEI Nicaragua, Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018, December 2018, p. 63.

79. The information gathered from testimonies shows that social media also played an important role in the transmission of threats and intimidation against participants in the protests, by publishing personal data, death threats and messages threatening people's security and personal integrity, as well as those of their families.⁶⁶ In this regard, a Nicaraguan citizen gave the Commission the following testimony: "on social media networks they sent an image of me with my organization's shirt saying that I should stop talking about the police or I would end up with a mouth full of flies, i.e., dead [...]. This appeared on Facebook [...]. This put my integrity at risk."⁶⁷
80. Similarly, during its visit, the Commission identified a pattern of multiple impacts on the personal integrity of Nicaraguan asylum seekers and refugees caused by threats on social media networks, in particular psychological pathologies, such as anxiety, lack of sleep, post-traumatic stress and depression, among others. In this regard, in her testimony, a woman who supported the protesters by providing food and medicine, referred to the threats she received through social media networks in the following terms:

"The CPCs began to accuse me of delivering weapons to the youths who participated in the marches in Diriamba and Managua; this information circulated to the people of the neighborhood and to the National Police. Photos of me began to be published on Facebook, accusing me of being a terrorist, drug trafficker, in possession of illegal weapons, and people commented with photos of my house and vehicles. Threats appeared on social media that they were going to burn my house, and days later paramilitary groups and people from the neighborhood supported by the CPCs, burned the facilities of the polyclinic which I owned, and where I treated the injured youths. Days before leaving Nicaragua, they also ransacked my house."⁶⁸

81. In this regard, the Commission considers it necessary to refer to the role of Internet companies, such as social media platforms, in adopting measures to prevent and mitigate this type of online content. In this sense, the IACHR's Special Rapporteurship for Freedom of Expression pointed out that the right to freedom of expression finds on the Internet a unique tool to incrementally extend its enormous potential to broad sectors of the population.⁶⁹ However, there is also concern about how this medium provides a platform for racist movements and hate speech; misinformation in user-

⁶⁶ On this point, see among others OHCHR, *Human Rights Violations and Abuses in the Context of Protests in Nicaragua*, August 2018, paras. 6, 37, 94.

⁶⁷ Testimony of a human rights defender who provided legal assistance during the protests, received by the IACHR in San José, October 16, 2018.

⁶⁸ Testimony of an individual who participated in the demonstrations from April 8, 2018, and from then on relied on humanitarian aid, received by the IACHR in San José, October 16, 2018.

⁶⁹ IACHR, Special Rapporteur for Freedom of Expression, *Freedom of Expression and the Internet*. OEA/Ser.L/V/II, IACHR/RELE/INF. 11/13 (2013), para. 10. UN *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*. A/66/290, August 10, 2011, para. 10; IACHR, Special Rapporteur for Freedom of Expression, *Freedom of Expression and the Internet*. OEA/Ser.L/V/II, IACHR/RELE/INF. 11/13 (2013), para. 12.

generated content, as well as the dissemination of messages inciting abuse directed against migrants, asylum-seekers and refugees.⁷⁰

82. With regard to the theme of hate speech on the internet, the Commission has considered that the distinction between legitimate and illegitimate expressions requires sensitive tools and respect for the most rigorous judicial guarantees in accordance with Articles 13, 8 and 25 of the American Convention. Consequently, the complexity and magnitude of the fight against hate speech or incitement to violence could lead Internet companies to restrict expressions even when unconnected to an adverse outcome. In addition, intermediaries do not have - nor are required to have - the operational/technical capacity to review content for which they are not responsible. Nor do they have - nor are they required to have - the legal knowledge necessary to identify the cases in which specific content could effectively produce an unlawful harm that must be prevented.⁷¹
83. In particular, in terms of expressions or content which may endanger the life, security or integrity of a specific group of individuals - as is the case of asylum-seekers and refugees who are *per se* in a situation of vulnerability - Internet companies must adopt prompt and timely mechanisms regarding the transmission of content involving threats and messages inciting violence against them, and endanger the international protection provided by a second State.
84. Specifically, the IACHR considers that private actors have the responsibility to respect human rights online. This includes both a responsibility not to restrict rights and the positive responsibility to create an environment in which rights are respected. In this regard, intermediaries, in particular, should put in place effective systems of monitoring, impact assessments and accessible and effective complaints systems in order to identify actual or potential human rights harms caused by their services or activities.⁷² In addition, in its Report *Standards for a Free, Open and Inclusive Internet*, the Office of the Special Rapporteur pointed out that when negative or potential human rights impacts are identified, private actors should have in place effective

⁷⁰ UN Report of the Special Rapporteur on the Promotion and Protection of the right to Freedom of Opinion and Expression, A/HRC/38/35, April 6, 2018, para. 27. UNHCR, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/HRC/26/49, May 6, 2014, paras. 16-19; UNHCR, Report of the Special Rapporteur on Minority Issues, A/HRC/28/64, January 5, 2015, paras. 41-42.

⁷¹ IACHR, Special Rapporteur for Freedom of Expression, *Freedom of Expression and the Internet*, OEA/Ser.L/V/II, IACHR/RELE/INF. 11/13 (2013), para. 99. See in the same sense, the Special Rapporteur on the Promotion and Protection of the right to Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), OAS Special Rapporteur for the Freedom of Expression and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People's Rights (ACHPR), *Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda*, March 2017.

⁷² IACHR, Special Rapporteur for Freedom of Expression, *Standards for a Free, Open, and Inclusive Internet*, OEA/Ser.L/V/II, IACHR/RELE/INF.17/17 (2017), para. 98.

systems for providing appropriate remedies for those affected, and adjust their activities and systems as necessary to prevent future abuse.⁷³

85. The Commission has determined that these mechanisms should only block the allegedly illicit content, and provide sufficient guarantees of transparency and accountability. Thus any measure to restrict online content should only be adopted: after the illegal content to be blocked has been fully and clearly identified, and when necessary to achieve a pressing aim; under a strict balance of proportionality; and must be carefully designed and clearly limited so as not to affect legitimate speech or protected content. Likewise, as indicated above, the measures must be authorized or put in place pursuant to the appropriate procedural guarantees, according to the terms of Articles 8 and 25 of the American Convention.⁷⁴ In this sense, although social media networks have been a fundamental tool for raising awareness of the situation in Nicaragua, the IACHR considers that the seriousness of the threats received by Nicaraguans on these networks makes imperative the need to analyze the role and obligations played by intermediaries in relation to the persecution and subsequent procedures for determining refugee status or complementary protection.
86. In accordance with the norms and standards of International Human Rights Law, as well as the provisions of the *Guiding Principles on Business and Human Rights*, companies must, among other things: (i) avoid causing or contributing to adverse human rights impacts and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts (Principle 13); (ii) adopt senior level policies aimed at respecting the human rights of its users (Principle 16); as well as, (iii) provide appropriate reparation, including through dispute settlement mechanisms at the operational level that users can access without increasing their “sense of helplessness”. (Principles 22, 29 and 31).
87. Finally, in order to promote transparency, the *Guiding Principles* also recognize that “in order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders.”(Principle 21). Thus, companies must articulate the bases for these restrictions and demonstrate the need and proportionality of those measures (such as content removal or account suspensions).⁷⁵

⁷³ IACHR, Special Rapporteur for Freedom of Expression, *Standards for a Free, Open, and Inclusive Internet*. OEA/Ser.L/V/II, IACHR/RELE/INF.17/17 (2017), para. 99.

⁷⁴ IACHR, Special Rapporteur for Freedom of Expression, *Freedom of Expression and the Internet*. OEA/Ser.L/V/II, IACHR/RELE/INF. 11/13 (2013), paras. 85-86.

⁷⁵ UN Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. A/HRC/38/35, April 6, 2018, para. 28.

CHAPTER 3
INTERNAL DISPLACEMENT IN
NICARAGUA

INTERNAL DISPLACEMENT IN NICARAGUA

88. The Commission has been monitoring how a large number of Nicaraguans have been forced into displacements within the same city or to other cities due to the escalation and prolongation of violence after repression of the protests which commenced in April 2018, and that intensified during the months of July, August and September of the same year.⁷⁶ In this regard, the Commission received information from the testimonies gathered indicating that a significant number of individuals were forced to move internally before deciding to leave their country for Costa Rica.
89. In this regard, the Commission recalls the State obligation to respect and guarantee the right to freedom of movement and residence of all individuals under its jurisdiction, and this includes the prohibition on arbitrary displacement.⁷⁷ Article 22.1 of the American Convention establishes that “every person lawfully in the territory of a State Party has the right to move in it, and to reside in it, subject to the provisions of the law.” The Inter-American Court has considered that this norm protects the right not to be forcibly displaced within a State, or from having to be forcedly leave the territory of the State in which an individual is lawfully present; so guarantees must be provided so that persons can move and reside freely in their places of origin.⁷⁸
90. Similarly, in accordance with the Guiding Principles of Internal Displacement, States have four main duties regarding internally displaced persons: (i) the obligation to prevent displacement; (ii) the obligation to protect and assist [the] displaced during displacement; (iii) the obligation to provide and facilitate humanitarian assistance; and (iv) the obligation to facilitate the return, resettlement and reintegration of internally displaced persons in safety.⁷⁹
91. The organs of the Inter-American Human Rights System have taken the view that internal displacement not only violates the right to move freely in the territory of the State, and to freely choose the place of residence, but also entails the violation of other

⁷⁶ IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, OEA/Ser.L/V/II (2018), para.220.

⁷⁷ IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, OEA/Ser.L/V/II, Doc. 86 (2018), para. 225.

⁷⁸ I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213; and I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192.

⁷⁹ IACHR, *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons” Norms and Standards of the Inter-American Human Rights System*, OEA/SER.L/V/II, Doc. 46/15 (2015), para. 119; and IACHR, Truth, Justice, and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II, Doc. 49/13 (2013), para. 537.

multiple human rights, such as the right to an adequate standard of living, the right to physical integrity, the right to private and family life, children's rights, the right to work, the right to health, the right to education, the right to property, the right to identity, political rights, among others. Likewise, it has been interpreted as a continuous violation, and so remains until individuals can return to their places of origin voluntarily, with dignity and in safety, or until they are voluntarily resettled in another part of the country.⁸⁰

92. The Commission considers it necessary to highlight the findings of the Inter-American Court of Human Rights in the *Case of V.R.P., V.P.C. et al. v. Nicaragua*, in the sense that the right of freedom of movement and residence may be violated when an individual is a victim of threats or harassment, and the State fails to provide the necessary guarantees so that he or she is prevented from moving about and residing freely in the territory in question, even when the threats and harassment originate from non-state actors. Likewise, the lack of an effective investigation into acts of violence, as well as the situation of impunity, can undermine the trust of the victims in the justice system, and contribute to conditions of insecurity. In addition, such a situation of impunity can lead to or perpetuate exile or forced displacement.⁸¹

A. *Reasons for Internal Displacement of Nicaraguans*

93. Since its working visit to Nicaragua and thereafter, the IACHR, through the MESENI, has gathered information on a large number of students, demonstrators, victims and their families, witnesses, human rights defenders, religious leaders, medical and health personnel, indigenous peoples, among others, who have been forced to flee their homes and, in some cases, hide in safe houses.⁸² The Commission has observed that at first the State of Nicaragua's actions were characterized by the violent repression of the protests, which later evolved into selective persecution, arbitrary detentions and practices of criminalization of dissidents and their families. As a consequence, thousands of individuals have been forced to hide and move, even to the point of being forced to flee Nicaragua to seek international protection in other countries.⁸³
94. Similarly, the IACHR received information indicating that the majority of individuals did not usually stay in one place for a long time because of fear and the constant persecution both by individuals close to the government who were searching out those who had fled, as well as by the National Police through lists and each local

⁸⁰ UN Commission on Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission Resolution 1997/39. Addendum: Guiding Principles on Internal Displacement, February 11, 1998, E/CN.4/1998/53/Add.2, Principle 28.

⁸¹ I/A Court H.R., *Case of V.R.P., V.P.C. et al. v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 350, para. 309.

⁸² IACHR, Press Release No. 183/18, IACHR expresses concern about the situation of Nicaraguan migrants and refugees and calls on the States of the region to adopt measures for their protection, August 15, 2018.

⁸³ IACHR, Press Release No. 183/18, IACHR expresses concern about the situation of Nicaraguan migrants and refugees and calls on the States of the region to adopt measures for their protection, August 15, 2018.

neighborhood Citizen Power Council (CPC). The testimonies pointed out that it was impossible to find a safe place in Nicaragua due to the constant vigilance of the National Police and the CPCs:

“[...] some neighbors had to help me out of the house in different vehicles. I had to change safe houses five times, because my name is on the blacklist. The CPCs reported everything to the police and government authorities. There was a police siege at all points and they constantly checked vehicles and public transport buses.”⁸⁴

95. Similarly, in its *Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018*, the Interdisciplinary Group of Independent Experts (GIEI) for Nicaragua referred to the presence of individuals with links to the Nicaraguan government in San José and other parts of Costa Rica searching for Nicaraguans who had fled. As a consequence, these displaced persons did not feel safe, and therefore:

“They frequently stay a good part of the day locked in the rooms where they live, or without going out at night.” The GIEI also indicated the distrust of other Nicaraguans in the same condition of displacement, being isolated from groups and collectives. In the most drastic cases, people would use false names to avoid being identified.⁸⁵

96. In several of the testimonies gathered during its visit to Costa Rica, there was consistent mention of the impossibility to find a safe place in Nicaragua, because different members of the CPCs are ordered to identify any individual who is from outside that sector under surveillance, and to report it to the National Police.

B. Consequences of Internal Displacement on the Rights of Nicaraguans

97. The intimidation, harassment and persecution by state agents, police officers and CPC members against Nicaraguans identified as government opponents is a cause of their forced internal displacement to the different areas and neighborhoods of Nicaragua, and represents a serious impact on their human rights. In its report, the GIEI acknowledged that these types of threats were fairly common in neighborhoods and in community life, from these public bodies and services that are supposed to support the population. This threatening presence also produced divisions and tension between neighbors and the people living their daily lives in the different neighborhoods in Nicaragua.⁸⁶

⁸⁴ Testimony of an individual who participated in the demonstrations from April 18, 2018, and was present in safe houses, received by the IACHR in San José, October 15, 2018.

⁸⁵ GIEI Nicaragua, *Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018*, December 2018, p. 324.

⁸⁶ GIEI Nicaragua, *Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018*, December 2018, p. 308.

98. Internal displacement has also resulted in the separation of family groups. Individuals fleeing to different places, such as safe houses, find it difficult to contact their relatives for fear of being discovered and that their relatives suffer reprisals or threats by State agents or persons close to the government to give information on their whereabouts. This scattering of families has resulted in the loss of emotional ties with family, friends and other people in the community.⁸⁷

⁸⁷ GIEI Nicaragua, Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018, December 2018, p. 308.

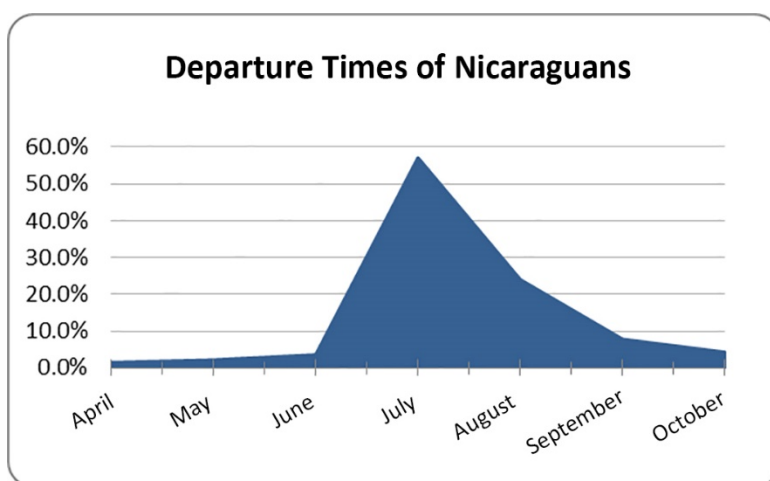
CHAPTER 4

FORCED MIGRATION FROM NICARAGUA TO COSTA RICA

FORCED MIGRATION FROM NICARAGUA TO COSTA RICA

99. State repression and human rights violations in Nicaragua have not only forced Nicaraguans to move internally, but have also generated an arbitrary displacement outside Nicaraguan territory via unsafe and clandestine routes. Thus, one year after the onset of the crisis, more than 70,000 persons have been forced to flee Nicaragua.⁸⁸ Similarly, the IACHR observes that the most of the Nicaraguans' departures coincide with the beginning of "Cleanup Operation" and the consequent escalation of violence between April and October 2018, which has previously been identified by the IACHR.⁸⁹

Departure Times of Nicaraguans: January to October



Source: IACHR

100. Regarding the departure of Nicaraguans, the State of Nicaragua informed the IACHR that according to the Migration and Non Nationals records from April to October 2018, "198,162 Nicaraguans were registered as having departed by legally authorized southern border posts, which compared to 225,858 departures for the same period in 2017, constitute a decrease of 12.2% in relation to the 2018 data".⁹⁰ Likewise, the

⁸⁸ UNHCR, *Americas Monthly Report*, May 2019, p. 4.

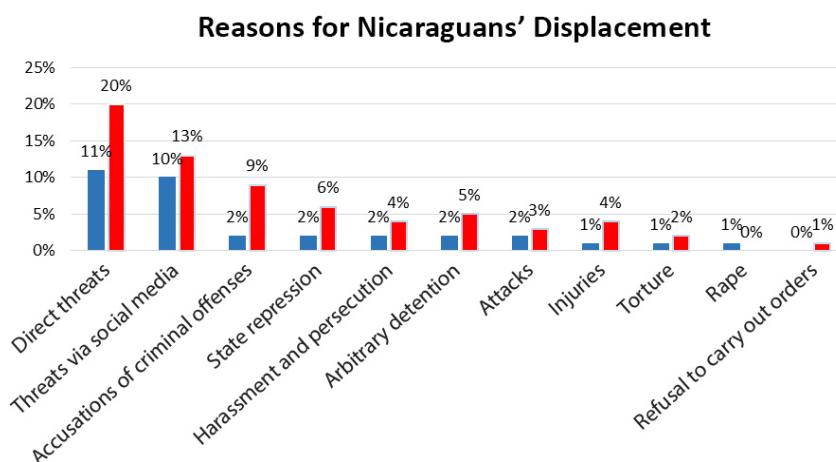
⁸⁹ IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, OEA/Ser.L/V/II, Doc. 86 (2018), paras. 220-222.

⁹⁰ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR's Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, para. 11.

State of Nicaragua highlighted that, during the same period, 182,854 Nicaraguans coming from Costa Rica entered the country, “indicating that at the end of October 2018, 92.3% of Nicaraguans who had left for the neighboring country had returned”. Therefore, no mass irregular migration of Nicaraguans originated in the northern and southern borders of the national territory, since nationals’ departure and entry into the country, remained within the natural parameters”.⁹¹

101. On the other hand, the testimonies gathered by the IACHR indicated that the main reasons why Nicaraguans flee were due, in 31% of the cases, to direct threats; in 23% of cases, due to threats via social media; in 11% of cases, due to accusations of criminal offenses; in 8%, due to state repression; in 6%, due to harassment and persecution; in 7%, due to arbitrary detention; in 5%, due to attacks, and in another 5%, as a result of injuries; in 1% of cases, due to rape, and in another 1% of cases, due to a refusal to carry out orders.

Reasons for Nicaraguans’ Displacement



Source: IACHR

102. The IACHR has monitored and verified the fact that the Nicaraguans who were forced to migrate mostly moved to other countries in the region, such as Costa Rica, Honduras, Panama, Mexico, the United States and Canada, and to a lesser extent, also to Spain.⁹² In this latter country there was a record increase in political asylum applications of 900% over those registered in 2017.⁹³ In this regard, the GIEI Report of Nicaragua documented that as a result of the threat level, individuals have had to

⁹¹ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, para. 12.

⁹² See, IACHR, Press Release No. 183/18, [IACHR expresses concern about the situation of Nicaraguan migrants and refugees and calls on the States of the region to adopt measures for their protection](#), August 15, 2018.

⁹³ *El Nuevo Diario*, [Petición de asilo de nicas en España crece 9 veces](#), October 12, 2018.

travel with only the clothes on their backs, hiding during the day, moving at night, avoiding controls, crossing rivers, paying bribes, and risking arrest or even death.⁹⁴

103. The Commission received information indicating that Nicaraguans persecuted by the State, as well as being victims of constant threats, attacks and harassment on their families, are confronted with a series of obstacles to leave their country and to access regular and secure migratory routes, which makes it difficult for them to request international protection in other countries, such as Costa Rica.
104. As noted in the previous chapter, the State of Nicaragua has created a surveillance and persecution system via CPCs and public force entities, such as the National Police and the Military Forces, who have a list of names of participants in the demonstrations, supporters or dissenters in some way. In some cases the State has arbitrarily accused them of committing offenses, thereby legitimizing searches.
105. During its working visit and based on the information provided, the IACHR was able to verify the conditions experienced by Nicaraguans both when they leave Nicaragua and when they enter Costa Rica, and identified the following risks and obstacles: (i) military checkpoints at strategic exit points; (ii) militarization of the border with Costa Rica; (iii) use of clandestine routes and irregular and insecure migratory channels; and (iv) migrant-trafficking, as set out below.

A. *Departure from the State of Nicaragua*

106. The Commission was aware of military checkpoints at various points of departure from the State of Nicaragua, as well as the militarization of its border with Costa Rica. According to the information received, these circumstances have hindered the departure of Nicaraguans seeking to flee from repression and state persecution and, therefore, their right to seek and receive asylum.
107. In accordance with the information received, these military checkpoints' main objective is to review the documentation of Nicaraguans crossing at these points and identifying whether their names are on a nationally available list, including the names of individuals identified in the demonstrations, the roadblocks, and those who have supported the dissenters through the supply of medicines, food or the dissemination of images and videos.⁹⁵ Individuals identified at military checkpoints are detained, and are not permitted to continue on their way, or to cross the border into Costa Rica. During its visit, the IACHR received the following testimony from an individual who had to cross by military checkpoints and who indicated that:

⁹⁴ GIEI Nicaragua, Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018, December 2018, p. 324.

⁹⁵ IACHR, Press Release No. 233/18: *Preliminary Observations on the working visit to monitor the situation of Nicaraguans forced to flee to Costa Rica*, November 1, 2108.

“On the way out of Nicaragua there was an Army control and checkpoint. They took people's details, compared them to a list and photos they had on their cell phones and checked our bags. Some people had their belongings taken or were charged money to pass through; others were detained and removed from the checkpoint. They intimidated people by asking if they were fleeing or if they had participated in some of the protests.⁹⁶

108. Regarding the installation of checkpoints and the militarization of the border, the Commission observes that these measures put the lives of Nicaraguans who are forced out of their country and request international protection in Costa Rica at greater risk. In this regard, the IACHR has indicated that historical experience shows that migrants will be forced to look for more dangerous routes and that the absence of legal avenues to migrate will also encourage people to turn to migrant traffickers, thereby endangering their life and physical integrity.⁹⁷ In this regard, the Commission reiterates the right for any person to leave the territory of their country, established in Article 22.2 of the American Convention on Human Rights. Additionally, the prohibition of leaving the territory itself violates the right to seek and receive asylum, established in Article 22.7 of the American Convention on Human Rights.
109. In this sense, the Inter-American Court has agreed with the United Nations Human Rights Committee in pointing out that the freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country. Consequently, this freedom includes both temporary travel abroad and departure in case of permanent migration. Likewise, the right of freedom of movement and residence includes the right of the person to determine the State of destination.⁹⁸
110. Although this right is not absolute, in accordance with Articles 22.3 and 30 of the American Convention, it can only be subject to restrictions meeting the requirements of legality, necessity and proportionality.⁹⁹ Regarding the principle of legality, the Inter-American Court has cited the criteria of the Human Rights Committee, which indicates that the limitations on rights must be determined by law, and that said restrictions do not impair the essence of the law, which must contain precise criteria and may not confer unfettered discretion on those charged with their enforcement.¹⁰⁰ For its part, with respect to the principle of necessity, the State must be able to offer sufficient evidence to show that the restriction on the right to personal liberty and

⁹⁶ Testimony of a former police officer who refused to obey orders against the demonstrators, received by the IACHR in San José, October 15, 2018.

⁹⁷ IACHR, Press Release No. 008/17, [IACHR expresses concern over Executive Orders on Immigration and Refugees in the United States](#), February 1, 2017.

⁹⁸ UN Human Rights Committee, *General Comment No.27: Article 12 (Freedom of Movement)*, November 2, 1999, para. 8.

⁹⁹ IACHR, [“Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons” Norms and Standards of the Inter-American Human Rights System](#), OEA/SER.L/V/II, Doc. 46/15 (2015), para. 258.

¹⁰⁰ UN Human Rights Committee, *General Comment No.27: Article 12 (Freedom of Movement)*, November 2, 1999, paras. 12 and 13.

freedom of movement is reasonable.¹⁰¹ Finally, the proportionality principle requires that restrictions only apply if there is no other less restrictive measure available and for the time strictly necessary to serve its purpose.¹⁰²

111. On the other hand, the Commission recalls that the right to leave any country is closely related to the right to seek and receive asylum. In this sense, an arbitrary restriction on this right may characterize a violation of Article 22.7 of the American Convention. The Commission observes that limiting the right of Nicaraguans to leave would fail to comply with the legitimate limitations on the right to free movement and residence, because they would breach the principles of legality, proportionality and adequacy. Based on the foregoing, the Commission urges the State of Nicaragua to guarantee the rights of free movement and residence, in particular the right to leave any country and the right to seek and receive asylum.
112. Due to the lack of regular, safe, accessible and feasible channels for Nicaraguans to migrate, especially regarding the right to leave the country safely, many have had no other option but to resort to clandestine channels providing irregular migration, via risky land routes. In this regard, the Commission received information on the irregular crossing sites known as "blind spots". These routes increase the risks and dangers that migrants already face. According to the testimonies gathered, those Nicaraguans leaving via "blind spots" face long hours of walking, as well as dangerous crossings through ditches and swamps. The information obtained during the working visit reveals that in at least 85% of 152 testimonies, Nicaraguans exited via "blind spots." The IACHR received the testimony from relatives of peasant leaders who, in fear of their lives, were forced to leave Nicaragua via insecure routes:

“Our journey was by wooded hills for three days. We were nine women with nine children. A van took us wrapped in plastic to prevent military checkpoints from stopping us. The men, on the other hand, were walking all the way up the mountain, sleeping on the hillsides and crossing rivers, for several days, without the necessary food for that crossing.”¹⁰³

113. In a similar sense, the IACHR was informed that these people frequently depart via clandestine routes guided by migrant traffickers known as “coyotes”, who obtain substantial economic benefits by transferring and facilitating their access to Costa Rica. In 12% of the testimonies received they entered into contact with “coyotes” to facilitate their departure from Nicaragua, as well as their entry into Costa Rica. The “coyotes” not only provide transportation for migrants, but also hire out the appropriate clothing (rubber boots) in order to cross the ditches and swamps. In addition, the Commission received information on the amounts charged to migrants

¹⁰¹ I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 124.

¹⁰² I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 133.

¹⁰³ Testimony of a former police officer who refused to comply with orders against demonstrators, received by the IACHR in San José, October 15 2018.

to cross the border through private homes and yards that lie on the border with Costa Rica. In this regard, the IACHR received the following testimony:

“When I left my country, I was running from the border guards. They were even chasing us and shooting at us from just three hundred meters away. We arrived at a private estate, where we were transferred to the border. They were Nicaraguans with farms. We crossed by paying a coyote, illegally.¹⁰⁴”

114. During its working visit, in addition to receiving direct testimonies from migrants, the IACHR delegation travelled to the border region of Peñas Blancas in Costa Rica, where it was able to observe part of the route taken by Nicaraguans along trails and swamps to cross via “blind spots” to Costa Rican territory, jumping the border wall which divides both countries. There, the Commission received the testimony of a group of people who were crossing the border wall at that time, who stated:

“I left Nicaragua out of fear. We lived in Jinotepe, and that is full of anti-riot police. My family supported the marches and we are afraid of state repression. To get here, I had to take a bus that left me closest to the border, but not so close as to meet with military checkpoints. In order to cross the swamps, I had to rent some boots, and on crossing the wall, I had to return them.¹⁰⁵”

115. The IACHR urges the State of Nicaragua to guarantee that all persons can freely leave Nicaragua and that their right to seek and receive asylum abroad is respected, in accordance with Article 22.2 and 22.7 of the American Convention on Human Rights.

B. Forced Migration of Nicaraguans as Gross Violations of Human Rights

116. The IACHR has monitored the serious human rights crisis taking place in Nicaragua since April 2018, and the profiles of persecuted individuals identified both in this report as well as in the country report published in June of 2018, and in Chapter IV B of the 2018 Annual Report. The IACHR has concluded that the population considered by the Nicaraguan government as opponents was subjected to persecution, abuse and violence. Likewise, the individuals interviewed during the working visit to Costa Rica said that those participating in protests, providing medical assistance to protesters, reporting irregularities, refusing to participate in extrajudicial executions, among others, and were targeted with acts of intimidation, threats and harassment.
117. The Nicaraguans who gave their testimonies to the IACHR said they had suffered persecution from vehicles, noticed motorcycles passing by their homes or found “graffiti” on the walls of their houses. Many witnessed the murder of someone close

¹⁰⁴ Testimony received by the IACHR in San José, October 15, 2018.

¹⁰⁵ Testimony of a person crossing via “blind spots” at Peñas Blancas, on the border with Nicaragua, received by the IACHR in Peñas Blancas, October 17, 2018.

to them, or subjected to arbitrary detentions. The majority indicated that they were on the government “lists”, and so received multiple death threats via social media, photographs of relatives identified as “the next torture victim” or even direct warnings from official agents that if they failed to leave the country, they would be arrested. Consequently, phrases such as “if I return, they will kill me”, “I have a price on my head”, “They follow me to kill me”, or “if I return, they told me that my family will suffer the consequences” are common.

118. Likewise, based on the statements made by the GIEI,¹⁰⁶ the IACHR observes that these events were devised and supported by the highest authorities of the country, including the President of the Republic. This is evidenced by the fact that similar acts of persecution have occurred in different parts of the country; they have persisted over time; public resources have been used; public discourse to discredit those identified as government opponents; the political backing of State agents; the role of civilians with full governmental support; and the failure to initiate investigations into both the violations causing the displacement as well as the displacements themselves.
119. In addition to the foregoing, the most serious documented pattern of conduct concerns the use of firearms with lethal or serious injury capabilities, as well as politically-motivated persecutions evidenced by arbitrary detentions; the denial of the right to medical treatment for injured protesters; and the denial of the right to effective judicial protection.¹⁰⁷ Additionally, these attacks were aimed at a civilian population identified as government opponents or dissidents.
120. In this regard, the GIEI determined that the existence of a widespread and systematic attack against the civilian population in Nicaragua, due to the place and timing of the events, the number of victims, the severity of the repressions, as well as certain patterns of activity carried out with state resources, reflected a well-defined policy endorsed at the very highest levels of the State.¹⁰⁸ In the *Report on the Violent Events that took place in Nicaragua between April 18 and May 30, 2018*,¹⁰⁹ the GIEI established that crimes against humanity had been committed - murder, imprisonment or other deprivation of physical liberty, persecution, rape, torture and forced disappearances. The IACHR observes that the forced migration of Nicaraguans originates as a consequence and continuation of this same context of repression, persecution, abuse and systematic and generalized violence against the population considered as Nicaraguan government opponents.
121. In this regard, the Commission emphasizes that from January to September 2018 alone, a total of 52,000 Nicaraguans were recorded entering and staying in Costa Rica;

¹⁰⁶ GIEI Nicaragua, [Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018](#), December 2018, p. 228.

¹⁰⁷ IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#). OEA/Ser.L/V/II, Doc. 86 (2018), Chapter 3; GIEI Nicaragua, [Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018](#), December 2018, p. 229.

¹⁰⁸ GIEI Nicaragua, [Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018](#), December 2018, p.228.

¹⁰⁹ GIEI Nicaragua, [Report on the violent events that took place in Nicaragua between April 18th and May 30th 2018](#), December 2018, pp.224-237.

and up until May 2019, the figure was 55,500 Nicaraguans who have been forced to leave the country and request international protection in Costa Rica.¹¹⁰ In addition to these alarming figures is the number of Nicaraguans who have been forced to leave for other countries such as Canada, Spain, the United States, Honduras, Mexico and Panama because of state repression and the violation of their human rights.

122. The IACHR has observed that Nicaraguans forced to move have done so with a tendency to flee inside and outside their country, after being subjected to coercive means such as threats both direct and via social media or intermediaries; murder of family members, colleagues and friends; torture; arbitrary detentions; and sexual violence, among others. In that sense, the IACHR points out that the decision of Nicaraguans considered as opponents of the government to flee is not based on a voluntary election, but on the only way to avoid imminent threats to their life and integrity, i.e., of submission to a state of coercion and fear that, by applying the above criteria, also implies having been displaced “by force”. As a consequence, thousands of individuals have been forced to leave their country and request international protection, a large part of them in the State of Costa Rica.
123. On the other hand, as the interviewees have repeatedly stated, if they try to return, there is a real risk of prejudice to their life and integrity, or to that of their families in Nicaragua. They have been warned about this point by State agents or private parties acting with the State’s acquiescence or tolerance. They also have a well-founded fear that the violations previously experienced in their country will be repeated.
124. In accordance with the above, and based on the work of the Inter-American Commission monitoring the situation of human rights in Nicaragua, as well as the work of the GIEI and the Special Monitoring Mechanism for Nicaragua (MESENI), the IACHR considers that the forced migration of Nicaraguans inside and outside their country constitutes, in itself, a gross violation of human rights.
125. Throughout its case law, the Commission and the Inter-American Court have developed the States’ obligation to investigate and identify, prosecute and, where appropriate, punish those responsible for gross human rights violations. Thus, the Inter-American Court has established the obligation without delay to initiate a serious, impartial and effective investigation *ex officio*.¹¹¹ Additionally, it has indicated that this obligation becomes especially acute and important given the seriousness of the crimes committed and the nature of the rights breached.¹¹² In view

¹¹⁰ UNHCR, [Americas Monthly Report](#), May 2019, p. 4.

¹¹¹ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 145; I/A Court H.R., *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 115; I/A Court H.R., *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 110; I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 283.

¹¹² I/A Court H.R., *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 157; I/A Court H.R., *Case of Goiburú et al. v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 84; I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 193; I/A Court H.R., *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparation and Costs. Judgment of September 1, 2010. Series C No. 217, para. 197.

of the foregoing, the Commission reiterates its call for gross human rights violations committed in the context of the repression to be duly investigated, prosecuted, sentenced, including those related to forced migration of Nicaraguans.

CHAPTER 5

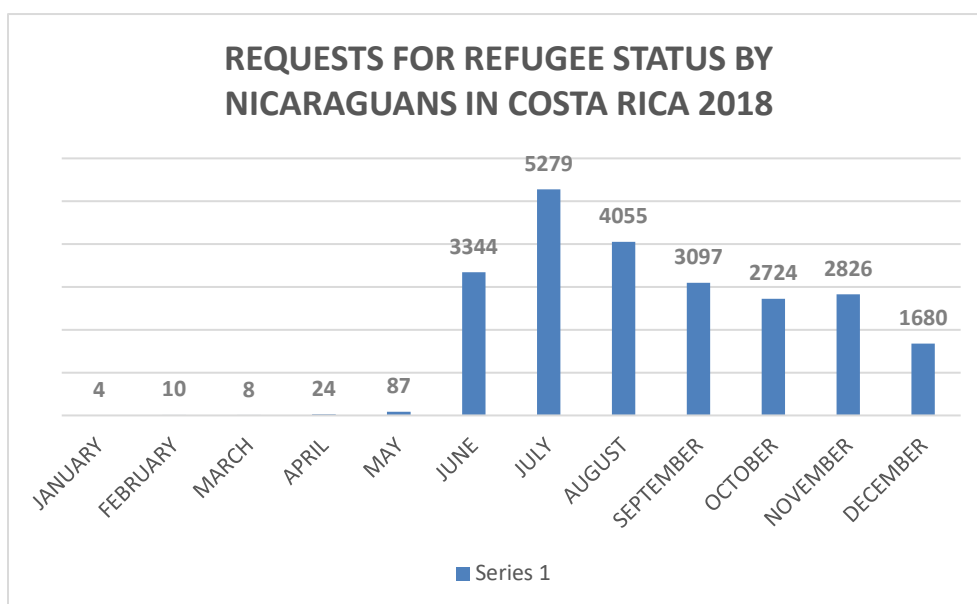
ENTERING COSTA RICA AND THE PROCESS FOR RECOGNIZING REFUGEE STATUS

ENTERING COSTA RICA AND THE PROCESS FOR RECOGNIZING REFUGEE STATUS

A. *Entering the State of Costa Rica*

126. The Commission recognizes the State of Costa Rica's open borders policy, which has protected thousands of individuals who have been forced to flee Nicaragua. According to the information received from the State of Costa Rica, estimates are that between January and September 2018, about 52,000 Nicaraguans entered Costa Rica and have stayed in the country. On the other hand, up until May 2019, the information provided indicates the registration of a total of 55,500 individuals who had expressed the need for international protection in Costa Rica.
127. In this regard, the IACHR observes that a greater number of applications were received for the recognition of refugee status by Nicaraguans in the months of June, July and August 2018 (3,344, 5,279 and 4,055, respectively), when the repression increased, as well as criminalization and persecution in Nicaragua.

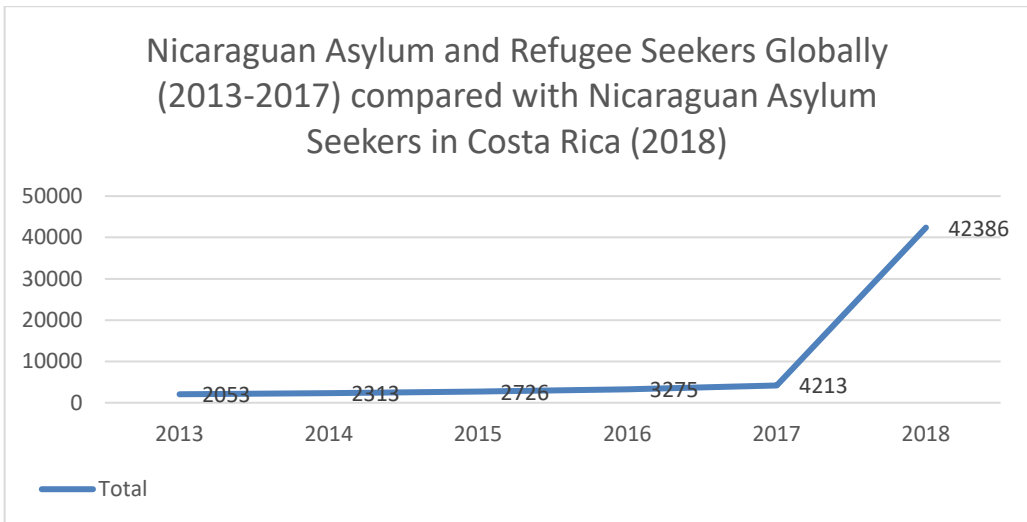
Requests for Refugee Status by Nicaraguans in Costa Rica



Source: Official Statistics. Costa Rica Refugee Unit

128. The IACHR is deeply concerned with the exponential rise in the number of Nicaraguans needing international protection in Costa Rica, compared to the number of Nicaraguan asylum-seekers and refugees reported in the last five years worldwide. According to the figures generated annually by the UNHCR, during the last five years the number of asylum-seekers and refugees of Nicaraguan nationality globally had remained below 3,000 and 1,500, respectively.¹¹³ In this sense, from 2017 to 2018 and only taking Costa Rica in account, there has been a 1,376% increase in the number of Nicaraguans requesting asylum compared to the global figures referred to.

Nicaraguans Requesting Asylum and Refugee Status Globally (2013-2017) compared with Nicaraguans Requesting Asylum in Costa Rica (2018)



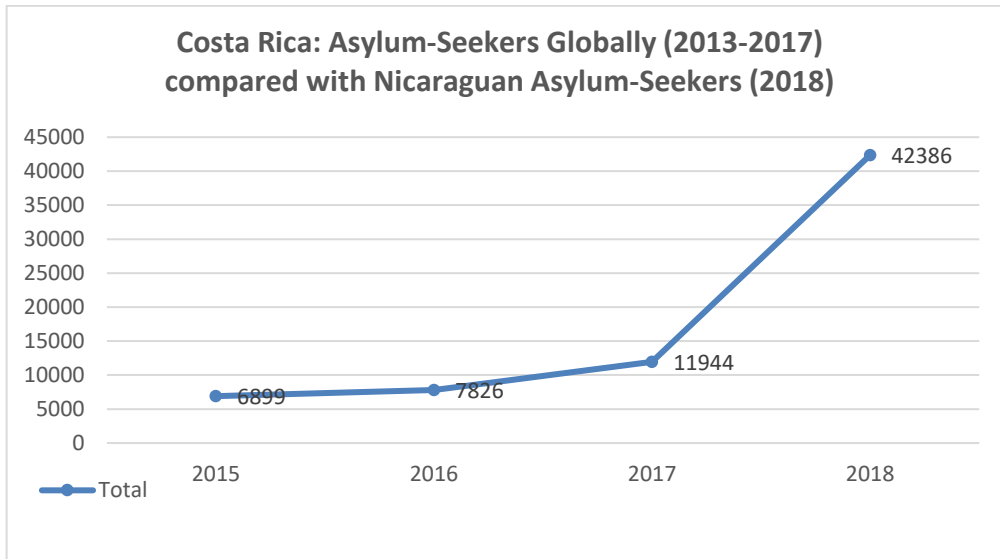
Source: Reports 2013 to 2017, Global Trends, UNHCR, and Official Statistics, Costa Rica Refugee Unit

129. Similarly, the annual figures produced by the UNHCR establish that between 2015 and 2017, Costa Rica received between 6,000 and 12,000 asylum-seekers and refugees annually from different places of origin.¹¹⁴ It is evident from the figures, that up until September 2018, there was a 476.8% increase in the number of individuals who have international protection needs in Costa Rica, only taking into account the 42,386 Nicaraguans who entered between the months of January and October of 2018.

¹¹³ For example, in 2013, 515 Nicaraguans requested asylum and 1,538 requested refugee status; in 2014, the number of applicants rose to 726 and 1,587, respectively; subsequently, in 2015, there were 1,248 asylum seekers of Nicaraguan origin and 1,478 refugees; in 2016, the number of asylum seekers reached 2,126 and refugees 1,149; finally, in 2017, the number of Nicaraguans seeking asylum worldwide amounted to 2,735 and 1,478 refugees. UNHCR, Global Trends, Reports 2013 to 2017.

¹¹⁴ UNHCR, Global Trends, Reports 2013 to 2017.

Costa Rica: Individuals Requesting Asylum Globally (2013-2017) compared with Nicaraguan Asylum Seekers (2018)



Source: Reports 2013 to 2017, Global Trends, UNHCR, and Official Statistics, Costa Rica Refugee Unit

130. Additionally, up until the time the Commission visited, it was informed that with respect to the Nicaraguans, in 2018, three requests for refugee status based on political opinion had been approved, 212 applications had been rejected, and twelve resolutions were issued to maintain refugee status.
131. Under the domestic legislation of Costa Rica, Nicaraguans require a tourist visa to enter their territory legally.¹¹⁵ This visa allows them to legally remain for a maximum period of up to 90 days. However, due to the circumstances surrounding the departure of the Nicaraguans, who have had to flee their country immediately due to individual persecution by state and private actors, as set out in previous paragraphs, it is reasonable to appreciate the difficulties facing them to fulfill the necessary procedures to obtain a visa prior to leaving Nicaragua.
132. The Commission indicates that according to the testimonies received during its working visit, Nicaraguans claimed that upon entering Costa Rican territory and expressing their intention to apply for asylum to the Migration Police officers at the border area, they were redirected immediately to the appropriate authorities to submit their formal asylum application. Likewise, 52% of the testimonies indicated they had received information on their right to seek and request asylum from the immigration authorities in Peñas Blancas. The Commission was even aware of some cases, particularly those who had been fleeing via “blind spots” for a long time, the injured, as well as women with children, who were interviewed by immigration

¹¹⁵ Ministry of Government and the Police, General Directorate for Migration and Non Nationals. General Directives on Entrance Visas for Non-Residents, September 14, 2018.

agents the same day in which they requested asylum and were issued their provisional asylum seeker card.

133. With respect to the entry of migrants to Costa Rican territory, the State of Costa Rica has adopted measures to address the situation, such as the Guidelines on Comprehensive Care of the Migratory Phenomenon, which establishes that the Ministry of Public Security will be in charge of border assistance and security, an entity that must also: (i) inform the various authorities about the arrival and departure of migratory flows; and (ii) coordinate with the Migration Police the appropriate measures for the control of entry and exit of this population.
134. The Commission also received information from the State of Costa Rica about the Action Protocol of the Special Migratory Situations Team (ESME), which serves as a guide to identify people with vulnerabilities or who are victims of a crime. This Protocol also establishes the need to ensure that no-one with international protection needs is rejected at the border, or deported to their country of origin. In the follow-up to ESME, the authorities identify, assess and assist children, possible victims of human trafficking, refugees and asylum-seekers, potential victims of sexual or gender-based violence, pregnant women, victims of migrant smuggling, shipwrecked individuals, mass displacements and the LGBTI population.¹¹⁶ The Commission welcomes the use of ESME and urges the State of Costa Rica to continue using it.
135. Despite the good practices of the State of Costa Rica, the Commission also received information regarding cases of Nicaraguans entering Costa Rica via irregular routes or “blind spots” and who were turned back and returned to the Nicaraguan side of the border without an adequate assessment of possible international protection needs. In the most serious cases, some of these individuals were arrested by Nicaraguan police officers. The Commission also received information on cases of individuals being turned back at the Juan Santamaría International Airport.
136. In its observations on the draft of this report, the State of Costa Rica indicated to the IACHR that, according to the definition contained in the 1961 General Migration and Non Nationals Statute Law No. 8764, the petition for refugee status is a voluntary act of those requiring international protection. In this sense, the refugee applicant must express his or her well-founded fears of persecution and, therefore, it is not possible for immigration control officials to act *ex officio* for a migrant, regardless of nationality, if he or she fails to comply with the entry and residence requirements. Additionally, the State of Costa Rica indicated that it is the obligation of the General Directorate of Migration and Non-Nationals (DGME) to supervise the entry and residence of individuals in the national territory, “so that the application *ex officio* of the Convention provisions regulating refugee issues would be inadmissible, without thereby attempting to violate the principle of *non-refoulement*.”¹¹⁷
137. In this regard, Article 22.8 of the American Convention on Human Rights recognizes the right to *non-refoulement*, stating “in no case may an alien be deported or returned

¹¹⁶ General Directorate of Migration and Non Nationals, Action Protocol for Special Migratory Situations, September 2018.

¹¹⁷ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica’s observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, p. 1.

to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.” Similarly, Article 33(1) of the 1951 Convention Relating to the Status of Refugees establishes the prohibition on expelling or returning in any manner, a refugee to a territory where his or her life or freedom may be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.

138. The IACHR points out that in the Inter-American System, the principle of *non-refoulement* is broader in its sense and scope; thus individuals are protected against refoulement as a specific form of asylum under Article 22.8 of the Convention, regardless of their legal or migratory status in the State in question.¹¹⁸ Both the IACHR and the Inter-American Court have considered that the principle of non-refoulement necessarily implies that refugees or those requiring international protection cannot be rejected at the border or expelled without an adequate and individualized analysis of their applications.¹¹⁹
139. The principle of *non-refoulement* is considered the cornerstone of the right to asylum and the international law of refugees,¹²⁰ and is also a customary norm of international law¹²¹ that has been recognized as a *jus cogens* norm.¹²² The right to *non-refoulement* is not exclusive to refugees, as it is intended to protect people's life, security, integrity or freedom. In this regard, the Inter-American Court considered it as a "guarantee of various non-derogable human rights."¹²³ The principle of *non-refoulement* also includes the prohibition of indirect *refoulement*, which implies that an individual requesting asylum should not be turned back or expelled where there is the possibility of suffering any risk of persecution, or to a State from which he or she may be returned to the country where this risk was suffered.¹²⁴ Likewise, the IACHR has pointed out

¹¹⁸ I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 152.

¹¹⁹ IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Doc. 40 rev. (2000), para. 25; I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 153.

¹²⁰ The principle of *non-refoulement* has also been characterized by the Executive Committee of the United Nations High Commissioner for Refugees as a “cardinal principle” for the protection of refugees, which “encourages States to intensify their efforts to protect the rights of refugees”. See: General Conclusion on International Protection, approved by the Executive Committee (42nd Session), No.65 (XLII) – 1991, General Conclusions, para. c.

¹²¹ Declaration of States parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, paragraph 4, indicating that: “Accepting the fundamental importance and enduring relevance of this international instrument of rights and principles, in particular the core principle of non-refoulement is embedded in customary international law.”

¹²² IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Doc. 40 rev. (2000), para. 154. In the same sense, see, IACHR, *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116, Doc 5 rev. 1 corr. (2002), para. 394.

¹²³ I/A Court H.R., *The institution of asylum, and its recognition as a human right under the Inter-American System of Protection (interpretation and scope of Articles 5, 22(7) and 22(8) in relation to Article 1(1) of the American Convention on Human Rights)*. Advisory Opinion OC-25/18 of May 30, 2018. Series A No. 25, para. 180.

¹²⁴ I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 153.

that individuals in situations of particular vulnerability must be treated with a differentiated approach in terms of the adoption of special protection measures.¹²⁵

140. In this sense, regardless of the migratory routes used by Nicaraguans to enter Costa Rica, they have the right to request asylum in accordance with Article 22.7 of the American Convention on Human Rights. The Commission also reminds the State of Costa Rica that rejection at the border violates the right to seek and receive asylum, as it prevents individuals from accessing fair and effective procedures for their possible international protection needs to be assessed. Additionally, it is essential to recognize the impact state persecution in Nicaragua has had on vulnerable populations, and to have differentiated approaches responding to the specific needs of children and adolescents, women, the elderly, indigenous peoples, individuals with disabilities, LGBTI individuals, journalists, human rights defenders and other groups with protection needs. Based on the identification of these needs, the State of Costa Rica must develop public policies with a comprehensive and human rights-based approach.
141. On the other hand, the Commission considers it relevant to recall the importance of mechanisms ensuring autonomous and independent monitoring that allow civil society, regional and international organizations to monitor State compliance with the human rights of migrants. In this regard, the Commission received information regarding the Costa Rican authorities' refusal to allow civil society organizations, such as HIAS, to carry out monitoring and to provide information and free legal advice at the facilities of the General Directorate of Migration and Non Nationals. The Commission urges the Costa Rican authorities to guarantee independent monitoring and to establish channels with civil society organizations, legal representatives, regional and international organizations to provide information on the rights of Nicaraguans.
142. In this sense, the Commission learned of the Costa Rican authorities' refusal for civil society organizations to visit the Central Regional Detention Center (CARC) on a monthly basis. In this regard, the Commission has expressed the importance of civil society organizations' having access to detention centers in order to monitor detention conditions, which also includes: guaranteeing access to all facilities in these detention centers; access to information and documentation related to the institutions and persons deprived of their liberty; and the possibility of conducting private and confidential interviews with persons deprived of their liberty and personnel, as established in Principle XXIV of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.¹²⁶
143. The Commission is aware of the commitments of the State of Costa Rica in the Ministry of Foreign Affairs to provide training for public officials. In this sense, the Commission urges the State to implement these commitments and provide training and awareness-raising for agents of the Ministry of Public Security and the Professional Migration Police for the effective identification of individuals in need of international

¹²⁵ IACHR, [Resolution 2/18 Forced Migration of Venezuelans](#), March 2, 2018.

¹²⁶ IACHR, Press Release No. 119/17, [IACHR expresses deep concern for Deaths and Detention Conditions at Migrant Detention Centers in the United States](#), August 11, 2017.

protection and special protection, as well as the appropriate channels to reach the corresponding authorities, provide information and ensure the rights to seek and receive asylum and *non-refoulement*.

144. In its observations on the present report, the State of Costa Rica pointed out that the Professional Migration Police officers have been trained to act in accordance with the pre-established procedures for the attention of individuals requesting international protection. It also noted that, recently, a total of 210 officials had been trained.¹²⁷
145. Finally, the Commission is aware that as long as the State of Nicaragua continues with the repression and criminalization of the exercise of peaceful protest and expression of political dissent, the forced migration of Nicaraguans will continue to increase progressively. In this regard, the Commission considers it necessary to develop a coordinated regional response based on human rights and the principle of shared responsibility to respond before, during and after the forced displacement of Nicaraguans. The IACHR urges all the States of the region to guarantee entry into their territory and asylum procedure to Nicaraguans, as well as to provide protection to those requiring it.

B. Procedure for Recognizing Refugee Status in Costa Rica

146. The procedures for the recognition of refugee status are aimed at determining whether an individual seeking international protection fulfills the requirements to be recognized as a refugee in accordance with international, regional and national legal obligations. In this regard, the Inter-American Court has stated that “the recognition of a person’s refugee status is not constitutive, but declarative; therefore, the State’s obligation is to ensure a duty of special care in the verification of this status and in the measures that it may adopt, through appropriate procedures and in accordance with due process.”¹²⁸
147. The Commission considers that the procedures for the recognition of refugee status are paramount as they entail an assessment and decision on the possible risk of affecting the most basic rights, such as life, integrity and liberty.¹²⁹ Additionally, the Commission observes that the effective enjoyment of the rights and benefits deriving from a person’s refugee status depends on the recognition that other States make in assessing whether the situation of a person or group of persons is consistent with the definition of refugee.¹³⁰

¹²⁷ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica’s observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, p. 1.

¹²⁸ I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, paras. 145 and 150.

¹²⁹ IACHR, Report No. 136/1, Case 12,474, Merits, *Pacheco Tineo Family*, Bolivia, October 31, 2011, para. 136. In this sense, see also, I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 157.

¹³⁰ Goodwin-Gill, Guy. *The Refugee in International Law*. Oxford: Clarendon Press, 1996, p. 51.

148. In this regard, the Commission and the Court have outlined the guarantees that must be respected for asylum-seekers. In particular, in the *Case of Pacheco Tineo*, the Court defined the following obligations for States:

1. They must guarantee the applicant the necessary facilities, including the services of a competent interpreter, as well as, if appropriate, access to legal assistance and representation, in order to submit their request to the authorities. Thus, the applicant must receive the necessary guidance concerning the procedure to be followed, in words and in a way that he can understand and, if appropriate, he should be given the opportunity to contact a UNHCR representative;
2. The request must be examined, objectively, within the framework of the relevant procedure, by a competent and clearly identified authority, and requires a personal interview;
3. The decisions adopted by the competent organs must be duly and expressly founded;
4. All stages of the asylum procedure must respect the protection of the applicant's personal information and the application, and the principle of confidentiality;
5. If the applicant is denied refugee status, he should be provided with information on how to file and appeal under the prevailing system and granted a reasonable period to do so;
6. The appeal for review must have suspensive effects and must allow the applicant to remain in the country until the competent authority has adopted the required decision [in the case].¹³¹

149. However, the Rules of Procedure for Refugees in Costa Rica state that the procedure for the recognition of refugee status consists of the following stages: [1] submission of the application to the Refugee Unit of the General Directorate of Migration and Non Nationals (DMGE); [2] an interview by an eligibility officer; [3] issuance of the provisional document as an applicant for refugee status; [4] technical evaluation by the eligibility officer; [5] evaluation by the Visa and Shelter Commission; and, [6] Commission decision regarding the approval or denial of refugee status.¹³²

150. The State of Costa Rica informed the IACHR that the declaratory nature of refugee status is recognized in Articles 106, 108, 115, 116 and 117 of the General Law on Migration and Non-Nationals. On the other hand, the State indicated that the increase in refugee applications exceeded the state's capacity of reception and management of the Shelter Unit. For this reason, in coordination with the UNHCR, the authorities increased the coverage area of the Shelter Unit to deal with cases directly in the border zone. It added that, since March 25, 2019, applicants have access to the refugee system in the north of the country thanks to the permanent presence of an office in the town

¹³¹ I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 159.

¹³² Rules of Procedure for Refugees, Decree No. 36831-G, September 28, 2011.

of Upala, which has accelerated the reception of applications and reduced delays in the San José offices.¹³³

151. Likewise, in its observations on this draft report, the State of Costa Rica emphasized that applicants currently obtain their refugee applicant identification on the same day as submission of the application and, therefore, the time for a preliminary meeting with the national authorities is reduced. In turn, the State indicated: “the early identification of individuals in need of international protection and their proper documentation allows a guarantee of access to the territory, avoiding *refoulement*, access to the refugee status assessment procedure, ensures safe transit through the country without risk of detention and deportation, and prevents travelling to San José to file an application.”¹³⁴

C. Filing the Application for Recognition of Refugee Status

152. Under Costa Rican legislation, the application for recognition of refugee status must be submitted to the competent officials of the General Directorate, at authorized land, sea or air entry points, as well as at the specialized office of said institution. Officials must forward the request to the Refugee Subprocess.¹³⁵ Persons requesting recognition of refugee status must complete a form with personal and family information, and a description of the circumstances leading to their departure from their country. Once the questionnaire is completed, individuals are informed of the date to attend an interview.
153. The Costa Rican authorities issue individuals with a provisional document providing proof of their refugee applicant status. This document guarantees the *non-refoulement* of persons and is free. It does not permit access to work; however, 90 days after obtaining it, it is possible to apply for a work permit with the Shelter Unit.¹³⁶
154. During its visit, the Commission learned that, up until June 2018, filing an application for the recognition of refugee status could only be made at the Shelter Unit of the General Directorate of Migration and Non Nationals (“DGME”) in the city of San José on Mondays and Thursdays between 8 am and 11 am. This caused long lines and the accumulation of people waiting, particularly Nicaraguans. However, on June 18, 2018, in the interests of diversifying the means of access to the application, the DGME set up an appointment service for applicants for refugee status via a telephone line 1311.¹³⁷
155. Based on the information provided by the State of Costa Rica, as of September 2018, a total of 26,689 Nicaraguans registered their interest in receiving international

¹³³ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica’s observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, p. 2.

¹³⁴ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica’s observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, p. 2.

¹³⁵ Rules of Procedure for Refugees, Decree No. 36831-G, September 28, 2011, Article 126.

¹³⁶ UNHCR, How to Apply for Refugee Status?, 2018.

¹³⁷ *El Nuevo Diario*, “Costa Rica habilita línea ante oleada de solicitudes de Refugio de Nicaragua”, July 18, 2018.

protection and were waiting to formalize their application. Of those, 13,248 applications were filed at a DGME Shelter Unit window and 15,441 applications by appointment on line 1311.¹³⁸

156. The Commission points out that the call costs \$3.00 dollars, and that it can only be made with a single telephone company, for four minutes of service, even if during that period of time the person can manage as many appointments as required. Additionally, civil society organizations alerted the Commission to the fact that some officials of the Shelter Unit told people that the only means available is line 1311, even though this mechanism is an alternative.
157. In this respect, the IACHR and the Inter-American Court have both indicated that migrants find themselves in a situation of vulnerability.¹³⁹ The Commission has specified that migrants and refugees often have no knowledge of the laws or language of the host country and on several occasions face outright hostility from the population and the authorities. Additionally, their irregular migratory status exposes them to further abuse. In this sense, given the vulnerable situation of migrants, they face a situation of structural vulnerability that exposes them to various abuses.¹⁴⁰ This situation is exacerbated by the fact that migrants often face interrelated forms of discrimination due to other factors such as age, sexual orientation, gender identity, poverty or extreme poverty, among others.¹⁴¹ For its part, the Inter-American Court has indicated that this condition of vulnerability has an ideological dimension and is maintained by *de jure* circumstances (inequalities in the law between nationals and non nationals) and *de facto* (structural inequalities) circumstances. This situation leads to differences in their access to public resources administered by the State.¹⁴²
158. The Inter-American Court has outlined the obligation of States to take affirmative action to reverse or change discriminatory situations that exist in their societies to the detriment of a specific group of persons.¹⁴³ In this sense, the Inter-American System has analyzed the situation of vulnerability of persons recognizing that it is not sufficient for States to refrain from violating rights, but that it is imperative to adopt

¹³⁸ Information provided by the General Directorate for Migration and Non Nationals (DGME) during the official visit to Costa Rica, October 16, 2018.

¹³⁹ IACHR, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico, OEA/Ser.L/V/II, Doc. 48/13 (2013), para. 83; IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, OEA/Ser.L/V/II, Doc. 46/15 (2015), para. 9; I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 114; I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 128.

¹⁴⁰ IACHR, *Second Progress Report of the Special Rapporteurship on Migrant Workers and their Families in the Hemisphere*, OEA/Ser.L/V/II.111, doc. 20 rev. (2001), para. 64.

¹⁴¹ IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, OEA/Ser.L/V/II, Doc. 46/15 (2015), para. 9.

¹⁴² I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 112.

¹⁴³ I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para 104.

affirmative measures to be determined according to the particular needs of protection, whether on account of personal situation or specific circumstances.¹⁴⁴

159. In this regard, the IACHR appreciates that the State of Costa Rica, like other States in the region,¹⁴⁵ recognizes in its domestic law the principle of free access to the procedure for the recognition of refugee status. Article 144 of its Rules of Procedure for Refugees states that “the procedure for determining refugee status shall be carried out at no cost to the applicant and in the most expeditious manner, without prejudice to procedural guarantees and the rights of the requesting applicant.”
160. However, the Nicaraguans interviewed by the Commission pointed out the difficult economic situation currently facing them. In this regard, the Commission identified that of the 152 gathered testimonies, 76.31% were unemployed in Costa Rica, and lived in a precarious situation. However, the Commission points out that individuals requesting international protection must: 1) have a telephone; 2) have access the Kolbi telephone line; and, 3) pay the cost of the call. This situation, in addition to the difficulties of getting to the San José Central Refuge Unit at the appropriate time and day, as well as the authorities’ obstacles against them of only requesting protection via a telephone call, could possibly lead to individuals being unable to commence the procedure to be recognized as refugees.
161. In this regard, the Commission considers it essential that the State of Costa Rica adopt measures aimed at ensuring that the right to seek and receive asylum is guaranteed for all persons, regardless of their particular situation of vulnerability, such as poverty or extreme poverty. To achieve this, it is important to eliminate administrative and procedural barriers in order to guarantee the rights to seek and receive asylum, as well as to *non-refoulement*. In this regard, the State of Costa Rica informed the Commission about the reductions in waiting times from the first indication of the need for international protection until the eligibility appointment. In this regard, the State indicates that since March 25, 2019, the Shelter Unit has been decentralized, and that since then applicants have access to the refuge system in the north of the country. Likewise, the permanent presence of this unit ensures access to the refugee status procedure, and the prompt identification of special protection needs and their appropriate referrals to the offer of state services.¹⁴⁶
162. The Commission urges the State of Costa Rica to continue with the effective application of the free procedure for the recognition of refugee status, which is adversely affected by the cost of the appointment service for applicants for refugee status enabled through the system of calls and telephone line 1311.

¹⁴⁴ I/A Court H.R., *Case of Furlan and family v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, para. 134.

¹⁴⁵ See, among others, [Organic Law of Human Mobility \(Ecuador\)](#), Article 99.12; [Law No. 20430 \(Chile\)](#), Article 48; [Law on Refugees, Complementary Protection and Political Asylum \(Mexico\)](#), Article 18.

¹⁴⁶ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica’s observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, pp. 1 and 2.

D. Interview with an Eligibility Officer

163. In accordance with Article 218 of the aforementioned Rules of Procedure, upon receipt of the application for refugee status at the Refugee Subprocess, said request will be registered and a date for the confidential interview will be notified. The individual must attend an interview with a dedicated officer, where information on the procedure for determining refugee status, their rights and obligations shall be given in a language that he or she can understand. Interpretation services and the right to receive legal advice will be provided.¹⁴⁷ At the end of the interview, the individual must sign a transcript and may request corrections, if deemed necessary.¹⁴⁸
164. The Commission received information that, between July and October 2018, after submitting their applications for the recognition of refugee status, either at DGME Shelter Unit's window or through the call line system, applicants were scheduled for interview appointment dates with the eligibility officer until 2019. Among the testimonies received during its visit, the IACHR was informed of a particular case in which the eligibility interview was scheduled for January 2020.
165. In this regard, the IACHR considers it important to emphasize that asylum-seekers must be able to access appropriate international protection through fair and efficient procedures. To this end, the Inter-American Court has determined that in accordance with the guarantees established in Articles 8, 22.7, 22.8 and 25 of the American Convention, and taking into account the UNHCR guidelines and criteria, asylum-seekers must have access to procedures to determine their status that permit a proper examination of their request, in keeping with the guarantees contained in the American Convention and in other applicable international instruments.¹⁴⁹
166. Based on the foregoing, the States are obliged to ensure that the individual requesting refugee status be heard by the requested State, within a reasonable period of time, and assessed via a prompt and timely personal interview.¹⁵⁰ In addition, in the present context, the issuance of the provisional applicant refugee document¹⁵¹ is contingent on the importance of the personal interview being carried out within a reasonable period of time, since this document temporarily governs the migratory status of applicants in Costa Rica, and the temporary work permit.
167. The Commission was able to identify that of the 152 systematized testimonies, 81% submitted their application for refugee status and of these, 45% still do not have their provisional document for refugee status, which in accordance with Article 54 of the Rules of Procedure for Refugees, temporarily validates the migratory status of this

¹⁴⁷ [Rules of Procedure for Refugees](#), Decree No. 36831-G, September 28, 2011, Article 129.

¹⁴⁸ UNHCR, [How to Apply for Refugee Status?](#), 2018.

¹⁴⁹ I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 159.

¹⁵⁰ UNHCR, Fair and efficient asylum procedures; a non-exhaustive overview of applicable international standards, September 2, 2005, para. 4; UNHCR, [Handbook on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#), reissue, Geneva, December 2011, paras. 196 to 199 and 205. b. i.

¹⁵¹ [Rules of Procedure for Refugees](#), Decree No. 36831-G, September 28, 2011.

group of individuals. Additionally, the issuance of this document allows the granting of a further provisional document with the right to work in those cases where the administration takes more than three months to resolve the submitted application. With this documentation the asylum seeker may exercise any type of paid or for profit activity both as a self-employed person or as an employee.

168. While the Commission acknowledges that the situation of mass forced migration of Nicaraguans has posed an important challenge for the State of Costa Rica, the extension of the dates of eligibility interviews, hand in hand with the lack of delivery of the provisional document as asylum applicant, has an impact on the timely issuance of the documentation temporarily validating the migratory status of the applicants, as well as on their access to and effective exercise of rights, especially the right to work.
169. Additionally, the Commission is concerned that applicants must provide the following requirements in the personal eligibility interview, such as: (i) 2 passport-sized photos; (ii) the original and photocopy of all pages of their passport, or failing that, an affidavit stating the reason for not being in possession thereof; (iii) a birth certificate; (iv) a criminal record certificate of their country of origin or country of residence during the last 5 years; (v) certification of marital status; (vi) an affidavit of the means and date of entry into Costa Rica; and (vii) proof of fingerprinting of the Police Archive.
170. The adverse and emergency conditions confronting Nicaraguans when they leave their country force many of these individuals to immediately leave their homes or safe houses where they are in hiding. This context of forced migration makes it very difficult for this group of individuals to present the necessary documentation required by the Costa Rican procedure for determining refugee status, such as birth certificates, criminal records and marital status.
171. Due to the circumstances and reasons why refugees are forced to leave their country of origin or habitual residence, International Refugee Law has even recognized that this group of persons has reasonable grounds for not even carrying a valid travel document, as well as false documentation, which should not prevent their access to a fair and effective procedure for the determination of possible need for international protection.¹⁵²
172. Although the Costa Rican Rules of Procedure for Refugees recognize that even without birth certificates, criminal records and marital status, asylum seekers can file an affidavit, the Commission is concerned about the economic costs borne by Nicaraguans in order to continue processing their asylum applications. At the same time, the IACHR observes that even though relevant support has been provided by civil society and international organizations¹⁵³ in order to ensure compliance with all requirements, the Commission considers that requirements imposed on asylum-seeker applicants in the eligibility interview may restrict their access to and effective

¹⁵² UNHCR Executive Committee, Conclusion No.15 (XXX) Refugees Without an Asylum Country, 1979; Conclusion No.22 (XXXII) Protection of Asylum-Seekers in Situations of Large-Scale Influx, 1981; Conclusion No.58 (XL) Problem of Refugees and Asylum-Seekers who Move in an Irregular Manner from a Country in Which they had already found protection, 1989.

¹⁵³ UNHCR, , [How to Apply for Refugee Status?](#), 2018.

exercise of the right to request asylum recognized in Article 22.7 of the American Convention. The identification of international protection needs - in the present case the determination of refugee status - may not be subject to such formalities, but rather focus on the evaluation of the applicant's statement as a priority.¹⁵⁴

173. Additionally, the Inter-American Court has established the need to ensure that access to justice is genuine and not merely formal.¹⁵⁵ In this regard, the Commission is concerned to observe the lack of legal guidance and assistance and urges the State of Costa Rica to guarantee the right to information about the procedures, as well as access to adequate and free legal advice and representation.
174. In this regard, the IACHR urges the State of Costa Rica to respect and guarantee the right to seek and receive asylum in a foreign territory enshrined in Article 22.7 of the American Convention on Human Rights, and recognize the situation of vulnerability of Nicaraguans who have been forced to leave their country, and to effectively ensure the cost-free, rapid and effective procedure for claiming asylum. The Commission also recommends strengthening the General Directorate of Migration and Non Nationals by allocating an adequate budget, sufficient material and human resources to ensure asylum proceedings within a reasonable time.

E. Appeal before the Administrative Court for Migrants

175. The Commission has already mentioned the existence and composition of the Costa Rican Administrative Migration Court, the sole jurisdictional body specialized in migration and asylum in Latin America. The Court is a decentralized body attached to the Ministry of the Interior and Police, and independently hears appeals against the final decisions of the General Directorate of Migration and Non Nationals.¹⁵⁶ The Commission emphasizes that the composition of the Court includes various professions, such as lawyers and psychologists, thus permitting an interdisciplinary study of asylum applications.
176. However, under the Costa Rican Rules of Procedure for Refugees, the decision of the Visa and Refugee Commission is subject to annulment on appeal within three working days, which is heard by the Administrative Migration Court. This court has a maximum period of three months to reach a decision as established in Articles 225 and 228 of the General Law on Migration and Non Nationals. Likewise, the decisions of this Court are not subject to appeal, in accordance with Article 224 of the General Law on Migration and Non Nationals.
177. In this context, the Inter-American Court has found that the right to seek and receive asylum established in Article 22.7 of the American Convention, read in conjunction

¹⁵⁴ UNHCR, [Handbook on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#), reissue, Geneva, December 2011, paras. 195 -202.

¹⁵⁵ I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 126.

¹⁵⁶ Article 25 of the General Law of Migration and Non Nationals.

with Articles 8 and 25 thereof, ensures that the individuals requesting refugee status be heard by the State with basic due process guarantees to be protected in immigration procedures, in procedures relating to an application for recognition of refugee status, or as the case may be, that may result from the expulsion or deportation of a refugee or applicant.¹⁵⁷

178. One of the procedural safeguards with proceedings for the assessment of refugee status is the State's obligation to provide sufficient and necessary information as to how the person may appeal the decision to refuse recognition of refugee status; and to grant a reasonable period for this, according to the system currently in force, so that the decision given is formally reconsidered.¹⁵⁸
179. The Commission observes that the Costa Rican Rules of Procedure for Refugees provides for a reduced period of 3 working days for the applicant to resort to the necessary legal assistance and to file an appeal before the Administrative Migration Court against decision of the Visa and Shelter Commission denying refugee status, which is contrary to international standards.
180. Therefore, in accordance with the guarantees recognized in Articles 8, 22.7, 22.8 and 25 of the American Convention and with UNHCR guidelines, the IACHR considers it appropriate to point out that the reconsideration motion or appeal must have suspensive effects, and, as such, the applicant must be allowed to remain in the country until the competent authority adopts a decision on the case - and even while any challenge is pending - unless it can be shown that the request is manifestly unfounded.¹⁵⁹ In this regard, the Commission acknowledges that Article 52 of the Costa Rican Rules of Procedure for Refugees expressly establishes said suspensive effect until the appropriate procedure has been completed by a final decision.¹⁶⁰

¹⁵⁷ I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 155.

¹⁵⁸ IACHR Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, OEA/Ser.L/V/II, Doc. 46/15 (2015), para. 432. See, I/A Court H.R., *Case of Vélez Looor v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 179, and *Case of Mohamed v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 23, 2012. Series C No. 255, para. 98. See also: Executive Committee of the United Nations High Commissioner for Refugees, *Determination of Refugee Status*, No. 8 (XXVIII) (1977), para. e.vi: "If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system." In the same sense: United Nations High Commissioner for Refugees, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice – Principle Conclusions and Recommendations*. A UNHCR Research project on the application of key provisions of the Asylum Procedures Directive in Selected Member States, March 2010, p. 89.

¹⁵⁹ IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, OEA/Ser.L/V/II, Doc. 46/15 (2015), para. 432. See, United Nations High Commissioner for Refugees, *Determination of Refugee Status*, No. 8 (XXVIII) (1977), para. e.vii.

¹⁶⁰ Rules of Procedure for Refugees, Decree No. 36831-G, September 28, 2011. Art. 52. — "The filing of an application for the recognition of refugee status shall have the effect of suspending the execution of the alien's extradition until such time as the appropriate proceedings have concluded with a definitive decision, which shall be remitted to the appropriate judicial authorities."

181. Therefore the IACHR urges the State of Costa Rica to adapt its domestic asylum rules to Inter-American standards, in particular, to guarantee asylum-seekers a reasonable period of time to lodge an appeal against the decision to deny refugee status in accordance with the procedural guarantees enshrined in Articles 8, 22.7 and 25 of the American Convention.
182. In its observations on this draft report, the State of Costa Rica reiterated to the IACHR that a rejection of a application for recognition of refugee status may be appealed in two ways: revocation and appeal. Regarding the reasonable period of time to file a challenge, the State indicated that “the entire legal system establishes the possibility of challenging within three days of the time following communication of the order, with the additional advantage that ‘days’ meant business days.”¹⁶¹

¹⁶¹ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica’s observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, p. 2.

CHAPTER 6
INTERNATIONAL PROTECTION

INTERNATIONAL PROTECTION

183. Based on the information gathered during its visit to Costa Rica, the Commission notes that a large number of individuals who have fled Nicaragua and entered Costa Rica may be in need international protection and recognition as refugees under the classic definition of refugee in the 1951 Convention Relating to the Status of Refugees and its Protocol of 1967, the Declaration of Cartagena, or for being refugees *sur place*. The Commission also observes that there are individuals who could not be returned to Nicaragua and who may require complementary protection despite the fact of not fitting into the definition of refugee.
184. In this regard, the Inter-American Court of Human Rights has interpreted international protection as that “a State offers to a foreign person because, in her or his country of nationality or habitual residence, that individual’s human rights are threatened or violated and she or he is unable to obtain due protection there because it is not accessible, available and/or effective.” The Court found that the following types of international protection are derived from the sources of international human rights law, international refugee law and international humanitarian law: a) the protection received by asylum seekers and refugees on the basis of the international conventions or domestic law; b) the protection received by asylum seekers and refugees on the basis of the broadened definition of the Cartagena Declaration; c) the principle of *non-refoulement* and complementary protection and other forms of humanitarian protection; and, d) protection received by stateless persons in accordance with relevant international instruments.¹⁶² In this sense, based on the information gathered during the visit and the testimonies collected, the possibilities of international protection available to Nicaraguans will be analyzed in detail.

A. *Asylum and Refugee Applicants based on the 1951 Convention Relating to the Status of Refugees*

185. The Commission and the Inter-American Court have been emphatic in reiterating that a person is considered a refugee as soon as he or she meets the requirements set forth in the definition of refugee in the 1951 Convention, which necessarily occurs before refugee status is formally determined by the receiving State.¹⁶³ Thus, the recognition of refugee status has a declarative nature, and refugees are protected by the principle

¹⁶² I/A Court H.R., Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, para. 37.

¹⁶³ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva, 1979, Reedited in 1992), para. 28.a.

and right of *non-refoulement* even if they have not been legally admitted by the receiving State.¹⁶⁴ According to the Inter-American Court, the importance of this principle and right resides precisely in the fact that individuals cannot be rejected at the border, or expelled without an adequate and individualized analysis of their claims.¹⁶⁵

186. However, in accordance with Article 1A of the 1951 Convention Relating to the Status of Refugees, to which the State of Costa Rica is a party,¹⁶⁶ a person is a refugee owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”¹⁶⁷
187. The criteria set out in the definition of refugee in the 1951 Convention Relating to the Status of Refugees are not mutually exclusive, and may coincide. This opinion, belief or membership may also be imputed or attributed to the applicant by the persecuting State or a non-state agent.¹⁶⁸ Among the reasons for persecution recognized by the definition of refugee in the 1951 Convention, is persecution for political opinions, which “presupposes that the applicant hold opinions not tolerated by the authorities, which are critical of their policies or methods”, and as such, the applicant has fears of being persecuted for holding such opinions.¹⁶⁹
188. For the purposes of the 1951 Convention, the term “political opinion” should be understood in the broad sense to incorporate any opinion on any matter in which the machinery of the State, government, society or policy may be engaged.¹⁷⁰ The key question is whether the applicant holds - or is perceived to hold - opinions which are not tolerated by the authorities or by the community, and whether the individual has

¹⁶⁴ Article 33 of the 1951 Convention provides that: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the borders of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

¹⁶⁵ I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 153.

¹⁶⁶ Costa Rica has been a party to the 1951 Convention since March 28, 1978. See UNHCR States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol: <https://www.unhcr.org/fileadmin/Documents/BDL/2001/0506.pdf>.

¹⁶⁷ The definition of refugee in the 1951 Convention is also reflected in Article 106 of the *Ley de Migración and Extranjería No. 8764* (“Law of Migration and Non Nationals”) No.8764.

¹⁶⁸ UNHCR, Advisory Opinion to the Tokyo Bar Association, note 8 supra, para. 5. V cited in. UNHCR, *Letter to the Tokyo Bar Association Regarding Refugee Claims Based on Sexual Orientation*, November 21, 2008, p. 17.

¹⁶⁹ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva, 1979, Reedited in 1992), para. 80.

¹⁷⁰ See Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, May 7, 2002, (HCR/GIP/02/01), in particular para.32. See also Guy S Goodwin-Gill, *The Refugee in International Law* (2nd Edition), Clarendon Press, 1996, at p. 49 and James C. Hathaway, *The Law of Refugee Status*, Butterworth’s, 1991 at p. 149.

a well-founded fear of persecution for this reason.¹⁷¹ In terms of the UNHCR, there may also be situations in which the applicant has not given any expression to their opinions in any way, but that, due to the strength of their convictions, it may be reasonable to assume that the applicant will sooner or later express their opinions, and will, as a result, come into conflict with the authorities. When this presumption is reasonably justified, the applicant can also be considered to have fear of persecution for reasons of political opinion.¹⁷²

189. The Commission has observed that the majority of applications for recognition of refugee status by Nicaraguans who have had to flee their country are based on their real or imputed political opinions, and, therefore, it considers that they need international refugee protection under the 1951 Convention.¹⁷³
190. Additionally, the Commission observes that the State of Nicaragua has also used the criminal justice system to carry out persecution against some individuals. From the testimonies received, the IACHR was able to observe that some individuals reported having been indicted arbitrarily for committing offenses such as terrorist financing, organized crime or illegal possession of firearms, simply by participating in the demonstrations or supporting the opposition.
191. The UNHCR has indicated that “when the law in the country of origin defines as crimes some acts that are protected by international human rights standards, such as the freedom to express an opinion, which would be inherently persecutory; or when criminal proceedings in the country of origin do not comply with the basic rules of impartiality and justice; or when the punishment given to a legal process is clearly legitimate; that is, too severe in relation to the crime committed”¹⁷⁴; these are clear examples where the State is using the law and/or criminal proceedings as a prosecution tool. In order to determine whether prosecution amounts to persecution, it is necessary to refer to the laws of the country of origin or habitual residence, since it is possible that a law is not in conformity with accepted human rights standards. However, more often it may not be in the law, but its application which is discriminatory. Due to the difficulties involved in the evaluation of the laws of another State, national authorities can use as a yardstick their own legislation, and the principles set forth in the various international instruments relating to human rights in the framework of the procedure for the recognition of refugee status.¹⁷⁵
192. On the other hand, one reason for the recognition of refugee status in the 1951 Convention Relating to the Status of Refugees is membership of a certain social group. According to the UNHCR, a particular social group can be defined as “a group of

¹⁷¹ UNHCR, *Refugee Status Determination: Identifying who is a Refugee Self-study module 2*, 1 September 2005, para. 2.2.4.5.

¹⁷² UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva, 1979, Reedited in 1992), para. 82.

¹⁷³ UNHCR, *Guidance Note on the Outflow of Nicaraguans*, August 2018, para. 1.

¹⁷⁴ UNHCR, *Refugee Status Determination: Identifying who is a Refugee Self-study module 2*, 1 September 2005, para. 2.2.4.5.

¹⁷⁵ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva, 1979, Reedited in 1992), paras. 59-60.

persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights."¹⁷⁶

193. This category must be understood from an evolutionary perspective, considering the diverse and changing nature of groups in various societies and the evolving international human rights norms.¹⁷⁷ In the case of Nicaraguans who have been forced to flee, various persecution profiles have been identified, as detailed in Chapter 2 on forced displacement dynamics, consisting of: (i) students who participated in the demonstrations and protests; (ii) human rights defenders and leaders of social and peasant movements; (iii) individuals supporting the participants in the protests through the provision of food, safe houses and medicines; (iv) doctors; (v) journalists; and (vi) former military personnel and police officers who refused to participate in the repressions ordered by the Nicaraguan government. These profiles match those previously identified by the UNHCR.¹⁷⁸ In this regard, the Commission observes that many individuals who have fled Nicaragua may satisfy the definition of a refugee by belonging to a certain social group.
194. In this context, the IACHR recognizes the efforts made by the State of Costa Rica and urges it to continue allowing Nicaraguans to enter its territory and to grant access to the procedure for determining refugee status, in accordance with its obligations set out in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as international human rights standards and international refugee law.

B. Broad Definition of the 1984 Cartagena Declaration on Refugees

195. In its third conclusion, the Cartagena Declaration establishes that the definition or concept of a refugee recommended for use in the region, "in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."
196. The definition of a refugee in the Cartagena Declaration has achieved a particular position in the region through its incorporation into the different national laws and

¹⁷⁶ UNHCR, Guidelines on International Protection No.2: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees , May 7, 2002, HCR/GIP/02/02, para. 11.

¹⁷⁷ UNHCR, Guidelines on International Protection No.2: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees , May 7, 2002, HCR/GIP/02/02, para. 3.

¹⁷⁸ UNHCR, Guidance Note on the Outflow of Nicaraguans, August 2018, fn.2

practices.¹⁷⁹ The status of the expanded definition of refugee has been confirmed by the Inter-American Court of Human Rights,¹⁸⁰ the San José Declaration on Refugees and Displaced Persons (1994), the Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America (2004), the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas (2010), as well as the Brazil Declaration and Plan of Action (2014).

197. However, during its visit, the Commission observed that Costa Rica's General Migration Law limits the definition of a refugee to that established in the 1951 Convention, without considering the extended definition set out in the 1984 Cartagena Declaration on Refugees.¹⁸¹ However, a judgment of the Contentious Administrative Court of November 28, 2014, brought the matter to the attention of the General Directorate of Migration and Non Nationals so that, in future, the Cartagena Declaration be taken as part of the domestic system, in view of the fact that the Constitutional Court had incorporated the Cartagena Declaration into domestic law as a constitutionality parameter.¹⁸²
198. With respect to the scope of the definition of refugee in the Cartagena Declaration, the UNHCR has determined that the circumstances referred to in that definition, "are characterized by the indiscriminate, unpredictable or collective nature of the risks they present to the life or lives, security or freedom of an individual or group of individuals, or even for populations in general." That is, the broadened definition focuses on the exposure of individuals to the threats inherent in the aforementioned circumstances,¹⁸³ and highlights the difference with the definition in the 1951 Convention, by the element of individual persecution.
199. This definition protects as refugees those individuals who: (i) are outside their country, (ii) because their life, security or freedom has been threatened, (iii) as a result of circumstances mentioned in the definition, existing in their country of origin or habitual residence, such as the massive violation of human rights.

¹⁷⁹ The Cartagena definition of refugee has been incorporated into the laws of Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

¹⁸⁰ I/A Court H.R., *Rights and guarantees of children in the context of migration and/or in need of international protection*. Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, paras. 76, 77, 79 and 249.

¹⁸¹ Article 106 of the Law of Migration and Non Nationals, No.8764 establishes that: Recognition of the status of refugee shall be subject to the relevant rules established in the international instruments approved, ratified and in force for the Government of Costa Rica. For the purposes of the current Law, the term refugee shall apply to all foreigners recognized as such by the General Administration. Refugee shall be understood as an individual who: 1. Due to a well-founded fear of persecution due to reasons of race, religion, nationality, gender, membership of a determined group or of political opinions, is outside the country of his or her nationality and is unable, or due to said fears, is unwilling to seek the protection of said country. 2. Lacking a nationality, and being outside the country of his or her former habitual residence, is unable, or owing to said fear, is unwilling to return thereto.

¹⁸² Contentious Administrative Court, Judgment of November 28, 2014, Vote No. 0103-2014-IV.

¹⁸³ UNHCR, Guidelines on International Protection No.2: Claims to refugee status related to situations of armed violence and conflict under Article A1(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees and the regional refugee definitions. HCR/GIP/16/12, December 2, 2016, paras. 71 and 72 .

200. In the case of Nicaraguans who have been forced to leave their country, the Commission has identified that the acts of violence and state repression recorded from April 18, 2018, have generated a grave human rights crisis in Nicaragua that has intensified throughout 2018. In its Report *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, the IACHR denounced a progressive and incessant deterioration of the human rights situation in Nicaragua and of The Rule of Law itself as a result of the state repression of protests. In addition, eight months after the commencement of the crisis in the country, the IACHR has strongly condemned the State's reaction which has resulted in the deaths of 326 individuals and more than 2,000 injured; in the arrests and prosecution of more than 700 individuals; in the dismissal of 300 health professionals, the expulsion of at least 80 students from the National Autonomous University of Nicaragua (UNAN), and the exile of at least 70 journalists and media employees.¹⁸⁴
201. With respect to forced displacement, the IACHR notes with concern that with the traditional ratio of displacement to death in contexts of armed conflict of 5:1¹⁸⁵ and that in states such as Syria, a maximum ratio of 25:1 has been demonstrated¹⁸⁶; using the information provided, the proportion in Nicaragua reaches more than 200 displaced for each death since the crisis began in the country - which represents an alarming rate.¹⁸⁷
202. Another element demonstrating the massive human rights violations in Nicaragua is the Inter-American Commission's granting of precautionary measures. Until May 2019, the Commission had granted 69 precautionary measures in favor of more than 160 Nicaraguans, including in certain cases their family circle,¹⁸⁸ in a situation of serious and urgent risk of irreparable damage to their rights. The precautionary measures referred to the situation of, inter alia, human rights defenders and peasant leaders, individuals who participated in the protests and roadblocks, journalists, students, individuals supporting the protestors, people deprived of their liberty, and doctors. Likewise, the IACHR verified that, in a large percentage of the aforementioned measures, the beneficiaries indicated that they had received death threats through social media.
203. On May 21, 2019, after a request submitted by the Commission,¹⁸⁹ the Inter-American Court adopted provisional measures in favor of 17 beneficiaries of precautionary measures who were deprived of their liberty in a situation of extreme gravity and

¹⁸⁴ IACHR, Press Release No. 273/18, [IACHR denounces aggravation of the repression and the closure of democratic spaces in Nicaragua](#), December 19, 2018.

¹⁸⁵ MIT, [Iraq: The Human Cost](#), 2012.

¹⁸⁶ Steven Feldstein, [Rethinking the impact of war: Elevating protections for the displaced](#), ACUNS, October 2018, p. 11.

¹⁸⁷ Account must be taken of the fact that the calculation amounts to an estimation based on available information and the existence of other intervening factors in the process of displacement, cultural, structural and geographic, among others.

¹⁸⁸ See, IACHR, Nicaragua – [Precautionary Measures](#).

¹⁸⁹ IACHR, Press Release No. 117/19. [IACHR submits a Request to the Inter-American Court for Provisional Protection Measures for 17 People who are being deprived of their Freedom and are at Extreme Risk in Nicaragua](#), May 15, 2019.

urgency of irreparable damages in Nicaragua.¹⁹⁰ These are student leaders, social leaders, peasants, journalists and human rights defenders, in some cases described by their relatives and sectors of Nicaraguan society as "political prisoners", who have played a highly visible leading role against the measures promoted by the current Nicaraguan government since April 2018. The beneficiaries of the provisional measures are Kevin Rodrigo Espinoza Gutierrez,¹⁹¹ Cristhian Rodrigo Fajardo Caballero,¹⁹² Yubrank Miguel Suazo Herrera,¹⁹³ Edwin José Carcache Dávila,¹⁹⁴ Medardo Mairena Sequeira, Mario Lener Fonseca Díaz,¹⁹⁵ Ricardo Baltodano,¹⁹⁶ Jaime Ramon Ampie Toledo, Julio José Ampie Machado, Reynaldo Lira Luquez,¹⁹⁷ Miguel Mora Barberena,¹⁹⁸ Lucia Pineda Ubau,¹⁹⁹ Amaya Eva Coppens Zamora, Olesia Auxiliadora Muñoz Pavón, Tania Verónica Muñoz Pavón, María Adilia Peralta Serrato, and Ireland Undina Jeréz Barrera.²⁰⁰

204. The situations of repression suffered by Nicaraguan applicants for international protection may qualify for various categories established in the Cartagena Declaration, such as a massive violation of human rights, mainly affecting individuals opposed to the government. In this regard, the Inter-American Court has indicated that the term "massive" refers to the scale or magnitude of the violation, regardless of the duration, and as such, the violation may result from a single event.²⁰¹ The UNHCR has also determined that when the effects of human rights violations go beyond real/direct victims to affect large sectors of the population, or even society as a whole, the situation can also be classified as a "massive violation of human rights"; and has

¹⁹⁰ I/A Court H. R., *Matter of seventeen persons deprived of liberty regarding Nicaragua. Provisional Measures. Adoption of Urgent Provisional Measures*. Order of the President of the Inter-American Court of Human Rights of May 21, 2019.

¹⁹¹ IACHR, Resolution 35/2018. Precautionary Measure 472-18 and others. Bosco Rneé Bermúdez and others, Nicaragua (Members of the Student Movement), May 21, 2018.

¹⁹² IACHR, Resolution 56/2018. Precautionary Measures 868-18, 819-18, 777-18, 850-18 and 871-18. Christian Rodrigo Fajardo Caballero and others, Nicaragua, June 25, 2018.

¹⁹³ IACHR, Resolution 56/2018. Precautionary Measures 868-18, 819-18, 777-18, 850-18 and 871-18. Christian Rodrigo Fajardo Caballero and others, Nicaragua, June 25, 2018.

¹⁹⁴ IACHR, Resolution 74/2018. Precautionary Measure 469-18. Edwin José Carcache Dávila, Nicaragua, September 27, 2018.

¹⁹⁵ IACHR, Resolution 80/2018. Precautionary Measure 1172-18. Medardo Mairena Sequeira and Mario Lener Fonseca Díaz, Nicaragua (Members of the Civil Alliance for Justice and Democracy, and the Round Table representing the Peasants Movement), October 15, 2018.

¹⁹⁶ IACHR, Resolution 73/2018. Precautionary Measure 1130-18. Mónica López Baltodano and her immediate family, Nicaragua, September 27, 2018.

¹⁹⁷ IACHR, Resolution 46/2018. Precautionary Measure 921-16 and 520-18. Marco Antonio Carmona and others, Nicaragua (Human Rights Defenders), July 2, 2018.

¹⁹⁸ IACHR, Resolution 90/2018. Precautionary Measure 873-18. Miguel Mora Barberena, Leticia Gaitán Hernández and their immediate families, Nicaragua (Journalists of 100% Noticias), December 13, 2018.

¹⁹⁹ IACHR, Resolution 5/2019. Precautionary Measure 873-18. Lucía Pineda Ubau and her immediate family, Nicaragua (Amplification), February 11, 2019.

²⁰⁰ IACHR, Resolution 84/2018. Precautionary Measure 1133-18. Amaya Eva Coppens Zamora and others (Persons deprived of their liberty at Penitentiary Center La Esperanza), Nicaragua, November 11, 2018.

²⁰¹ I/A Court H.R., *Case of the Las Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, paras. 73, 79 and 152; I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 4, 2012. Series C No. 250, paras. 56, 58-60 and 63.

pointed out that the elements of planning and organization by the perpetrator - be it a State or non-state actor - as well as forced displacement can be indicators of such a characteristic situation.²⁰²

205. In this context, the IACHR urges the State of Costa Rica to incorporate into its domestic legislation the expanded definition of a refugee established in the 1984 Cartagena Declaration and apply it to guarantee the right to asylum for Nicaraguans fulfilling said definition, since they are fleeing from the current social and political crisis that has caused a massive violation of human rights.

C. *Prima Facie and Group Recognition of Nicaraguans*

206. The Commission has fully recognized the response the State of Costa Rica has given to Nicaraguans who have entered its territory. At the same time, the Commission recognizes the challenge in terms of institutional capacity, financial and human resources to adequately address the massive movement it has faced since April 2018.
207. In this regard, in its Guidance Note on the Outflow of Nicaraguans, the UNHCR mentioned that “in the event that asylum systems become overwhelmed as a result of large numbers of applications, the UNHCR encourages group-based mechanisms, which it is also prepared to support.”²⁰³
208. The group-based determination (*prima facie*) refers to the recognition of refugee status based on obvious and objective circumstances in the country of origin. This type of procedure can be used in cases where individual determination is impracticable, impossible or unnecessary, or when the refugee character of a group of similarly situated persons is apparent.²⁰⁴ Group-based recognition can be made for the reasons contained in the 1951 Convention Relating to the Status of Refugees or in regional instruments, such as the Cartagena Declaration. Such recognition applies to all individuals belonging to the beneficiary class, unless there is evidence to the contrary that they are refugees, in particular circumstances, in which case an individual evaluation may be required.²⁰⁵
209. Taking into account the context of massive human rights violations, the profiles of individuals subjected to persecution in Nicaragua, as well as the agents and perpetrators responsible for the various forms of persecution in the country, the IACHR deems appropriate the use of group-based protection responses, which implies the possibility of making a determination for the *prima facie* or group-based

²⁰² UNHCR, *Guidelines on International Protection No.2: Claims to refugee status related to situations of armed violence and conflict under Article A1(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*. HCR/GIP/16/12, December 2, 2016, para. 76.

²⁰³ UNHCR, *Guidance Note on the Outflow of Nicaraguans*, August 2018, para. 3.

²⁰⁴ UNHCR, *Guidelines on International Protection No.11: Prima Facie Recognition of Refugee Status*, June 24, 2015, HCR/GIP/15/11., para.2

²⁰⁵ UNHCR, *Guidelines on International Protection No.11: Prima Facie Recognition of Refugee Status*, June 24, 2015, HCR/GIP/15/11.

recognition of refugee status. This type of procedure would imply the collective recognition of Nicaraguans without the need for an individualized evaluation.

D. Complimentary Protection

210. In its Preliminary Observations, the Commission valued the indication by the State of Costa Rica on the forthcoming incorporation of the complementary protection into the domestic legal protection system. There is complementary protection when “the authorized entity in the receiving country accords to the alien who is an irregular migrant and who does not meet the conditions under the traditional or broadened definition of a refugee, consisting, mainly, in not returning her or him to the territory of another country where her or his life, liberty, safety or integrity would be threatened.”²⁰⁶
211. Thus complementary protection recognizes that there are individuals who do not come within the definition of a refugee, but who cannot be returned to their countries, either due to obligations in other international treaties²⁰⁷ or by application of international customary law. Thus, the mechanism of complementary protection results in a broad expression of the content and scope of the right to *non-refoulement*, through which States ensure the rights of individuals who do not qualify as refugees or for another immigration status, but cannot be returned.²⁰⁸
212. As indicated above, the Inter-American Court has interpreted the right to *non-refoulement*, established in Article 22.8 of the American Convention, as a broader right in its content and scope vis-a-vis the rights under international refugee law, since it offers protection for any foreigner - and not only to asylees or refugees - when their life, integrity and/or freedom are at risk of being violated, whatever their legal status or migratory situation in the country where they are.²⁰⁹ The foregoing includes those individuals at risk of torture or cruel, inhuman or degrading treatment or punishment in accordance with Article 13 of the Inter-American Convention to Prevent and Punish Torture²¹⁰ and Article 3 of the United Nations Convention against Torture and Others

²⁰⁶ I/A Court H.R., Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, para. 238.

²⁰⁷ Such as Articles 3 of the Refugee Convention, Article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 7 of the International Covenant on Civil and Political Rights, Articles 5 and 22.8 of the American Convention on Human Rights, Article 13 of the Inter-American Convention to Prevent and Punish Torture and Article 3 of the European Convention on Human Rights.

²⁰⁸ I/A Court H.R., Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, paras. 238-240.

²⁰⁹ I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 135.

²¹⁰ OAS, [Inter-American Convention to Prevent and Punish Torture](#), Article 13. Extradition shall not be granted nor shall the person sought be returned when there are grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting State.

Cruel, Inhuman or Degrading Treatment or Punishment.²¹¹ The obligation of *non-refoulement* established in these provisions is absolute, and implies the prohibition against expelling any individual, without exception of any kind.²¹²

213. The Executive Committee of the United Nations High Commissioner for Refugees referred to complementary forms of protection, establishing that: i) they are a positive way of responding pragmatically to certain international protection needs; ii) that they should be applied in a way that strengthens, rather than undermines, the international refugee protection regime; iii) temporary protection, without official recognition of refugee status, as a specific provisional protection response to situations of mass influx in order to provide immediate emergency protection from *refoulement*, should be clearly distinguished from other forms of international protection; iv) that in granting complementary forms of protection to those persons in need of it, it provides them the highest degree of stability and certainty by ensuring human rights without discrimination, taking into account the best interests of the child and the family unit; v) that the possibility of establishing a comprehensive procedure before a central authority adopting a single decision allowing for the assessment of refugee status, be followed by other international protection needs, as a means of assessing all international protection needs, while recognizing the need for a flexible approach to the procedures applied; vi) the importance that people in need of international protection obtain and enjoy it.²¹³
214. In the case of Nicaraguans who have been forced to leave their country and who do not meet the criteria for inclusion contemplated in the definition of refugee in the 1951 Convention or in the expanded definition of the Cartagena Declaration, but whose return to Nicaragua could risk their life, liberty and security, the State of Costa Rica has the obligation not to return them. To that effect it could invoke concepts such as the recognition of complementary protection.²¹⁴
215. Within the framework of complementary protection, the State of Costa Rica has the obligation to assess, for example, if the presumption of a “certain risk” exists that this group of individuals may suffer torture or cruel, inhuman or degrading treatment should they be deported or extradited,²¹⁵ or whether their right to life is at risk of

²¹¹ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3.1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned a consistent pattern of gross, flagrant or mass violations of human rights.

²¹² In the same sense, see IACHR, Report on Terrorism and Human Rights. OEA/Ser.L/V/II.116 Doc 5 rev. 1 corr. (2002), para. 394.

²¹³ Executive Committee of the Programme of the High Commissioner, Conclusion on the Provision on International Protection Including through Complementary Forms of Protection, October 7, 2005.

²¹⁴ UNHCR, Ficha Técnica No. 3 Sobre el derecho a la no devolución y no expulsión. Fichas Técnicas sobre el Sistema Interamericano de Derechos Humanos y la Protección de las personas del interés del UNHCR, <http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/BDL/2017/11218>. (Spanish ONLY)

²¹⁵ For precautionary measures of the IACHR related to the principle of *non-refoulement*, see, among others: MC-291-11, José Antonio Cantoral Benavides (Bolivia): Mr. Cantoral Benavides is a national of Peru with refugee status in Bolivia, the Commission granted precautionary measures in his favor because it

violation due to the context of violence and persecution experienced in Nicaragua against any individual identified as a dissident. Likewise, under complementary protection there is a duty of the State to assess whether the return of an individual could even seriously affect their health condition, in light of the restriction on access to health services for those considered as opponents of the current regime. In this regard, various international organs have agreed that the return of an individual could be considered a violation of international obligations, if this measure results in a serious health deterioration, or even in their death.²¹⁶

216. In this regard, the right to *non-refoulement* is not limited to specific provisions; there may be various situations with well-founded reasons to believe that there is a real risk of irreparable harm if the person is returned.²¹⁷ Therefore, the circumstances in which complementary protection could be granted are not susceptible to exhaustive definition, but are subject to the evolution and interpretation of the right to *non-refoulement*.²¹⁸
217. With respect to the procedure for the determination of complementary protection, this must be given with the minimum of due process guarantees ensured to all persons, regardless of their migratory status, enabling them to assert and defend their

considered that his deportation to Peru could endanger his life and integrity; MC - 10-09, Wong Ho Wing (Peru); Djamel Ameziane (United States), Precautionary Measure of August 20, 2008: Mr. Ameziane was captured by US agents in Afghanistan and transferred to Guantanamo, later the United States was going to deport him to Algeria where he could be in danger of being tortured; Boniface Nyamanhindi (United States), Precautionary Measure of August 18, 2008: Mr. Nyamanhindi, a Zimbabwean national, in immigration detention in the United States was awaiting deportation to his country where he could be subjected to torture and other cruel, inhuman and degrading treatment for being a member of the party opposing the government; Frank Igwebuike Enwonwu (United States), Precautionary Measure of March 28, 2007: Mr. Enwonwu is a national of Nigeria, detained in the United States and while waiting deportation, the Commission granted precautionary measures on the ground that if Mr. Enwonwu was returned to his country, he could be subjected to torture; Enrique Medrano, Juan Berrio and the girls Sandy Juliet Martínez Copete, Yoinis Gutiérrez Mena, Sandra Gutiérrez Mena and Yesenia Berrio Mena (Panama), Precautionary Measure of April 25, 2003; Ikbal Iskander and Gina Aziez (Canada), Precautionary Measure of February 19, 2002.

²¹⁶ In this sense, the Inter-American Court has held that: “[...] the expulsion or return of a person violates international obligations, depending on the particular circumstances of the specific person, such as in cases in which this [sic] measures would result in harming or a serious deterioration in the person’s health, or, even, when it could lead to her or his death. In order to evaluate a possible violation of the Convention or Declaration, the status of the health or the type of ailment that the person suffers would have to be taken into account, as well as the health care available in the country of origin and the physical and financial accessibility to this, among other aspects [...]”. See, I/A Court H.R., *Rights and guarantees of children in the context of migration and/or in need of international protection*. Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, para. 229. See also, IACHR, Report No. 63/08, Admissibility and Merits, Case 12.534, *Andrea Mortlock*, United States, July 25, 2008, para. 91. IACHR. Precautionary Measure 171/11, *Edwin A. Márquez González*, United States, July 5, 2011; IACHR. Precautionary Measure 5/11, *Haitian Nationals in Process of Deportation*, United States, February 1, 2011; IACHR. Resolution 81/2018, Precautionary Measure 490/18 *M.B.B.P.*, Panama, October 15, 2018. Committee on the Rights of the Child, *General Observation No. 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 39th Session (2005), U.N. Doc. CRC/GC/2005/6 (2005), para. 27.

²¹⁷ Committee on the Rights of the Child, *General Observation No. 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 39th Session (2005), U.N. Doc. CRC/GC/2005/6 (2005).

²¹⁸ MCADAM Jane, ‘Human Rights and Forced Migration’ in FIDDIAN-QASMIYEH, Elena, LOESCHER, Gil, LONG, Katy, SIGONA Nando, *The Oxford Handbook of Refugee & Forced Migration Studies* (Oxford, 2014), p. 205.

rights and interests effectively and without discrimination.²¹⁹ However, with respect to the procedure to be followed to grant complementary protection, the UNHCR has established that the ideal is to have a single procedure to first examine whether a person can be recognized as a refugee in terms of the 1951 Convention to be followed by an examination if there is a risk should that the person be returned, and should, consequently, be granted protection accordingly.²²⁰ At this point, the Commission considers it relevant to point out that, although the nature of complementary protection is also humanitarian as in the case of the recognition of refugee status, the granting of such protection must be differentiated from the granting of visas for humanitarian reasons.

218. Finally, with respect to the recognition of rights for beneficiaries of complementary protection, the Inter-American Court has established that the privileges and rights derived from international protection must be based on the needs of the applicant and not on the type of international protection granted. Thus, beneficiaries of complementary protection must rely on the recognition of basic rights of protected persons.²²¹ In the same vein, the UNHCR has established that the minimum rights and benefits enjoyed by a recognized refugee or obtaining complementary protection are the same, in order to show that the needs of all individuals requiring of international protection are the same.²²² Consequently, under international protection, complementary protection must grant the beneficiaries the same guaranteed rights enjoyed by refugees.
219. In this context, the IACHR urges the State of Costa Rica to ensure other forms of international protection to those non nationals who fail to satisfy the criteria to be considered refugees and applicants for such status, but who do require international protection, by respecting and guaranteeing the right to *non-refoulement* and minimum due process guarantees enshrined in Articles 8, 22.8 and 25 of the American Convention on Human Rights.

E. Refugees sur place

220. The individual who was not a refugee upon leaving his or her country, but who subsequently acquires such status, is called a refugee *sur place*. While both the 1951 Convention and the Cartagena Declaration require as the first element of the definition of a refugee that a person should be outside their country, this does not

²¹⁹ I/A Court H.R., *Case of expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 351; I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 143.

²²⁰ UNHCR, *Agenda for Protection*, 2003, third edition, p. 34.

²²¹ I/A Court H.R., Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, para. 239.

²²² UNHCR, UNHCR's Observations on the European Commission's Proposal for a Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals and Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection (Brussels, 12 September 2001, COM(2001) 510 final, 2001/0207 (CNS).

necessarily mean that they must have left that country illegally or that he or she must have departed due to well-founded fears. The individual may have decided to request recognition of their refugee status after having already been abroad for some time.²²³

221. In this regard, the UNHCR has emphasized that no part of the 1951 Convention is limited to actions or persecution that took place before the individual's departure. In fact, the wording of the 1951 Convention suggests the exact opposite; that it can and does apply to all individuals who are "outside the country of nationality".²²⁴
222. This interpretation is further confirmed by the wording and content of Article 1C(4), establishing that the 1951 Convention ceases to apply to a person who "has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution." When referring explicitly to a country where the individual "remained", it is clear that the fear of persecution does not depend on, and does not need to have arisen before, leaving or fleeing his or her country.²²⁵
223. An individual may be considered a refugee *sur place* under two different scenarios: (i) due to circumstances arising in their country of origin during his or her absence; and (ii) as a result of his or her own activities or behavior in the receiving State. The first scenario applies, for example, to diplomats and other officials serving abroad, prisoners of war, students, migrant workers and others; while the second, for example, through the political opinions expressed by that individual about their country of residence.²²⁶
224. Regarding political opinions expressed in the receiving State, it should be emphasized that some applicants may have decided not to act on their political opinion in the country of origin for fear of the consequences of expressing it openly. In this sense, their fear of persecution may arise, or be known, while present in the receiving State, which may result in a refugee *sur place* application.²²⁷
225. In this context, the UNHCR has emphasized that the critical approach in analyzing asylum applications should always be given to the persecution or risk faced by the asylum seeker and not as to whether the applicant's activities in his or her country of residence are self-sufficient. Therefore, as in any asylum application, the

²²³ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva, 1979, Reedited in 1992), para. 94.

²²⁴ UNHCR, Amicus curiae of the United Nations High Commissioner for Refugees (UNHCR) on the interpretation and application of 'sur place' claims within the meaning of Article 1A(2) of the 1951 Convention Relating to the Status of Refugees, February 14, 2017, para. 21.

²²⁵ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva, 1979, Reedited in 1992), para. 94; A. Zimmermann and C. Mahler, 'Article 1A, para. 2, Definition of the term 'Refugee', in The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary, edited by A. Zimmermann, p. 325, para. 132.

²²⁶ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva, 1979, Reedited in 1992), paras. 95-96.

²²⁷ UNHCR, [Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), October 23, 2012, HCR/GIP/12/01, para. 57.

determination to be made under the 1951 Convention is whether there is fear of persecution and if such fear is founded.²²⁸

226. In this regard, the Commission received information on a group of Nicaraguans who, for different reasons, had left their country of origin prior to April 2018, and that due to the current situation in the country have well-founded fears of returning and need recognition as refugees. As a result of the above, the Commission considers it relevant that through its General Directorate of Migration, the State of Costa Rica also considers refugee *sur place* applications of Nicaraguans who entered prior to April 2018, the time identified by the IACHR as the commencement of state repression in Nicaragua; and who, because of the current situation of massive human rights violations, or because of their activities or political opinions, are unwilling or unable to return to Nicaragua and require international refugee protection in Costa Rica.
227. The IACHR urges the State of Costa Rica to guarantee the recognition of refugee status to Nicaraguans with well-founded fears of persecution if they return to Nicaragua, including so-called refugees *sur place*, through fair, swift and efficient procedures guaranteeing their right to request asylum and the right to *non-refoulement* in accordance with Articles 22.7 and 22.8 of the American Convention.

F. Conditions for Return

228. During its visit, the IACHR received testimony from Nicaraguans who fled their country and expressed interest in eventually returning. In this regard, one of the individuals giving testimony to the IACHR during the visit stated that: “What I would like is for the president to leave and I’d like to return. It is hard to be in a country not your own. I would like, in the future, to return and see Nicaragua free. See Nicaragua with democracy.”²²⁹ At the same time, some interviewees indicated that as long as repression and violence continue in Nicaragua, they do not consider their return as an option since there is still a serious risk to their lives: “We want to return to Nicaragua, but we cannot while that government continues there. With them there, we are dead.”²³⁰
229. In its observations on the draft report, the State of Nicaragua indicated that it guarantees the voluntary, assisted and safe return of Nicaraguans through the

²²⁸ ‘There is no logical or empirical connection between the well-founded fear of being persecuted or of suffering serious harm, and the fact that the person may have acted in a manner designed to create a refugee claim. The 1951 Convention does not, either explicitly or implicitly, contain a provision according to which its protection cannot be afforded to persons whose claims for asylum are the result of actions abroad.’ [UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals (OJ L 304/12 of 30.9.2004), 28 January 2005, p. 17].

²²⁹ Testimony of an individual who participated in the demonstrations since April 8, 2018, received by the IACHR in San José, October 16, 2018.

²³⁰ Testimony of an individual who participated in the demonstrations since April 8, 2018, received by the IACHR in San José, October 16, 2018.

Program on Assisted Voluntary Return, as implemented from April 15, 2019.²³¹ Likewise, the State of Nicaragua detailed the measures adopted by the National Police under the Amnesty Law (Law 996), approved on June 10, 2019, in particular: i) (...) verification from police preventive cells that none of the “criminal detainees” was linked to the acts of violence that occurred as from April 18, 2018; ii) decision not to continue with police investigations in response to the potential perpetrators and offenses that occurred as of April 18, 2018, until the date of entry into force of said law; iii) revocation of all police detention orders, as well as search warrants, detention, apprehension and occupation of property orders directed at persons under investigation and searched in relation to the events beginning on April 18, 2018; iv) indications that no individual may be detained upon entering the country by authorized border crossings (air, sea or land); v) it indicated that deportees entering Nicaragua will not be detained as they are to be considered beneficiaries of the Amnesty Law; vi) cancellation of INTERPOL-Nicaragua search notices against individuals involved in the acts of violence initiated on April 18; vii) cancellation of all registered criminal records in favor of individuals benefiting from the Amnesty Law (...).²³²

230. In this regard, the Commission considers it relevant to point out that the return of Nicaraguans can only take place once the State offers real guarantees that their life and personal integrity will no longer be at risk, and that they will not be subject to persecution upon their return to Nicaraguan territory. In particular, the United Nations Special Rapporteur on the human rights of migrants has considered that organizing returns to States that are unsafe and in which migrants may be subject to violations of their human rights may imply a violation of the principle of *non-refoulement*.²³³
231. In that regard, the IACHR recalls that in order to qualify as “voluntary,” the return must meet the requirements of a fully informed decision, free from coercion and backed by the availability of sufficient valid alternatives.²³⁴ Regarding the latter, the IACHR observes that, on many occasions, migrants with international protection needs are forced to return in order to avoid deportation, imprisonment or miserable conditions.²³⁵ According to the testimonies collected by the IACHR, some individuals were contemplating the possibility of returning to Nicaragua, due to the difficulties they have faced in Costa Rica, above all, due to impediments to employment since the procedure began to determine the need for international protection; such decisions cannot qualify as “voluntary”.
232. Based on the above considerations, the Commission reiterates that State of Nicaragua has the obligation to adopt and implement measures to respect and guarantee the rights to life, personal integrity, the prohibition of torture and cruel, inhuman and

²³¹ Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, para. 14.

²³² Communication from the State of Nicaragua. Note MPN-OEA/0093. Observations of the State of Nicaragua on the IACHR’s Draft Report on the Migration of Nicaraguans to Costa Rica, July 29, 2019, para. 31.

²³³ UN *Report of the Special Rapporteur on the human rights of migrants*, A/HRC/38/41, May 4, 2018, para. 30.

²³⁴ UN *Report of the Special Rapporteur on the human rights of migrants*, A/HRC/38/41, May 4, 2018, para. 30. See, inter alia, UNHCR, [Handbook for Voluntary Repatriation: International Protection](#), 1996, p. 11.

²³⁵ UN *Report of the Special Rapporteur on the human rights of migrants*, A/HRC/38/41, May 4, 2018, para. 15.

degrading treatment, personal freedom and the prohibition on arbitrary detention. Until such measures are effectively implemented, and in order to respect and guarantee their obligations under international human rights law and international refugee law, the transit and destination countries of these individuals must refrain from promoting or carry out targeted measures so that individuals with international protection needs go back to their country of origin and return.

CHAPTER 7

ACCESS TO AND EFFECTIVE
EXERCISE OF RIGHTS
IN COSTA RICA

ACCESS TO AND EFFECTIVE EXERCISE OF RIGHTS IN COSTA RICA

233. The Commission has recognized the open-door policy of the State of Costa Rica, as well as its humanitarian response provided to Nicaraguans. Similarly, the Commission noted that Nicaraguans have created a very strong mutual solidarity and support network, organizing themselves into movements and organizations. From exile, these networks continue to develop strategies to highlight and struggle against the situation in their country and eventually return there.²³⁶
234. At the same time, during its visit, the Commission received information regarding the various challenges in terms of access to rights, especially economic, social, cultural and environmental rights, such as the right to health, housing, education and work.²³⁷ In many cases, this occurred due to the State of Costa Rica's failure to issue documentation promptly and in a timely manner.
235. Nicaraguans informed the Commission that they had received support in reception homes or places arranged by the church where they have been able to access basic services, such as food and housing. Likewise, civil society organizations have provided other types of support such as free legal assistance or psychological treatment. However, as the GIEI mentioned, the resources have been insufficient and there are individuals who have not received support of any kind and are living in the streets.²³⁸
236. When the Inter-American Court referred to the general obligation to respect and guarantee the rights recognized in the Convention, it established that it has an *erga omnes* character,²³⁹ and that States cannot establish any grounds for discrimination in respecting and guaranteeing the rights recognized in the Convention with respect to the persons subject to its jurisdiction. In the words of the Court "the obligation to respect and ensure the right to equal protection and non-discrimination is irrespective of a person's migratory status in a State."²⁴⁰

²³⁶ Interdisciplinary Group of Independent Experts (GIEI) Nicaragua, Report on the violent events that took place in Nicaragua between April 18th and May 30th, 2018, December 2018, p. 324.

²³⁷ See, *El Nuevo Diario*, Refugiados nicas pasan penurias en Costa Rica, February 12, 2019. IACHR, Press Release No. 233/18, Preliminary Observations on the working visit to monitor the situation of Nicaraguans forced to flee to Costa Rica, November 1, 2018.

²³⁸ GIEI Nicaragua, Report on the violent events that took place in Nicaragua between April 18th and May 30th, 2018, December 2018, p. 324.

²³⁹ I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 109.

²⁴⁰ I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 155.

237. The Inter-American Court considered that the principle of equality before the law and non-discrimination belongs to the realm of *jus cogens*, as an imperative norm of international law. In this sense, discriminatory treatment is unacceptable based on gender, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status.²⁴¹
238. Migrants and persons subject to international protection, just as nationals of a State, have the right to respect and guarantee of their human rights and that States establish mechanisms for their protection. With specific reference to refugees, the 1951 Convention Relating to the Status of Refugees, in addition to recognizing the right for persons whose circumstances fall within the definition of Article 1A(b) to receive protection, enshrines a series of rights related to their personal status, documentation, freedom of movement, education, health, work, access to justice, and rights to property and association.
239. The only limitations on human rights contemplated are the right to enter, move about within and reside in a country, which is restricted to those who have the legal authorization to do so,²⁴² and certain political rights granted only to citizens.²⁴³ However, even within these exceptions, the right of access to justice and to due process must be guaranteed, as well as the principle of *non-refoulement*, to seek and receive asylum, non-discrimination, the best interests of the child or adolescent and the family unit. In this way, migrants and those subject to international protection are entitled to have the rights enshrined in the American Convention and other Inter-American instruments respected and ensured on equal terms with other persons.
240. Similarly, General Observation No. 15 of the Human Rights Committee establishes that the rights recognized in the Covenant are applicable to all persons, regardless of reciprocity, and regardless of their nationality or the fact they are stateless;²⁴⁴ and General Observation No. 20 of the Committee on Economic, Social and Cultural Rights, which establishes that the rights recognized in the Covenant are applicable to all persons, including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of their legal status and documentation.²⁴⁵ In particular, the Committee warned that “the lack of documentation frequently makes it impossible for parents to send their children to school, or for migrants to have access to health care, including emergency medical treatment, to take up employment, to apply for social housing or to engage in an

²⁴¹ I/A Court H.R., *Judicial Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 101.

²⁴² See, [American Convention on Human Rights](#), Article 22.1.

²⁴³ See, [American Convention on Human Rights](#), Article 23.1.

²⁴⁴ UN Human Rights Committee, *The Position of Aliens under the Covenant*, 11/04/86. General Comment No. 15, 27th Period of Sessions, 1986, para. 1. Available at: <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2001/1403.pdf?view=1>

²⁴⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No.20: Non-discrimination in economic, social and cultural rights (art.2, para.2 of the International Covenant on Economic, Social and Cultural Rights), para. 30.

economic activity in a self-employed capacity.”²⁴⁶ For its part, the UNHCR Executive Committee (ExComm) established in its Conclusion No. 82 on Safeguarding Asylum that there is an obligation to treat asylum-seekers and refugees in accordance with the applicable human rights and refugee law standards as set out in relevant international instruments.²⁴⁷

A. *Right to Work*

241. According to the testimonies received by the IACHR, 76.31% of the interviewees had been unable to take up formal work in Costa Rica. This in turn, could have pernicious repercussions on the effective exercise of their other human rights such as access to housing, health and education, in light of the interdependence and indivisibility between human rights, the lack of hierarchy, and the fact that they are enforceable in all cases before competent authorities.²⁴⁸
242. In this regard, the Inter-American Court has indicated that labor rights are protected by Article 26 of the American Convention, which in turn protects the rights derived from economic and social rights, and educational, scientific and cultural norms contained in the OAS Charter.²⁴⁹ In this regard, Article 45.b of the Charter states that “work is a right and a social duty”, and Article 46 of the same instrument indicates that States must “harmonize the social legislation” for the protection of such a right. Likewise, in *Advisory Opinion OC-10/89*, the Inter-American Court indicated that “the Member States have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, ...to the corresponding provisions of the Declaration.”²⁵⁰ Thus, Article XIV of the American Declaration provides that “[e]very person has the right to work under proper conditions, and to follow his vocation freely[...].”

²⁴⁶ UN Committee on Economic, Social and Cultural Rights: Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights. UN Doc. E/C.12/2017/1, March 13, 2017, para. 11.

²⁴⁷ UNHCR, Executive Committee No. 82 (XLVIII) *Conclusion on Safeguarding Asylum*, 1997, 48th Session of the Executive Committee, para. vi). Available at: <http://www.unhcr.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/BDL/2002/0593>.

²⁴⁸ I/A Court H.R., *Case of Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, para. 141; I/A Court H.R., *Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, para. 101; I/A Court H.R., *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 131.

²⁴⁹ I/A Court H.R., *Case of Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, para. 143.

²⁵⁰ I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 43.

243. In addition, this right is recognized in a vast international *corpus iuris* such as Article 6 of the International Covenant on Economic, Social and Cultural Rights,²⁵¹ Article 23 of the Universal Declaration of Human Rights,²⁵² Articles 6 and 7 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights,²⁵³ Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women²⁵⁴, and Article 32.2 of the Convention on the Rights of the Child.²⁵⁵ The IACHR also notes that in the framework of the Summits of the Americas, the Heads of State and Government have consistently expressed the importance of guaranteeing the protection of the human rights for migrants, including labor rights, by expressing specific mandates on the subject.²⁵⁶ This has also been reflected by the OAS General Assembly.²⁵⁷ Within the framework of the United Nations, the General Assembly also requested compliance of employment legislation and respect and promotion of international labor standards and the rights of migrants in their places of work.²⁵⁸
244. One of the main concerns identified by the Commission during its visit is the lack of effective access to the right to work, primarily due to the lack of prompt and timely issuance of the work permit recognized by the Costa Rican Rules of Procedure for Refugees.²⁵⁹ In this regard, Article 54 of the Rules of Procedure establishes that while the application for refugee status is under assessment, the Refugee Subprocess of the General Directorate may extend to the applicant a provisional document free of charge, temporarily governing their migratory status. This provisional document proves that the person is an applicant for refugee status and ensures the right to *non-refoulement*.
245. However, this provisional document does not guarantee the right to work. However, if the administration exceeds the three month time limit to resolve the request, the Refugee Subprocess can – after analyzing the case – recommend to the Directorate General the issuance of a provisional document for the incorporation of the right to

²⁵¹ See, [International Covenant on Economic, Social and Cultural Rights](#), Article 6.1.

²⁵² See, [Universal Declaration of Human Rights](#), Article 23.

²⁵³ See, [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”](#), Articles 6 and 7.

²⁵⁴ See, [Convention on the Elimination of All Forms of Discrimination against Women](#), Article 11. 1.

²⁵⁵ See, [Convention on the Rights of the Child](#), Article 32.2.

²⁵⁶ OAS. Summits of the Americas: Follow-Up and implementation: Mandates (Migration). At: <http://www.summit-americas.org/sisca/mig.html> (last visited February 4, 2019).

²⁵⁷ OAS, GENERAL ASSEMBLY, HUMAN RIGHTS OF MIGRANTS, INCLUDING MIGRANT WORKERS AND THEIR FAMILIES. AG/RES. 2729 (XLII-O/12). JUNE 4, 2012.

²⁵⁸ UN General Assembly. Resolution 68/179. Protection of Migrants. UN Doc. A/RES/68/179, January 28, 2014; UN General Assembly. Declaration of the High-level Dialogue on International Migration and Development. UN Doc. A/RES/68/4, January 21, 2014. See, inter alia, UN. Committee on Economic, Social and Cultural Rights, [General Comment No.18: The Right to Work](#), U.N. Doc. E/C.12/GC/18, November 24, 2005. Also, the Preamble to ILO Convention No.168, of 1988, which provides: “[...] the importance of work and productive employment in any society not only because of the resources which they create for the community, but also because of the income which they bring to the workers, the social role which they confer and the feeling of self-esteem which workers derive from them..”.

²⁵⁹ Article 54 of the [Rules of Procedure for Refugees](#).

work. With such documentation, the individual may undertake any remunerated or for-profit activity.²⁶⁰

246. In this regard, the Commission welcomes the fact that the domestic regulations of Costa Rica recognize the right to work and foresee the issuance of a work permit. However, information received indicated that the three-month period does not begin to run from time the application is submitted, but when the applicant completes his or her case file with the eligibility interview. This may take place more than one year after the application is submitted.²⁶¹ Additionally, civil society organizations highlight the lack of objectivity in the granting of work permits since, in many cases, this seems to depend on the willingness of the official receiving the application, and not on an objective assessment.
247. In this regard, the Inter-American Court has established that the recognition of refugee status is not constitutive, but declarative. In this sense, the individual does not acquire refugee status by virtue of recognition, but is recognized as such due to the fact of being a refugee.²⁶² Therefore, the Commission considers that individuals are applicants from the moment they request formal recognition as refugees, and that, therefore, the correct interpretation of Article 54 of the Rules of Procedure implies that the 3 month time limit starts to run as from the first contact with the authorities and submission of the application.
248. Additionally, the Commission observes that the Rules of Procedure contemplate the possibility of receiving a work permit “if the administration extends the three month time limit to resolve the application”. This is due to the fact that Costa Rican legislation envisages that the applications be resolved within three months, in a duly reasoned decision.²⁶³ For its part, the State reported on its strenuous efforts to guarantee the right of access to work, and that as of July 2019, a total of 14,000 work permits had been issued by the DGME.²⁶⁴
249. At the same time, the Commission expresses concern about the information received indicating that work permits are not being issued within the period set out in the Rules of Procedure. In that regard, during its visit to Costa Rica, the IACHR was informed that the three-month period set out in the Rules of Procedure for Refugees is not being met in practice. There are individuals in possession of a provisional

²⁶⁰ The last paragraph of Article 54 of the [Rules of Procedure for Refugees](#) establishes that: “Should the administration extend for three months the time to resolve the application, and the case has been considered by the Refugee Subprocess, the latter may recommend to the General Directorate that a provisional document be issued incorporating the right to work. With this documentation any type of paid labor, either employed or self-employed, may be engaged under strict adherence to the provisions of the current legal system.”

²⁶¹ *HIAS, Cumplimiento de obligaciones del Estado costarricense asumidas en el marco de la Convención de 1951 and others instrumentos de protección internacional, en relación con la situación de personas nicaragüenses*, (Spanish Only), November 6, 2018.

²⁶² I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 145.

²⁶³ [Rules of Procedure for Refugees](#), Article 26.

²⁶⁴ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica’s observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, p. 6

certificate as an applicant refugee, even with offers of work, who have been unable to access the work permit, and thereby, unable to engage in formal work. In this regard, the testimony of a family group indicated that:

“Although we have the document as asylum seekers, when we go to Migration to apply for a work permit, they don't want to issue it. They tell us to come back another day. Our son found an informal job, but we are a family group of five people, and what he earns is not enough. Nor is there a clear policy regarding people with professional titles such as doctors, that cannot return to Nicaragua to legalize documents for fear of our lives.”²⁶⁵

250. The Commission expresses its concern about the issuance of the work permit, at the earliest, within 9 to 12 months after submission of the asylum application. This situation may also generate pernicious effects in the exercise of the right to work, exposing Nicaraguans in need of international protection to a lack of access to formal employment, as well as working conditions of exploitation or under-employment. In this regard, the UNHCR has pointed out that “restricting the rights of refugees and delaying the attainment of durable solutions for years causes frustration and tension among refugees and in the host community. In such situations refugees, particularly women and children, become more vulnerable to various forms of exploitation such as trafficking and forced recruitment, and may develop a long-term dependency on humanitarian assistance.”²⁶⁶
251. Likewise, the IACHR has referred on several occasions to the condition of structural vulnerability faced by migrants, and to the abuses they face, including poor working conditions.²⁶⁷ Along the same lines, the Guiding Principles on Business and Human Rights refer to migrants as one of the groups that often does not enjoy the same level of legal protection of their human rights as the general population, which may facilitate abuses by companies and prevent administrative or judicial review of such cases.²⁶⁸
252. In particular, the IACHR draws attention to the existence of deceptive recruitment practices or the absence of employment contracts; abusive working conditions, in

²⁶⁵ Testimony of a family group, mainly doctors, who had to flee for treating those wounded at the demonstrations or roadblocks, received by the IACHR in San José, October 15, 2018.

²⁶⁶ UNHCR, Local Integration and Self-Reliance, U.N.Doc. EC/55/5C/CRP.15, June 15, 2015, para. 6. See, inter alia UN. Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility, A/HRC/35/25, April 28, 2017, para. 49. UN. Committee on Economic, Social and Cultural Rights, General Comment No.18: The Right to Work, U.N. Doc. E/C.12/GC/18, November 24, 2005. International Labor Organization, Promoting Fair Migration – General Survey concerning the Migrant Workers Instruments, ILC.105/III/1B, 2016, para. 371.

²⁶⁷ IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II, Doc. 46/15 (2015), para. 8; IACHR. Annual Report. Second Progress Report on the Special Rapporteurship on Migrant Workers and Their Families in the Hemisphere, OEA/Ser.L/V/II.111 doc. 20 rev. April 16, 2001, para. 64.

²⁶⁸ UN Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council, June 16, 2011, Resolution 17/4, observations on Principles 3, 12 and 26.

some cases guided by commercial justifications of "cost reductions" or "improvement" of corporate competitiveness, without taking into account human rights norms or specific evidence on the labor market; the absence of basic social security protection despite the fact that such persons contribute, at a minimum, through indirect taxes; or, the inefficiency of the legal system and of state supervision of labor and occupational health concerns with respect to these individuals. This situation may be exacerbated when taking into account the factors of discrimination and social xenophobia commonly experienced by them and the difficulties of becoming members of unions and workers groups as a means to protect their employment rights.

253. In this regard, in its observations on the draft of this report, the State of Costa Rica indicated that Costa Rican employment legislation states that "the reality contract prevails, as such, the absence of a written contract does not, *per se*, constitute an employment breach, unless there is a breach of minimum working conditions".²⁶⁹ The State added that the labor inspection, under the National Directorate of Labor Inspection (DNI) control, has national coverage that is based on scheduling and individual complaints criteria.²⁷⁰
254. For its part, the Inter-American Court has established that "the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment," and that "on assuming an employment relationship, the migrant acquires rights as a worker, which must be recognized and guaranteed, irrespective of his regular or irregular status in the State of employment. These rights are a consequence of the employment relationship."²⁷¹ Therefore, the IACHR considers that asylum applicants who begin an employment relationship must enjoy the same employment rights and benefits as nationals. In this regard, the UN Committee on Migrant Workers (CMW) has warned about the need to take effective measures against non-payment of wages, deferment of payment until the workers' departure, the transfer of wages to accounts inaccessible to migrant workers or the payment of lower wages than those received by nationals.²⁷²
255. In this regard, the States must adopt appropriate measures to ensure that companies hiring these individuals also respect their employment rights, on equal terms as national workers. For these purposes, it is important that companies exercise due diligence in their procedures to identify possible risks and negative impacts on human rights, and the State's supervisory task in these cases is essential as part of its international obligations in this area.

²⁶⁹ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica's observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, p. 5.

²⁷⁰ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica's observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, p. 5.

²⁷¹ I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 134.

²⁷² Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, *General Comment No.2 on the Rights of Migrant Workers in an Irregular Situation and Members of their Families*, August 28, 2013, para. 63.

256. On the other hand, the Commission observes that under Costa Rican legislation, documented aliens have permission to work. In this regard, the Commission recalls that anyone requesting recognition of refugee status also has documented status, even if their request for recognition thereof has not yet been resolved. Within this framework, the Commission observes that the issuance of the work permit three months after the eligibility interview within the procedure for determining refugee status, represents an inequality in relation to other migrants. Notwithstanding the foregoing, the IACHR recalls that irrespective of the migratory status of the person when an employment relationship is established, the protections accorded by law to workers, with the full range of rights and obligations covered, must apply to all workers without discrimination, including on the basis of documented or undocumented status.²⁷³
257. In this regard, the Commission urges the State of Costa Rica to adopt both legislative and administrative measures within the procedure for the recognition of refugee status, in order for individuals who have declared that they need international protection through their asylum application have access to a work permit from the time they submit said application, without distinction. This guarantees their right to work and their exercise of other human rights that depend on it. In addition, taking into account the particular historical position of Costa Rica as a host State in the Central American region, the Commission considers that as part of the fulfillment of its international guarantee obligations in these contexts, the design and incorporation of programs focused on individuals requiring international protection within their national employment policies and regulatory labor frameworks will not only be necessary at the national level, but may serve as an example of a good practice to be followed by the other States in the region.
258. Additionally, the Commission was informed that upon issuance of a work permit, asylum seekers and refugees cannot formally perform all types of work, such as construction or domestic service activities, since there is an exhaustive list of employments requiring a special migratory category known as “specific occupational worker”, meaning a “non-national, who, while not included in the other special categories, is required to perform remunerated activities as recommended by the Ministry of Labor on the basis of the studies on occupational activities.”²⁷⁴
259. In this regard, the Inter-American Court of Human Rights has indicated that States cannot discriminate based on one or more of the prohibited categories set out in Article 1.1 of the American Convention.²⁷⁵ Similarly, the Commission notes that this differential treatment of access to the right to work based on the individual’s migratory status could only be considered legitimate when it pursues a valid, reasonable and proportionate objective.²⁷⁶

²⁷³ IACHR. Report No. 50/16, *Undocumented Workers v United States of America*, Merits, November 30, 2016, para.76.

²⁷⁴ Article 2 of the [Rules of Procedure for Foreigners](#).

²⁷⁵ See, [American Convention on Human Rights](#), Art. 1.1.

²⁷⁶ I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 119.

260. In the current situation, the IACHR has been unable to discern a reasonable justification or valid objective legitimizing the differentiation between the special migratory category of refugee and the specific occupational worker, in the sense that asylum seekers and refugees are unable to engage in certain occupations reserved for the “specific occupational worker.” In addition, the Commission notes that this differentiated treatment is not necessary or indispensable generally to non nationals exercising their right to work, and in particular to Nicaraguans with international protection needs, as it runs contrary to Article 1.1 of the American Convention, as well as the international obligations contained in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
261. In its observations on the draft report, the State of Costa Rica presented detailed information on the functions performed by the Ministry of Labor and Social Security (MTSS) in relation to the working conditions of migrants. In this regard, the State indicated that the Ministry has a group of inspectors at the National Labor Inspection Directorate (DNI), who visit work centers to check up on workers’ employment rights, regardless of their migratory status. It added that, between 2016 and 2018, the DNI’s budget increased by 25%, reinforcing the country’s interest in improving the observance of workers’ employment conditions. In addition to the above, the State indicated that the MTSS has the Directorate of Labor Affairs responsible for the alternative resolution of individual and collective disputes, social dialogue and advice on employment rights. As the State of Costa Rica pointed out, in both Directorates individuals are received without a consideration of their migratory status, so any request made to provide documentation is to verify data and maintain service statistics. In particular, the State emphasized that in these Directorates “complaints are not filed due to migratory status, nor is access to legal information denied; on the contrary, it is a principle of our employment law system that the condition of workers and their applicable employment rights, prevail over migratory status.”²⁷⁷
262. On the other hand, the State of Costa Rica referred in general terms to the activities carried out through the MTSS in relation to employment access. These actions focus on the entire unemployed population of working age, including nationals, non-national residents, refugee applicants and refugees. Among the information presented, the State of Costa Rica indicated that: i) it recently approved reforms to modernize the National Employment System and improve individuals’ working capacity; ii) in compliance with ILO Recommendation 204, the State is working towards formalizing the National Transitional Strategy to Formal Employment; iii) within the framework of the Education and Vocational Training initiative, a Targeting Strategy is being prepared to construct a plan that will allow for the long-term establishment of new employment needs; iv) the objectives of the National Strategy for the Transition to the Formal Economy have been integrated into the State’s National Development Plan 2019-2022 in order to reduce the percentage of workers in the informal economy by up to 41.01% over the next four years; v) internally, the MTSS is in the process of developing an institutional strategy to address the migrant

²⁷⁷ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica’s observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, pp. 3 and 4.

working population, as well as improving administrative management of procedures related to labor migration.²⁷⁸

263. Consequently, the IACHR recognizes and welcomes the policies adopted by the State of Costa Rica and, at the same time, urges the State to take the necessary measures to respect and guarantee the right to work of Nicaraguans who have been forced to flee their country and request international protection in Costa Rica, in a timely and effective way by issuing the work permit from the time the applicant initiates the procedure to determine a need for international protection, and by allowing access to all occupations without distinction based on migratory status. Additionally, taking into consideration the particular situation of migrants' vulnerability, the State must adopt measures aimed at supervising hiring companies, in order to prevent possible violations of their human rights.

B. Right to Housing

264. In its Preliminary Observations, the Commission was pleased to highlight the creation and establishment of areas such as the North Migrant Assistance Center (CATEM) located in La Cruz, and the National Children's Trust (PANI) shelter for unaccompanied migrant children and adolescents in Upala.
265. With respect to the first, the Commission was able to observe during its visit that 45 individuals were being housed in the North CATEM, 18 of them were Nicaraguans and asylum seekers. The Center is divided into 26 shelters and the accommodation methodology consists in dividing families, men and women, separated in turn by their place of origin: Nicaraguans; persons not from the region, and other nationalities. The Commission interviewed the Nicaraguans at the CATEM, who reported that they enjoyed good conditions and treatment by the authorities.
266. However, the IACHR identified deficiencies in the shelters housing those individuals as they are permanently exposed to bad weather, the lack of basic provisions for their protection and well-being, such as bedclothes and appropriate clothing, the lack of sanitary conditions by constant exposure to animals such as rodents and snakes, as well as the lack of adequate spaces for living, eating and recreation, particularly for children and adolescents.
267. The Commission recalls that the right to housing is recognized in a vast international *corpus iuris* such as Article 11.1 of the International Covenant on Economic, Social and Cultural Rights,²⁷⁹ Article 23.1 of the Universal Declaration of Human Rights,²⁸⁰ Article 14.2 of the Convention on the Elimination of All Forms of Discrimination

²⁷⁸ Communication from the State of Costa Rica, DM-DV-1480-2019. Costa Rica's observations on the Draft Report on Forced Migration of Nicaraguans to Costa Rica, August 9, 2019, pp. 4 and 5.

²⁷⁹ See, [International Covenant on Economic, Social and Cultural Rights](#), Article 11.1.

²⁸⁰ See, [Universal Declaration of Human Rights](#), Article 23.1.

against Women,²⁸¹ Article 27.3 of the Convention on the Rights of the Child,²⁸² Article 43 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,²⁸³ as well as Article 21 of the Convention Relating to the Status of Refugees.²⁸⁴ In the sphere of the Americas, of relevance are Article 26 of the American Convention, Article 34.k of the OAS Charter, Article XI of the American Declaration, and other norms related to the protection of human rights that include housing provisions, such as Article III.1.a. of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, Article 24 of the Inter-American Convention on Protecting the Human Rights of Older Persons and various articles of the American Declaration on the Rights of Indigenous Peoples.²⁸⁵

268. In terms of the content and scope of this right, General Comment No. 4 of the Committee on Economic, Social and Cultural Rights notes that the right to housing should be interpreted broadly, “as the right to live somewhere in security, peace and dignity”, for the following reasons:

Firstly, ... "the inherent dignity of the human person", from which the rights in the Covenant are said to be derived, requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons, irrespective of income or access to economic resources; (ii) Secondly, the reference in Article 11(1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated, in paragraph 5: "the concept of 'adequate shelter'... means having a place with adequate privacy, where desired, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and an adequate location with regard to work and basic facilities - all at a reasonable cost."²⁸⁶

269. Similarly, the CESCR Committee indicated that for housing to be considered adequate, there must be such elements as: (i) the *availability of services, materials, facilities and infrastructure*, in the sense that “all beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitary and washing facilities, means of food storage, refuse disposal, site drainage and emergency services”; as well as (ii) to *habitability*, “in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural

²⁸¹ See, [Convention on the Elimination of All Forms of Discrimination against Women](#), Article 14.2.h.

²⁸² See, [Convention on the Rights of the Child](#), Article 27.3.

²⁸³ See, [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#), Article 43.d. 1.

²⁸⁴ See, [Convention Relating to the Status of Refugees](#), Article 21.

²⁸⁵ Taking into account the close relationship of the question of housing with the protection of their lands and territories, in the light of Articles VI, XXV, XXVI, XXIX and XXX of the aforementioned Declaration.

²⁸⁶ UN. Committee on Economic, Social and Cultural Rights, [General Comment No.4: The Right to Adequate Housing \(Art.11\(1\) of the Covenant\)](#), U.N. Doc. E/1991/23, para. 7.

hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.”²⁸⁷

270. On the relationship between the right to housing and the protection of people in the context of human mobility, the Office of the United Nations High Commissioner for Human Rights and UN-HABITAT have indicated that:

Persons on the move, whether they are refugees, asylum-seekers, internally displaced persons (IDPs) or migrants, are particularly vulnerable to a range of human rights violations, including violations of the right to adequate housing. Displaced persons are also particularly vulnerable to discrimination, racism and xenophobia, which further interfere with their ability to secure sustainable and adequate living conditions. People who have been forcibly displaced will often have suffered trauma during their flight, and will have lost familiar coping strategies and support mechanisms. Refugee and IDP camps around the world, particularly when the displacement is protracted, are often dilapidated and overcrowded, providing inadequate shelter and services. Sometimes their inhabitants enjoy no basic services at all. Displaced women and girls living in camps can be subject to sexual and gender-based violence, for instance because not enough attention is paid to their specific needs and vulnerabilities in the design and layout of the camp.²⁸⁸

271. Similarly, in its 2008 Annual Report, the Office of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, indicated that within the groups requiring special attention and protection with respect to the right to adequate housing are refugees and asylum-seekers.²⁸⁹ In that sense, housing for people with special needs can take the form of emergency shelters (short-term accommodation), shelters (medium-term accommodation), short-term rental accommodation and community care homes.²⁹⁰
272. In this regard, the Commission is concerned that the current conditions at North CATEM fail to meet the criteria for availability of basic services and habitability, consistent with the right to adequate housing; this may have an adverse impact on the right to health, safe drinking water and sanitation of its inhabitants. As to the conditions at North CATEM, the following is the testimony of a Nicaraguan man who

²⁸⁷ UN. Committee on Economic, Social and Cultural Rights, General Comment No.4: The Right to Adequate Housing (Art.11(1) of the Covenant), U.N. Doc. E/1991/23, para. 8.

²⁸⁸ UN OHCHR/UN-Habitat, The Right to Adequate Housing, Fact Sheet No. 21 Rev.1, 2010, pp. 26-27.

²⁸⁹ United Nations Human Rights Council, Report of the Special Rapporteur on adequate housing as component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/7/16, February 13, 2008, para. 49.

²⁹⁰ United Nations Human Rights Council, Report of the Special Rapporteur on adequate housing as component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/7/16, February 13, 2008, para. 51. See, inter alia, OHCHR, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante Enjoyment of the rights to health and adequate housing by migrants, A/HRC/14/30, April 16, 2010, para. 39.

had to flee the country as a result of the state repression and who was alone in the Center:

“We slept in tents pitched on the ground. When it rains, water passes through the tents. We do not have blankets, pillows, sheets or mattresses in good condition. When I came to the CATEM, I spent four days without blankets. The mattresses have to be mounted on top of wood on the ground to avoid the animals. Nor do we have enough cleaning products. Because of the weather and the state of the tents, there are many insects and rodents. You can't sleep in peace. We want to get out of here but we can't get a job. We are discriminated against for wearing the CATEM bracelet. We are branded like animals.”²⁹¹

273. Despite the efforts of the Costa Rican authorities, the Commission is concerned that the current conditions at North CATEM fail to meet the criteria for availability of basic services and habitability, part of the right to adequate housing, and that this may impact on the right to health of its inhabitants.
274. On this occasion, the IACHR urges the State of Costa Rica to improve the conditions at North CATEM in order to guarantee the well-being of migrants, asylum-seekers and refugees, ensuring the availability of the necessary living conditions in a healthy and dignified environment in these temporary shelters. The Commission also urges the State of Costa Rica to adopt measures to promote international support and the exercise of shared responsibility in the rescue, reception and accommodation of Nicaraguans. The Commission repeats its call made to the other States of the region to strengthen technical and financial assistance to the State of Costa Rica.
275. On the other hand, the IACHR received troubling information from Nicaraguans housed at the North CATEM regarding acts of discrimination and xenophobia, as well as insecurity, due to the fact that when they leave the center they are easily identified by carrying bracelets. As mentioned in the testimony of a person in the shelter, said bracelet limits him in finding formal work, since the inhabitants of the municipality of La Cruz easily identify him and discriminate against him for being housed there.
276. Although the Commission considers it appropriate that the persons housed at the North CATEM require identification, it also recognizes that the State of Costa Rica could provide other forms of identification for its inhabitants, resulting in less harm to the rights of foreigners, particularly their right to non-discrimination in accessing and exercising other human rights.
277. With respect to the right of access to adequate housing, during its visit, the Commission received information on the programs of the Joint Institute of Social Assistance (IMAS), which includes access in favor of asylum-seekers to economic

²⁹¹ Testimony of an individual housed at the North CATEM and who fled due to harassment by the National Police outside his home, after photos were published in a newspaper participating in a march. IACHR in La Cruz, October 17, 2018.

benefits for food and housing rentals.²⁹² However, the IACHR is concerned about the lack of clarity of these programs considering the increase in the number of Nicaraguan asylum seekers in recent months.

278. On the other hand, the IACHR also emphasizes that although the right to clean water and sanitation is a right with its own content,²⁹³ there is a close relationship with the enjoyment of the right to adequate housing. In this regard, the Commission recalls that: “[n]o household should be denied the right to water on the grounds of their housing or land status [...] Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals.”²⁹⁴ In contexts such as the one under consideration, enabling the minimum essential content of the human right to water and sanitation cannot be made conditional on the financial, human or technical capacity of the State. Therefore, the State of Costa Rica must have an inclusive approach to access to water and sanitation, including this specific group of people, and taking into account the particular needs of women in this situation in the planning and emergency responses for water supply and sanitation services, in order to ensure and meet the specific needs of refugees, asylum-seekers or internally displaced persons. Likewise, the IACHR recognizes that as long as these individuals have access to dignified work, as previously discussed, their likelihood of living autonomously increases and, therefore, the financial sustainability for the payment of water and sanitation services is also reinforced.
279. While the Commission recognizes that the full realization of economic, social and cultural rights must be achieved progressively, this should not be misinterpreted in the sense that the States’ international obligations with respect to these rights are deprived of any substantive content. States have a minimum obligation to ensure at least the satisfaction of essential levels of each of the economic, social and cultural rights, such as the right to adequate housing.²⁹⁵
280. The Committee on Economic, Social and Cultural Rights has indicated that regardless of the state of development of a particular country, there are certain measures that must be taken immediately in favor of the right to adequate housing, which requires a State’s commitment to facilitate the self-help of the affected groups. It also has reiterated that the States Parties to the ICESCR “must give due priority to those social groups living in unfavorable conditions by giving them particular consideration.”²⁹⁶
281. The testimonies received by the IACHR during its visit indicate that although gratitude was given to the State for allowing them to enter the country, several individuals

²⁹² Government of Costa Rica, Mixed Institute of Social Assistance, available at: <http://www.imas.go.cr/>

²⁹³ UN. Committee on Economic, Social and Cultural Rights. *General Comment No.15: The Right to Water (Arts.11 and 12 of the Covenant)*, U.N. Doc. E/C.12/2002/11, January 20, 2003; IACHR. Annual Report 2015. Chapter IV.A: Access to Water in the Americas, An introduction to the Human Right to Water in the Inter-American System. OEA/Ser.L/V/II. Doc. 48/15, December 31, 2015.

²⁹⁴ UN. Committee on Economic, Social and Cultural Rights. *General Comment No.15: The Right to Water (Arts.11 and 12 of the Covenant)*, U.N. Doc. E/C.12/2002/11, January 20, 2003, para. 16 subsections c and f.

²⁹⁵ UN. Committee on Economic, Social and Cultural Rights, *General Comment No.3: The Nature of States Parties’ Obligations (Art.2, para.1, of the Convention)*, U.N. Doc. E/1991/23, para. 10.

²⁹⁶ UN. Committee on Economic, Social and Cultural Rights, *General Comment No.4: The Right to Adequate Housing (Art.11(1) of the Covenant)*, U.N. Doc. E/1991/23, para. 11.

stated that they were unable find adequate housing, forcing them to sleep in parks or church shelters, as well as being in overcrowded conditions due to a lack of the necessary financial resources to rent adequate housing. In this sense, a Nicaraguan man who had to flee his country, accompanied by his underage son, said that:

“Our situation, the refugees, here in Costa Rica, is difficult. We can't work, we don't have documentation and we haven't been able to find a shelter where we can live temporarily. Every day we sleep in different houses, belonging to people known to my family who have been in Costa Rica for some time. They let us sleep for two or three nights, and then I keep in contact with other people to find where to go. There are nights we have nowhere to sleep, and my son and I stay in the park of La Merced.”²⁹⁷

282. As the Commission has reiterated in this report, given the interrelation and interdependence amongst all human rights, the lack of access to adequate housing is also a consequence, primarily, of the lack of the timely issuance of documentation and a work permit in favor of asylum-seekers. This prevents them from engaging in a formal source of employment promptly and in a timely manner from the submission of their application for the recognition of refugee status, and as such prevents them from generating the economic resources for their survival.
283. In this regard, the United Nations Office of the Special Rapporteur on the human rights of migrants noted that discrimination in housing may also result from poverty and economic marginalization. Migrants, who may experience marginalization in the labor market and often have difficulties in securing stable jobs with reasonable pay, are often relegated to a lower socio-economic status and may be subject to differential treatment by housing providers.²⁹⁸
284. In this regard, the State of Costa Rica must adopt specific policies aimed directly at facilitating the right to adequate housing, including access to safe drinking water and sanitation, in favor of Nicaraguans with international protection needs, particularly through the issuance of documentation allowing them to access formal work and inter-dependently to adequate housing. In all cases said policies must avoid causing these people to live in precarious conditions or causing segregation, directly or indirectly, to certain geographical areas.

1. Housing and accommodation for Children and Adolescents

285. During its visit, the Commission observed the situation of children and adolescents in the National Children's Trust (PANI) shelter, serving unaccompanied migrant children and adolescents, as well as at the North CATEM. The PANI is located in the

²⁹⁷ Testimony of an individual who had to flee Nicaragua together with his minor son due to persecution by paramilitaries for having participated in the roadblocks at Masaya, received by the IACHR in San José, October 15, 2108.

²⁹⁸ OHCHR. Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante Enjoyment of the rights to health and adequate housing by migrants, A/HRC/14/30, April 16, 2010, para. 44.

municipality of Upala and since being set up three years ago, it has received around 94 individuals, including unaccompanied women or with children, as well as unaccompanied girls, boys and adolescents aged between 12 and 18. The Commission had a favorable view on the good conditions and care programs in the PANI - in particular, food, public and psychological health, and access to education. From March to September 2018, the PANI also received 45 unaccompanied children and adolescents, mostly from Nicaraguan nationality. The staff of the PANI shelter identified as the reasons forcing these Nicaraguan children and adolescent to flee, their participation in the protests, as well as in the roadblocks. In most cases, it was their families themselves who encouraged them to leave Nicaragua due to the fear of government reprisals. However, they recognize that one of the main challenges in these cases has been precisely to re-establish contact with the different families.

286. However, Article 19 of the American Convention provides that children, in addition to being holders of the rights established in this instrument, have the right to special protection measures due from the State. In this regard, the case law of the Inter-American system has established that the States parties to the Convention are under an obligation to take all positive measures to ensure the protection of children and adolescents, whether in their relations with public authorities, in relations among individuals or with non-state entities,²⁹⁹ and that the special protection derived from Article 19 of the Convention must be defined according to the particular circumstances of each case and must also be understood as an additional and complementary right.³⁰⁰ Likewise, the Inter-American Court has determined that the governing principle regarding the protection of children is their best interest, based on their characteristics as children, and as such, on the need to foster their development, expanding their potential to the full.³⁰¹
287. In accordance with the criteria developed above, States must prioritize the measures promoting care for the children with a view to their integral protection, when they are involved in immigration procedures. Thus, States have the obligation to guarantee the protection of all children at all stages of the migratory process, including accommodation in temporary centers.³⁰²
288. In its Advisory Opinion No. 21/14, the Inter-American Court indicated that it is essential that temporary accommodation centers - regardless of whether the children are with their family, unaccompanied or separated - ensure material conditions and an adequate regime for them, at all times ensuring the protection of their rights. In

²⁹⁹ I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No.17, para. 87.

³⁰⁰ I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No.17, paras. 53, 54 and 60; I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 133; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 164.

³⁰¹ I/A Court H.R., *Case of the Pacheco Tineo family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272, para. 218.

³⁰² OHCHR. Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante Enjoyment of the rights to health and adequate housing by migrants, A/HRC/14/30, April 16, 2010, para. 26.

this regard, it is relevant to take into account, in each case, the diversity of the children as regards their ethnic, cultural, linguistic and religious background.³⁰³

289. In that sense, for a place of accommodation to comply with the conditions for the exercise of the rights established in the Convention on the Rights of the Child, it must have a physical infrastructure that allows said development. Some of these conditions are: ensuring that children have a certain degree of separateness so that their privacy is respected; ensuring that the living quarters should provide a place where they can keep their possessions in safety; ensuring that all meals must be provided during the child's stay and that they meet her or his nutritional needs; ensuring access to health care services, either physical and/or psychological; ensuring continuous access to education outside the center; ensuring that there is a place for recreation and play; and ensuring that children who wish to take part in cultural, social, and religious activities should have a guardian to accompany them.³⁰⁴
290. In this regard, the Commission welcomes the fact that the PANI shelter has the necessary infrastructure to ensure the development of the unaccompanied children and adolescents housed there, in accordance with the aforementioned Inter-American standards, through conditions such as the adequate number of rooms with a certain degree of separateness that respect the children's and adolescents' privacy, as well as sufficient areas for personal hygiene. A complete and nutritious diet is ensured through a meal plan that is constantly renewed; the center has psychosocial, recreational and study areas; and continuous provision of access to education outside the establishment.
291. Additionally, the Commission welcomes the fact that the PANI shelter has sufficient and adequate staff, which is also specialized and fully trained in child psychology, child protection and in the human rights of children, as required by Inter-American standards.³⁰⁵ Likewise, the Commission applauds the implementation of the Action Protocol for Migration Officials relating to Minors in Situations of Vulnerability;³⁰⁶ the Protocol for the detection, care and comprehensive protection of minors who require international protection;³⁰⁷ and the Protocol for the care and protection of unaccompanied or separated foreign minors, outside their country of origin.³⁰⁸

³⁰³ I/A Court H.R., Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, para. 181.

³⁰⁴ I/A Court H.R., Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, para. 183.

³⁰⁵ I/A Court H.R., Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, para. 184.

³⁰⁶ Sossa Siles, Xinia, [Action Protocol for Migration Officials relating to Minors in Situations of Vulnerability](#).

³⁰⁷ UNHCR, DGME, National Child Welfare Agency, Association of Consultants and International Assessor, Protocol for the Identification, Attention and Comprehensive Protection for minors in need of international protection, 2014.

³⁰⁸ Bipartisan Commission, General Directorate of Migration and Non Nationals, National Infancy Wardship, Protocol for the Care and Protection of unaccompanied or separated foreign minors, outside their country of origin, March, 2012.

292. On the other hand, the Commission notes with concern the lack of adequate spaces for coexistence, food and recreation for children and adolescents at the North CATEM. The Commission noted that the physical infrastructure of North CATEM does not have the necessary conditions to protect the rights of children staying with their families. The lack of access to education, complete and nutritious food, and recreation in the temporary center is detrimental to their rights recognized in Article 19 of the American Convention, as well as in the Convention on the Rights of the Child, and contrary to the principle of the best interest of the child.
293. The lack of adequate housing can have a profound impact on children and adolescents, given the integral link between housing rights and their cognitive, physical, cultural, emotional and social development. A safe and secure living environment is crucial for children and adolescents to effectively exercise other human rights, such as the rights to education, health and personal security.³⁰⁹
294. In this context, the IACHR calls on the State of Costa Rica to continue adopting and implementing measures aimed at respecting and guaranteeing the principle of the best interests of migrant children and adolescents enshrined in Article 19 of the American Convention and Article 3 of the Convention on the Rights of the Child,³¹⁰ in particular through the improvement of the conditions of the North CATEM with a differentiated approach in favor of the children and adolescents housed there, including taking as a reference the PANI care programs and their implementation through the different protocols adopted internally and the Inter-American norms and standards referred to in this Report.

B. Right to Health

295. With respect to the right to access public health services, the Commission received information that refugees are able to access the health system of the Costa Rican Social Security Fund (CCSS) as long as they are insured. If not, when faced with an emergency situation, they can be treated in the health system, provided that they subsequently reimburse the value of the service rendered. The Children and Adolescents Code of Costa Rica recognizes minors as an exception, who "will enjoy direct and free medical attention from the State", when they are unable to access the care by another form of insurance.³¹¹
296. The Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility established that:

³⁰⁹ OHCHR. Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante Enjoyment of the rights to health and adequate housing by migrants, A/HRC/14/30, April 16, 2010, para. 57.

³¹⁰ Convention on the Rights of the Child, Article 3.1.

³¹¹ Children and Adolescents Code. Article 41. Right to Medical Treatment. – Minors shall receive direct and free medical attention from the State. Public centers or services for prevention and health care will be obliged to provide, immediately, the service that this population requires without discrimination on grounds of race, gender, social status or nationality. The absence of legal representatives, lack of identity documents, lack of space or other circumstances cannot be used as a justification."

Migrants may be more vulnerable to poor health by virtue of their often low socioeconomic status, the sometimes harrowing process of migration and their vulnerability as non-nationals in the new country. The mental health of migrants is an issue of concern, with factors such as human rights violations before or during the migration process, social isolation caused by separation from family and social networks, job insecurity, difficult living conditions, detention and exploitative treatment potentially having adverse effects. Migrant women and girls often experience more problematic pregnancy and gynecological health issues as compared with the host population.³¹²

297. With respect to the right to health, mention should be made of Article 26 of the American Convention, Articles 45.b and 34 subsections i and l of the OAS Charter, as well as Article XI of the American Declaration. The latter establishes that “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.” Likewise, this right is recognized in a vast international *corpus iuris* such as Article 12.1 of the International Covenant on Economic, Social and Cultural Rights,³¹³ Article 25.1 of the Universal Declaration of Human Rights,³¹⁴ Article 10 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights,³¹⁵ Article 12.1 of the Convention on the Elimination of All Forms of Discrimination against Women,³¹⁶ Article 24.1 of the Convention on the Rights of the Child,³¹⁷ subsection iv) of paragraph e) of Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination,³¹⁸ as well as Article 43 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³¹⁹
298. With respect to its content and scope, the ESCR Committee, in its General Observation No. 14, has indicated that the right to health should be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health. This is also closely linked to and inter-dependent on the exercise of other human rights, such as the right to food, housing, work, education, human dignity, life, non-discrimination, to equality, not to

³¹² UN. [Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility](#), A/HRC/35/25, April 28, 2017, para. 67.

³¹³ See, [International Covenant on Economic, Social and Cultural Rights](#), Article 12.1. 1.

³¹⁴ See, [Universal Declaration of Human Rights](#), Article 25.1.

³¹⁵ See, [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”](#), Article 10.1.

³¹⁶ See, [Convention on the Elimination of All Forms of Discrimination against Women](#), Article 12.1.

³¹⁷ See, [Convention on the Rights of the Child](#), Article 24.1.

³¹⁸ See, [International Convention on the Elimination of all forms of Racial Discrimination](#), Article 5.

³¹⁹ See, [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#), Article 43.

be subjected to torture, to a private life, access to information and to freedom of association, assembly and circulation.³²⁰

299. In this regard, it has determined that one of the essential and interrelated elements of the right to health consists of accessibility, which in turn comprises: (i) a dimension of non-discrimination, which necessarily implies that “the health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sectors of the population, in fact and in law, without any discrimination on any of the prohibited grounds”, as is the case of migratory status; and, also of (ii) a dimension of economic accessibility or affordability, which requires that health facilities, goods and services be available to everyone. In this regard, the ESCR Committee noted that, “[p]ayment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly funded, are affordable for all, including socially disadvantaged groups.³²¹
300. The Commission considers that due to the same situation of vulnerability facing Nicaraguans in need of international protection, and taking into account that they have been forced to flee from a context of extreme violence and state persecution, they require greater ease of access to public health services without requiring insurance with the Costa Rican Social Security Fund. In the same sense, the Commission recognizes that in general the presence of real or perceived fear and risks that these individuals may be expelled could dissuade them from seeking and requesting health care, even in cases of emergency. Therefore it is necessary to separate the functions of health care personnel from those of the migration or security services and to make accessible, adequate and opportune information in this respect.
301. The Commission is concerned that the CCSS insurance requirement may be limiting access to public health services for Nicaraguans who were forced to leave their country, in view of the fact that this age group is the highest entering Costa Rica, as well as the various health effects that are constant in a population fleeing violence and state repression.
302. During its visit, the Commission learned of several cases of Nicaraguans suffering from different health conditions, some even as a result of human rights violations suffered before or during the forced migration process, such as gunshot wounds, hypertension, post-traumatic stress, diabetes, gastritis, muscle and bone pain, insomnia, as well as HIV and STI’s, among others. These conditions require constant medical attention, treatment and provision of medications, and since they are not insured with the CCSS, they are unprotected and their health conditions have worsened.

³²⁰ UN. Committee on Economic, Social and Cultural Rights. [General Comment No.14: The Right to the Highest Attainable Standard of Health \(Art.12 of the Covenant\)](#), E/C.12/2000/4, August 11, 2000, paras. 3, 9 and 11.

³²¹ UN. Committee on Economic, Social and Cultural Rights. [General Comment No.14: The Right to the Highest Attainable Standard of Health \(Art.12 of the Covenant\)](#), E/C.12/2000/4, August 11, 2000, para. 12.

303. In this regard, the Inter-American Court has repeatedly emphasized the inextricable relationship between the right to personal integrity and health, highlighting that a lack of adequate medical treatment may result in a violation of Article 5.1 of the American Convention.³²² Thus, the Court has established that one of the components of health, as an integral part of the right to personal integrity, is precisely access to treatment services in which people enjoy equal opportunities to benefit from the highest possible level of health.³²³
304. In this sense, 64 of the 152 testimonies received during its visit indicated that individuals had required medical attention. However, only 10% of them had been able to access public health services, while 90% had been unable to do so precisely because of the requirement of medical insurance. The Commission was concerned by the testimony of a Nicaraguan seropositive man who had been unable to access antiretroviral treatment.

1. The mental health of individuals subject to persecution

305. Asylum-seekers are liable to develop severe side-effects to their mental health, including depression, anxiety, and in some cases, post-traumatic stress.³²⁴ The Commission observes that the impact of both the reasons for their migration as well as forced displacement ranges from temporary to long term trauma. In this regard, the Commission highlights the importance of mental health, which is an area that often does not receive adequate attention and is essential in cases of traumatic experiences.
306. In relation to the mental health situation of Nicaraguan applicants for international protection, the presence of collective psychosocial damage has been documented,³²⁵ i.e., collective emotional damage where those affected lack the assurance or protections of an institutional symbolic network, which allows them access to justice.³²⁶ Likewise, manifestations of greater incidence have been observed in Nicaraguans, inter alia: a) the government is seen as a direct perpetrator of socio-political violence, and b) the events are considered particularly traumatic because

³²² I/A Court H.R., *Case of I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para. 154; I/A Court H.R., *Case of Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298, para. 171, and I/A Court H.R., *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 157.

³²³ I/A Court H.R., *Case of I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para. 155.

³²⁴ OMS, Mental health promotion and mental health care in refugees and migrants. Technical guidance, 2018, p.5.

³²⁵ CENDEROS, *Psychosocial Symptoms in Nicaraguan Refugee Applicants*, 2019, pp. 1-2.

³²⁶ In this sense, Herman points out that: "Traumatic events call into question basic human relationships. They breach the attachments of family, friendship, love, and community. They shatter the construction of the self that is formed and sustained in relation to others. They undermine the belief systems that give meaning to human experience. They violate the victim's faith in a natural or divine order and cast the victim into a state of existential crisis": Herman, J. L. *Trauma and recovery*. New York: Basic Books, p. 50.

they were the sudden, prolonged, repetitive and intentional. Similarly, the following have been observed: i) symptoms of Post-traumatic Stress Disorder: such as hypersensitivity to the surroundings, difficulty concentrating, nightmares, difficulty sleeping, depression, chronic fatigue, apathy, uncontrolled crying, panic attacks, fear, guilt for abandoning either their families, their place or the struggle, or for having survived and being free, among others; ii) generalized anguish; iii) slow reaction and response adaptation to the situation.³²⁷

307. In this sense, information was received at one of the meetings held by the IACHR with personnel specialized in providing psychological assistance to migrants, where they observe two kinds of impact:

“On the one hand, the psychosocial impact. We observe a very high level of hopelessness and mistrust. They arrive in the country and are afraid to join another Nicaraguans because they don't know if they are from the government side or from another group [...]. On the other hand, intrapsychic side effects are observed. These people have been exposed to a lot of violence. They have trouble sleeping, they have recurring and invasive thoughts. They feel a lot of hate and don't know what to do with it. They cry a lot. They need to repeat everything or, suddenly, they clam up and feel headaches or nausea [...]. Many lived through near death experiences several times, so when they arrive in Costa Rica, they find it difficult to feel safe. Therefore, another very clear consequence is that they fail to overcome the fear they feel. They live in a permanent state of pain, horror and grief. A constantly aching wound.”³²⁸

308. The aforementioned symptoms increase significantly when the experience of sociopolitical violence is combined with aggravating factors such as acts of torture or sexual violence, witnessing the death of someone close, having family members in detention without any information about them, having offspring in Nicaragua without any possibility of transferring them to Costa Rica, or belonging to the LGBTI population.³²⁹ Regarding the latter, information has been received about a smear campaign against them:

“In the case of LGBTI individuals, the impact is double or triple. Many were criminalized like other students or peasants, but due to their sexual diversity, they were victims of a very forceful public smear campaign. If they were "gays in silence", now the whole country knows it. There is not only persecution but also criminalization, smearing and defamation. The psychological impact is very strong. They arrive in Costa Rica with shame on their family and in some cases, they feel

³²⁷ CENDEROS, *Psychosocial Symptoms in Nicaraguan Refugee Applicants*, 2019, p. 2.

³²⁸ Specialized Psychological Opinion of the Center for Migrant Social Rights (CENDEROS), received by the IACHR in San José, October 15, 2018

³²⁹ CENDEROS, *Psychosocial Symptoms in Nicaraguan Refugee Applicants*, 2019, p. 2.

guilty for exposing their families to a greater risk. The cases of torture that we attended involved LGBTI individuals.”³³⁰

309. In the testimonies taken during its visit, the Commission received information from individual victims of torture - as well as cruel, inhuman and degrading treatment by state agents and by para-state groups - who require urgent and immediate medical treatment for both physical damage as well as the psychosocial effects caused. In this regard there is the following testimony:

“The hardest part was seeing how they raped a friend of mine and then threatened me. To see how they tortured other friends, how my companions bled to death because they were not given attention, including one of them buried in the mountains of Jinotega. Torture is something that is always on my mind. It's something I want to forget and I can't.”³³¹

310. Additionally, the Commission received information regarding individuals indicating that they had acquired HIV/AIDS or other sexually transmitted diseases, after being victims of rapes during periods of detention, as well as the effects on their mental health knowing that they are carriers when entering shelters in Costa Rica.³³² In this sense, one of the testimonies conveys this situation:

“That day we woke up at the roadblock and when we were going to rest, the police appeared, and started shooting at us. 11 of us were taken. They mistreated, robbed and beat us, put guns in front of us and took pictures. Then they searched us and Lieutenant Guadalupe made me do fifty squats naked. Subsequently, five police officers abused me. I could only see the shoes of those who abused me, there were five people doing it. After that, they took me naked to the women's cell and later, they took me to Chipote by van. In Chipote, the insults and mistreatment began again, especially against me because I was identified as the leader of the organization [...]. On the 19th, I was in Diriamba, my wounds were treated in a safe house, and then, that same date we went by taxi to Rivas. At night, they took us to the border and at four in the morning of the 20th, 10 of us crossed in pairs through a “blind spot”. Right there we requested asylum at the Migration offices. Then, they gave us a place and made me health checks, where I was diagnosed with sexually transmitted infections.”³³³

311. With respect to the psychosocial damage to Nicaraguans, the Commission notes with concern the recent suicide of a Nicaraguan man, the brother of a demonstrator, who

³³⁰ Specialized Psychological Opinion of the Center for Migrant Social Rights (CENDEROS), received by the IACHR in San José, October 15, 2018.

³³¹ Testimony received by the IACHR in San José, October 16, 2018.

³³² CENDEROS, *Psychosocial Symptoms in Nicaraguan Refugee Applicants*, 2019, p. 2.

³³³ Testimony of a female victim of sexual violence during detention, received by the IACHR in San José, October 16, 2018.

was denied medical treatment in prison. According to the media, the aforementioned person had been searched by the police three times for participating in protests; and in a farewell letter he indicated that he preferred to die rather than be imprisoned.³³⁴

312. On the other hand, the IACHR takes into account that the existence of negative attitudes, intolerance and hostile discourse against these individuals also jeopardizes the development of enabling environments and, therefore, can be detrimental to the mental health and well-being of the population of the host country.³³⁵ Under these circumstances, the Commission considers that the mental health care of Nicaraguans in search of international protection is fundamental, and that the State of Costa Rica combats the formation of specific social hierarchies and power relations in detriment of health and the rights of these individuals thereby further aggravating their situation. To this end, it is important that the State of Costa Rica design a roadmap that sets out the guarantee of the right to physical and mental health of these individuals, favoring access and availability to health services without discrimination, including community support, increased participation and delivery of information to contribute experience in the support system, as well as highlighting comprehensive psychosocial approaches for a free coexistence without fear.
313. Finally, those working directly with asylum-seekers may develop secondary trauma or *vicarius trauma*. In this sense, a specialist in psychology and psychiatry working in shelters or migrant housing, human rights defenders, lawyers, staff of civil society organizations who provide humanitarian support, government authorities responsible for carrying out procedures for the recognition of refugee status and of providing humanitarian assistance, as well as personnel of regional and international human rights organizations may have their mental health adversely impacted. According to a study on the subject, these effects may occur because these individuals tend to worry about the stories of those they assist and feel committed or responsible for helping them. This can make them feel pessimistic, that is, they undervalue themselves and others, lose their belief in the possibility of change, become indifferent, or feel that their personality has changed.³³⁶
314. With respect to this aspect, the Inter-American Court has indicated that the violation of the right to physical and psychological integrity of the individual has various stages of degree, ranging from torture to other types of cruel, inhuman or degrading treatment, whose physical and psychological consequences vary in intensity according to endogenous and exogenous factors of the individual (duration of mistreatment, age, sex, health, context, vulnerability, among others factors) that should be analyzed in each situation. The Court also stressed that suffering is an

³³⁴ *Eldiario.es*, [Un organismo de DDHH advierte sobre los suicidios a causa de la crisis en Nicaragua](#), February 13, 2019. *El Nuevo Diario*, [Se quita la vida el hermano de un manifestante detenido en La Modelo](#), February 12, 2019. *El Nuevo Diario*, [Sicólogos advierten que suicidios por asedio podrían repetirse](#), February 15, 2019.

³³⁵ Human Rights Council. Interim Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UN Doc. A/73/216, July 27, 2018, para. 78.

³³⁶ Laurie Anne Pearlman & Lisa McKay, [Understanding & addressing vicarious trauma](#), Headington Institute, 2008, p. 7.

experience particular to each individual and, to that extent, will depend on a multiplicity of factors that make each person a unique individual.³³⁷

315. In this regard, the Commission urges the State of Costa Rica to guarantee the right to both physical and mental health, without discrimination by nationality or migratory status, particularly to Nicaraguans who have been forced to flee their country and to request international protection in Costa Rica, as well as to those who work directly with asylum seekers, through the availability and accessibility of public health facilities, goods and services. This must include access to medicines and curative, preventive and palliative health services, through a prior medical evaluation without the insurance requirements with the Costa Rican Social Security Fund (CCSS).

D. Right to Education

316. During its visit, the Commission received information on various measures that the Ministry of Public Education has implemented to ensure the right to free public education for all individuals, irrespective of their migratory status. In this regard, the Ministry has created a strategy for administrative assistance in favor of those seeking asylum and refugee status, in order to ensure their inclusion into the education system, as well as their integration into the classroom based on intercultural teaching procedures, in light of the non nationals' culture.³³⁸ These measures include the possibility of replacing official documents with affidavits where it is impossible to obtain official identity documents. It also establishes the possibility of applying special placement tests where evidence of education certificates is lacking.
317. In this regard, the Commission finds the fact of not having received information on the challenges facing the State of Costa Rica vis-a-vis respecting and guaranteeing the effective exercise of the right to education of individuals in need of international protection, as a positive indicator. On the contrary, only 11% of testimonies gathered by the IACHR refer to difficulties in accessing the public education system in Costa Rica.
318. With regard to the right to education, international obligations arising from a vast international *corpus iuris* must be considered. Of relevance at the Inter-American level are Article 26 of the American Convention, Articles 34h, 47 and 49 of the OAS Charter and Article XII of the American Declaration, as well as Article 13 of the International Covenant on Economic, Social and Cultural Rights,³³⁹ Article 26 of the Universal Declaration of Human Rights,³⁴⁰ Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights,³⁴¹

³³⁷ I/A Court H.R., *Case of I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para. 155.

³³⁸ UNHCR, Ministry of Public Education, *Refugee Population in the Costa Rican Education System*, 2018.

³³⁹ See, [International Covenant on Economic, Social and Cultural Rights](#), Article 13.1.

³⁴⁰ See, [Universal Declaration of Human Rights](#), Article 26. 1.

³⁴¹ See, [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"](#), Article 13.

Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women,³⁴² Article 28.1 of the Convention on the Rights of the Child,³⁴³ Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination,³⁴⁴ as well as Article 30 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³⁴⁵ Likewise, Article 22.1 of the 1951 Convention, establishes the right of refugees to public education indicating that “Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.”

319. For its part, the Office of the Special Rapporteur on the right to education has clearly indicated that: “Women, men, boys and girls of all ages and backgrounds – whether migrants, refugees, asylum-seekers, stateless persons, returnees or internally displaced persons - have the right to education, in particularly those forms of education which are most likely to contribute to realizing individual capabilities, on the one hand, and shared norms of respect and social justice, on the other.”³⁴⁶
320. In the Commission’s view, the right to education of migrants or those in search of international protection, in particular children and adolescents, shields them in the best possible way against the risk of becoming involved in dangerous activities, including child labor. The greater the diminishment in the content of the right to education, the greater are the possibilities of adverse impacts on the human rights of children in these contexts. The IACHR also points out that the principle of equality and non-discrimination governs non-academic education and training focusing on adults. It is therefore incumbent on the State to supervise whether access to education for these individuals is not limited in this regard. In addition, State implementation of these guarantees for the realization of these rights shields this population group from discrimination and xenophobia, sexual and gender-based violence, and from the risks of communicable diseases, crime, drugs and other dangers.
321. Regarding the content and scope of this right, the ESCR Committee has indicated that the interrelated characteristics of the right to education consist of: (i) *accessibility*, in the sense that educational institutions and programs must be accessible to all without discrimination. With respect to this last point, it determined that “education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds”, which includes nationality and migratory status; in addition, (ii) *adaptability*, in the sense that, “education must be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse and cultural settings,” which includes the context of forced migration.³⁴⁷

³⁴² See, [Convention on the Elimination of All Forms of Discrimination against Women](#), Article 10.

³⁴³ See, [Convention on the Rights of the Child](#), Article 28.1.

³⁴⁴ See, [International Convention on the Elimination of all forms of Racial Discrimination](#), Article 5.

³⁴⁵ See, [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#), Article 30.

³⁴⁶ Human Rights Council. Report of the Special Rapporteur on the Right to Education. UN Doc. A/HRC/14/25, April 16, 2010, para. 17.

³⁴⁷ UN. Committee on Economic, Social and Cultural Rights. *General Comment No.13: The Right to Education (Art.13)*, para. 6.

322. However, in the course of receiving testimonies, the IACHR learned of some cases where asylum-seekers stated that they were unable to enroll and register their children in a public school, because the educational institution demanded that all Nicaraguan school registration documents should be legalized and apostilled, or in some cases, the presentation of a passport. In this regard, the Commission considers that account should be taken of the fact that individuals with international protection needs are forced to flee their homes, primarily to save their lives, freedom and security. As a result, should any educational authority require it, some other type of measures should be employed to assess the educational level needed by children and adolescents, such as a placement test. The Commission considers that a differentiated treatment in the access to the right to education - such as the requirement of a legalized and apostilled foreign document - should take account of the context and the migratory process where individuals who have international protection needs flee from their country of origin or habitual residence. As indicated in this report, the situation forced this group of individuals to flee their homes, primarily in order to preserve their life, freedom and security.
323. In addition, the Committee has indicated that the States parties to the Covenant must carefully monitor education - including all relevant policies, institutions, programs, spending patterns and other practices - so as to identify and take measures to redress any *de facto* discrimination.³⁴⁸ This aspect will also involve the obligation of the State of Costa Rica in monitoring and inspecting public and private educational institutions which require presentation of legalized and apostilled documents by Nicaraguans who have been forced to flee their country. In this sense, the requirement to present national identity documentation may represent direct discrimination against refugees and asylum-seekers who are forced to leave their homes. The IACHR agrees that “if learning is viewed in terms of formal credentials and not competences that reflect prior learning, then considerable pools of knowledge are ignored, talent is wasted and opportunities for social inclusion are jeopardized”³⁴⁹ and therefore the possible exclusion of these individuals from enjoying their fundamental rights and freedoms. In this regard, it is also important to ensure that the registration systems at the educational centers take into account and accept the documents that refugees and asylum-seekers normally use to identify themselves, and are not a cause for obstruction.
324. On the other hand, the Commission has received information regarding the case of young university students who had dropped out of their courses in Nicaragua and wanted to resume them in Costa Rica. In this regard, the GIEI Report established that many students are unable to continue their studies because they do not possess the necessary documentation or, also, to work in their chose field because they cannot verify their prior studies.³⁵⁰ In this regard, the Commission highlights the Ministry of Public Education’s Guideline N ° DM-45-08-2018-MEP, urging public and private

³⁴⁸ UN. Committee on Economic, Social and Cultural Rights. *General Comment No.13: The Right to Education (Art.13)*, para. 37.

³⁴⁹ Human Rights Council. Report of the Special Rapporteur on the Right to Education. UN Doc. A/HRC/14/25, April 16, 2010, para. 60.

³⁵⁰ GIEI Nicaragua, [Report on the Violent Events that took place in Nicaragua between April 18th and May 30 2018](#), p. 324.

higher education centers, to implement actions in order to provide access on the basis of capacity to migrant students, refugees and shelter applicants who need to be enrolled in those institutions.³⁵¹

325. The Commission notes that according to the Committee on Economic, Social and Cultural Rights, the right to higher education must also be made accessible to all individuals, on the basis of each person's capacity. In this sense, it is essential that higher education is available on the basis of ability assessed by reference to relevant expertise and experience.³⁵² In this regard, although university autonomy is essential for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities,³⁵³ the State also has the obligation to ensure that access to such education is available to refugees and asylum-seekers, and that the formal admission requirements can thereby be made more flexible, considering that these individuals may find it very complicated, and sometimes impossible, to obtain official documentation. The IACHR agrees with the ESCR Committee, and points out that access to education and to employment are important channels for integration within the host country and will reduce the dependence of refugees or migrants on public support or private charities.³⁵⁴
326. In this regard, the Commission recognizes the measures adopted by the State of Costa Rica aimed at respecting and guaranteeing the right to primary and secondary education without discrimination, particularly to Nicaraguan children and adolescents who have been forced to flee their country and request international protection in Costa Rica. At the same time, in cases where access is difficult, it urges the State to dispense with requirements which, in the context of forced migration, are not reasonable - such as the legalization or apostille of documents. Likewise, the IACHR recommends that compliance with Directive N° DM-45-08-2018-MEP be monitored, to ensure access to higher education by Nicaraguans.

E. Discrimination, Xenophobia and Security

327. During its visit, the IACHR was able to observe various challenges for Nicaraguans relating to local integration in Costa Rica. Based on the testimonies received, 32% indicated they had experienced some form of discrimination and incidence of xenophobia, particularly by nationals in public places.
328. The local integration of the refugee population, asylum-seekers and all those seeking international protection needs, is the obligation of the receiving State. The State must

³⁵¹ Ministry of Public Education, Directive N° DM-45-08-2018-MEP, August 22, 2018.

³⁵² Committee on Economic, Social and Cultural Rights. *General Comment No.13: The Right to Education (Art.13)*, para. 19.

³⁵³ Committee on Economic, Social and Cultural Rights. *General Comment No.13: The Right to Education (Art.13)*, para. 40.

³⁵⁴ *Economic and Social Council, Committee on Economic, Social and Cultural Rights: Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights. UN Doc. E/C.12/2017/1, March 13, 2017, para. 6.*

implement effective mechanisms to ensure effective access to basic rights, such as education, work and medical treatment on equal terms as nationals.

329. In the case of Nicaraguans in Costa Rica, the Commission has observed that Costa Rica, as the receiving State, has failed to sufficiently address this obligation of local integration due to restrictive applicable regulations, such as the issuance of work permits, impediments on practicing certain professions that require another migratory category, limited access to public health services and adequate housing, as well as an insufficient asylum-seeker reception system, which gives rise to situations of *de facto* discrimination against of this group by nationals.
330. With respect to the right to equality and non-discrimination, the Inter-American Court has reiterated that “States must refrain from carrying out actions that are in any way aimed, directly or indirectly, at the creation of situations of *de jure or de facto* discrimination”.³⁵⁵ The Court has also emphasized that in the current stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*.
331. With regard to the obligations arising from this right, in addition to respecting and guaranteeing the full and free exercise of the rights and freedoms “without any discrimination” recognized in international human rights instruments, States have the obligation to “adopt measures to reverse or alter discriminatory situations existing in their societies, to the detriment of a certain group of individuals”, such as those who have international protection needs. This obligation also implies the special duty of protection on the part of the State vis-a-vis actions and practices of third parties that, with its tolerance or acquiescence, create, maintain or favor discriminatory situations.³⁵⁶
332. During its visit, the Commission was concerned to receive information regarding the violent and xenophobic demonstrations that took place on August 18, 2018, in San José,³⁵⁷ and the effects felt by the Nicaraguan population in need of international protection. In this regard, it is essential to highlight the immediate action of the State of Costa Rica through the arrest of the individuals responsible for these demonstrations and assaults on Nicaraguans.³⁵⁸

³⁵⁵ I/A Court H.R., Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 61; I/A Court H.R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 103.

³⁵⁶ I/A Court H.R., Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 61; I/A Court H.R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 104.

³⁵⁷ *La Nación*, UN deplores violent and xenophobic demonstrations in Costa Rica, August 18, 2018.

³⁵⁸ *La Nación*, 44 detenidos por agresiones xenofóbicas en San José, August 18, 2018.

333. With respect to the protection of migrants against all forms of discrimination and violence, the United Nations Rapporteur on the human rights of migrants has indicated that:

Mobility and diversity create complex issues that require sophisticated policies, a long-term vision, targeted investments and nuanced discourses. Until now, with a few exceptions, these requirements have not been met, though strong integration policies, efficient equality and anti-discrimination mechanisms, vigorous countering of hate speech, access to justice for all and the promotion of diversity at all levels are urgently needed in order to ensure that migrants become active citizens.³⁵⁹

334. On the other hand, with respect to the safety of Nicaraguans, 46.4% of the testimonies received indicate that they did not feel safe in Costa Rica because they continue to receive threats and direct intimidation from individuals who also have access to Costa Rica and who, through social media, calls and text messages, continue to identify them as opponents of the Nicaraguan government.
335. In this sense, the IACHR urges the State of Costa Rica to maintain its commitment to promote the social integration of Nicaraguans, and to strengthen solid mechanisms and policies promoting respect for and acceptance of cultural diversity, by encouraging the inclusion of this national group, facilitating their integration and by reversing existing discrimination in Costa Rican society. In particular, the Commission urges the State to monitor acts of intimidation, threats, violence, demonstrations and expressions of racism, discrimination, xenophobia and related intolerance against Nicaraguans in need of international protection, in order to guarantee their protection and ensure their access to remedies, compensation and reparations. The Commission also urges the State to continue implementing positive measures to combat discrimination and xenophobia, through educational and awareness campaigns, as well as training for officials who serve individuals in need of international protection.

³⁵⁹ UN. [Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility](#), A/HRC/35/25, April 28, 2017, para. 73.

CHAPTER 8

CONCLUSIONS AND
RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

A. Recommendations to the State of Nicaragua

336. The Commission has documented a progressive deterioration of the human rights situation in Nicaragua, and of the Rule of Law itself as a result of the exercise of state repression through the three branches of government. In this context, the Commission reiterates its strong condemnation of the State's response that has resulted in the death of at least 325 individuals and more than 2,000 injured; of the more than 700 people arrested and prosecuted; in the dismissal of 300 health professionals; the expulsion of at least 144 students from the National Autonomous University of Nicaragua (UNAN); and the exile of at least 70 journalists and media workers. In addition, in Costa Rica alone up until May 2019, at least 55,500 Nicaraguans have indicated the need for international protection, which represents in quantitative terms that the forced displacement has caused more violations of human rights as a result of state repression promoted by the State of Nicaragua since mid-April 2018. Despite the repeated requests by the Commission itself for the immediate cessation of state repression, it has not been stopped. On the contrary, the reprisals have intensified over time, exacerbating the crisis affecting the country.
337. The Commission reiterates its call for the immediate cessation of all forms of repression. Likewise, it urges the State to immediately investigate all acts of violence, with autonomy and independence, with strict adherence to relevant international norms and standards to ensure the right to truth and the right to comprehensive reparation in favor of the victims and their families. Likewise, the IACHR calls on the OAS Member States and the international community to reject the current repression keeping the enjoyment and exercise of the freedoms and rights of the Nicaraguan population in a critical state. The Commission also expresses its concern about the militarization of border points to hinder the departure of government opponents or dissidents.
338. From the information provided during and after its working visit, the Inter-American Commission was alarmed by the exponential increase in Nicaraguans who have been forced to leave their country and request international protection in other States. The Commission also considers that the forced displacement of those individuals identified as dissidents or opponents in the context of repression of demonstrations constitutes a gross violation of human rights.

339. In the light of the foregoing, the Commission urges the State of Nicaragua to adopt the following measures:

1. To refrain and immediately cease from undertaking any further acts of repression against protests and the persecution against individuals identified as opponents, and take effective measures to protect individuals who are in situations of persecution and risk.
2. Provide the necessary guarantees for individuals to travel and reside freely in Nicaragua, which necessarily implies refraining from continuing to criminalize and generating legal cases or proceedings that provoke the forced displacement of Nicaraguans.
3. Protect and provide humanitarian assistance to individuals who have been or will be subject to internal forced displacement.
4. Investigate, prosecute, sentence, punish, and, where appropriate, provide reparations for, the acts of violence, threats, harassment and persecution, as well as those acts carried out by state agents, the para-police and members of the Citizen Power Councils that caused displacement.
5. Ensure that all individuals can freely leave the territory of Nicaragua and that their right to seek and receive asylum in foreign territory is respected.

B. Recommendations to the State of Costa Rica

340. With respect to the situation of Nicaraguans in the State of Costa Rica, the IACHR greatly appreciates the State's open borders policy, which has protected tens of thousands of individuals who have been forced to flee Nicaragua. It also recognizes the progressive regulations on international protection; the promulgation of the Guidelines on the Comprehensive Care of the Migration within the Country; the elaboration of a plan for Migrant Flow; the protocols for attention of individuals in need of international protection, victims of human trafficking and migrant smuggling, for children and adolescents, particularly unaccompanied children and adolescents; as well as the indication of the forthcoming incorporation of complementary protection to Costa Rica's legal protection system. The IACHR also highlights the existence and setting up of Costa Rica's Administrative Court for Migrants, as the sole specialized jurisdictional agency on migration and asylum in Latin America.

341. The Inter-American Commission recognizes that mass forced migration of Nicaraguans has presented an important challenge for the State and the Costa Rican people. In this context, the Commission has noticed that the extension of the time for the refugee status determination procedure together with non-delivery of the provisional asylum-seeker documentation, have consequences for the timely issuance of documents allowing the temporary regulation of applicants' migratory status, as well as for their access and effective exercise of rights, especially the right to work. The Commission expresses profound concern because many individuals are living in precarious conditions without being able to access economic, social and cultural

rights, such as formal work, education, adequate housing and public health due to the lack of documentation. In addition, this may also imply that individuals who require international protection are subject to migratory procedures that fail to respect the principle of *non-refoulement*, and to assess their international protection needs.

342. The IACHR welcomes the focus on the creation and establishment of temporary immediate reception areas for migrants in need of international protection, such as the North Migrant Assistance Center (CATEM) in the municipality of La Cruz, as well as the National Children's Trust (PANI) Shelter in Upala, for unaccompanied migrant children and adolescents. However, the current conditions at the North CATEM may be adversely affecting the rights to personal integrity and safety, the right to health, the right to adequate housing, as well as the rights of the children and adolescents housed there. Therefore additional resources are required to adapt the facilities to the Inter-American and international standards in the area. The Commission is concerned about discrimination and xenophobia experienced by many individuals living in Costa Rica, which has prevented them from integrating into the local community and has also generated difficulties in the effective access to economic, social and cultural rights, as well as their right to a dignified life.
343. Lastly, given the serious and mass migration of Nicaraguans who are fleeing from their country to others, primarily to Costa Rica, because of its geographical proximity and historical migrations of Nicaraguans to that country, the Inter-American Commission calls on the States of the region and the international community to implement a regional and international response based on shared responsibility to respect and guarantee the human rights of these individuals, so that the State of Costa Rica can count on the necessary resources to respond adequately and effectively to this humanitarian emergency situation. In this regard, the IACHR calls on the States of the region to strengthen humanitarian assistance to individuals who are forced to leave Nicaragua, as well as to the receiving communities in order to provide the
344. Additionally, the IACHR recommends that State of Costa Rica adopt the following actions and measures to ensure the protection of the human rights of Nicaraguans in its territory, as well as assistance measures to be carried out in accordance with the financial capacity of the State and with the support that international cooperation can provide:
1. Adopt measures aimed at promoting international support and shared responsibility in the rescue, reception and accommodation of Nicaraguans. It is essential to implement a coordinated strategy of regional and international scope, based on shared responsibility and the approach from a human rights perspective to respond to the rapid situation and massive numbers of individuals who are being forced to migrate from Nicaragua. To this end, there must be a strengthening of technical and financial assistance to the State of Costa Rica. It is also necessary to strengthen the communities that host migrants and their families.
 2. Continue to implement accessible policies and measures that guarantee the entry of Nicaraguans requiring international protection into the territory, or to meet urgent humanitarian needs, as well as the respect for the principle and

right to *non-refoulement* of Nicaraguans who may be at risk of persecution or other serious violations of their human rights.

3. Guarantee the recognition of refugee status to Nicaraguans with well-founded fears of persecution upon their return to Nicaragua through fair, swift and efficient procedures that guarantee the right to receive assistance to meet their basic needs at a minimum, including differential approaches. The above also applies to Nicaraguans who were in Costa Rican territory since before the protests of April 2018 and who have a well-founded fear of persecution, from their own experience or from that suffered by individuals of a similar profile group due to the situation experienced in Nicaragua (refugees *sur place*).
4. Consider the implementation of alternative protection regimes for individuals who are unable to fulfill the criteria established in the definition of refugee in the 1951 Convention Relating to the Status of Refugees, but are at risk of damage comparable to persecution in case of return, deportation and/or involuntary return. In this sense, the Commission recommends incorporating the definition of the Cartagena Declaration into Costa Rican domestic legislation, as well as the incorporation and implementation of complementary protection.
5. Consider the adoption of collective protection responses, such as the possibility of making the determination for the recognition of *prima facie* or group refugee status; which implies the collective or group recognition of individuals as refugees, without the need for a case by case evaluation.
6. Establish an adequate entry, permanence and departure registration system permitting the generation of reliable statistics in a disaggregated manner, including data such as gender, occupation, profession, profiles and agents of persecution of Nicaraguans. This in turn should allow the identification of individuals in need of international protection and those in a situation of vulnerability or with special protection needs.
7. Ensure that procedures for the recognition of refugee status are free, and implement measures to shorten the deadlines for the recognition of refugee status, improve and strengthen the appointment system and scheduling of interviews, so that they are made within a reasonable time.
8. Guarantee the right to information and free legal assistance in matters of asylum procedures by government and civil society bodies for newly-arrived Nicaraguans, as well as for those who have resided in the country on a documented or undocumented basis. Also, ensure timely access to identity documentation.
9. Protect and provide humanitarian assistance to Nicaraguans who are directly within their jurisdiction; or through international organizations such as the United Nations High Commissioner for Refugees (UNHCR), UNICEF, UN Women, the International Organization for Migration (IOM), the World Food Program (WFP), the Pan American Health Organization (PAHO-WHO); as well

as facilitating that other relevant international and regional organizations, national human rights institutions and civil society organizations can provide humanitarian assistance and monitor human rights.

10. Implement measures to promote social integration and resilience of Nicaraguans, in particular through the guarantee of rights to non-discrimination and economic, social and cultural rights, including access to the right to work, education and social security, from the moment they submit their application for recognition of refugee status or other forms of international protection.
11. Improve the conditions at the Temporary Migrant Assistance Centers (CATEM) to guarantee the safety, well-being and the right to education of migrants, asylum seekers and refugees. Also, provide special care to the resident children and adolescents, as well as consider the possibility of gradually creating shelters in other cities further from the border and that provide greater security to migrants, asylum seekers and refugees.
12. Allow those in need of international protection access to a work permit, once their application for protection has been submitted to the General Directorate of Migration and Non Nationals (DGME), which must be renewable until the DGME analyzes the particular request and issues its decision. The work permit must allow the exercise of all types of profession and occupation, without the need to acquire another migratory status for this purpose.
13. Ensure medical care in public health systems that guarantee the personal, physical and psychological integrity of those in need of international protection, without the need to have an insurance coverage with the Costa Rican Social Security Fund (CCSS), considering their situation of extreme vulnerability and addressing the specific needs of this group of individuals.
14. Ensure that those in need of international protection have access to education, particularly to primary and secondary education, through additional mechanisms without the requirement for documentation that is impossible to obtain for this group of individuals, precisely because of the circumstances of their forced departure from their country of origin.
15. Implement positive measures to combat discrimination and xenophobia, such as training for officials who serve those in need of international protection, as well as educational and awareness campaigns aimed at promoting multicultural societies.
16. Strengthen the General Directorate of Migration and Non Nationals (DGME) and other Costa Rican institutions that are involved in the effective access of the rights of refugees, asylum seekers and those in need of international protection, through the allocation of an adequate budget, organic structure, and sufficient material and human resources to meet international protection requests in a timely manner.

17. Adopt measures to ensure that Nicaraguans' return is only carried out once the State of origin offers real guarantees that their life and personal integrity will not be at risk, and that they will not be subject to persecution upon returning to Nicaraguan territory.