

PETITION TO
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Ms. Elina Steinerte (Latvia)
Vice-Chair: Dr. Miriam Estrada-Castillo (Ecuador)
Ms. Leigh Toomey (Australia)
Mr. Mumba Malila (Zambia)
Ms. Priya Gopalan (Malaysia)

HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
JUAN SEBASTIÁN CHAMORRO AND FÉLIX MARADIAGA
Citizens of the Republic of Nicaragua

v.

The Government of Nicaragua

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7, 33/30,
and 42/22¹

Submitted by

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October 28, 2021

¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the U.N. Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights” pursuant to U.N. General Assembly Resolution 60/251, G.A. Res. 60/251, at ¶ 6 (Mar. 15, 2006), has further extended the Working Group’s mandate through Resolutions 6/4, 15/18, 20/16, 24/7, 33/30, and 42/22.

INTRODUCTION

As set forth below, the Republic of Nicaragua (Nicaragua) is arbitrarily depriving Juan Sebastián Chamorro and Félix Maradiaga of their liberty for political reasons. Chamorro and Maradiaga, prominent presidential candidates and civil society activists, were arrested and disappeared by the Nicaraguan National Police on June 8, 2021. For 84 days, they were disappeared and held *incommunicado* in undisclosed locations without any access to their lawyers, families, or doctors, and their families did not know if Chamorro and Maradiaga were still alive. Shortly after their arrests, both men were remanded to 90 days of judicial detention while “under investigation” for committing acts that “undermine [Nicaragua’s] independence, sovereignty, and self-determination” and other political charges. Nearly three months passed before Chamorro and Maradiaga were formally charged with “conspiracy to undermine national integrity.” No date has been set for their trial, and Chamorro and Maradiaga were ordered to remain in pretrial detention, indefinitely extending their detention. Ironically, in a communication dated October 22, 2021, the Ortega regime indicated the trial date would remain unscheduled owing to the “saturation of the agenda” of the judicial office and “force majeure.”

Chamorro and Maradiaga have been targets of the Ortega regime for their advocacy promoting both human rights and democratic governance in Nicaragua. But their arrests, disappearances, and detention are part of a broader crackdown on Nicaragua’s democratic opposition by President Daniel Ortega and his regime. Facing elections in November 2021, Ortega unleashed a brutal wave of repression to silence challengers and critics, systematically disappearing and/or detaining over 35 individuals, including presidential candidates, political party leaders, human rights defenders, journalists, student activists, labor leaders, farmers, and private sector leaders. Their detention is a desperate attempt by a deeply unpopular regime to maintain its hold on power.

Chamorro and Maradiaga’s detention is politically motivated and connected to their longstanding activism. The regime has alleged that both men were part of an international conspiracy to funnel foreign resources “to provide logistical support and create favorable conditions to harm the supreme interests of the nation,” amongst other blatantly political charges. By opening a baseless criminal process against them – and remanding them to indefinite pretrial detention – the regime has used these charges as a pretext to bar Chamorro and Maradiaga from the November 2021 presidential elections, allowing Ortega to coast to a fourth consecutive term without facing even a single credible opposition candidate.

The arbitrary nature of Chamorro’s and Maradiaga’s imprisonment is further demonstrated by the grave due process violations characterizing the proceedings against them. In addition to their 84-day enforced disappearance, both Chamorro and Maradiaga have been held *incommunicado* for extended periods of time. Both men were brought before secret hearings without their lawyers; indeed, they have repeatedly been denied access to their chosen lawyers. Their lawyers were never informed of the hearings which took place on June 9 and August 26. The Ortega regime persecuted both men’s lawyers such that the lawyers ultimately fled Nicaragua. And President Ortega and Vice President Rosario Murillo have denigrated Chamorro and Maradiaga in the media as “criminals” and “terrorists,” violating their right to the presumption of innocence.

The cases of Chamorro and Maradiaga are just two examples where the Ortega regime has manipulated Nicaragua’s institutions to serve its own interests. Accordingly, it is hereby requested that the attached Petition be considered a formal request for an opinion of the Working Group on Arbitrary Detention pursuant to Resolution 1997/50 of the UN Commission on Human Rights, as reconfirmed by Resolutions 2000/36 and 2003/31, and UN Human Rights Council Resolutions 6/4, 15/18, 20/16, 24/7, 33/30, and 42/22.

QUESTIONNAIRES FOR JUAN SEBASTIÁN CHAMORRO AND FÉLIX MARADIAGA²

Juan Sebastián Chamorro

I. IDENTITY

1. **Family name:** Chamorro García
2. **First name:** Juan Sebastián
3. **Sex:** Male
4. **Birthdate:** Feb. 23, 1971; 50 years old when arrested
5. **Nationality:** Nicaraguan
6. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Juan Sebastián Chamorro is a Nicaraguan economist, political leader of *Alianza Cívica por la Justicia y Democracia* (ACJD), and vocal critic of President Daniel Ortega. He was an independent candidate for Presidency of Nicaragua. His activism, criticism of the Ortega regime, and presidential candidacy are believed to be the main reasons behind his detention.
7. **Address of usual residence:** Chamorro resides at the family home in Managua.

II. ARREST

1. **Date of arrest:** June 8, 2021
2. **Place of arrest (as detailed as possible):** Chamorro family residence, Managua, approximately 7:00 pm local time. In the afternoon of June 8, 2021, Chamorro received a summons to appear at the Public Ministry for an “interview” on June 9, the following day. However, that evening around 7:00 pm, approximately forty armed police officers arrived at the Chamorro residence, where they jumped the property wall and forced open the gate. Chamorro, who was in his front yard, immediately knelt and put his hands above his head and was taken away by two police officers without explanation.
3. **Forces who carried out the arrest or are believed to have carried it out:** National Police
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** N/A.
6. **Reasons for the arrest imputed by the authorities:** At the time of the arrest, no reason was given for Chamorro’s arrest.
7. **Legal basis for the arrest including relevant legislation applied (if known):** Shortly after Chamorro’s arrest, the National Police published a press release indicating that Dr. Chamorro was under investigation “for committing acts that undermine independence, sovereignty, and self-determination; incite foreign interference in internal affairs; solicit military interventions; organize with funding by external entities in order to execute acts of terrorism and destabilization; propose commercial and economic blockades and financial operations against the state and its institutions; demand, praise, and applaud the imposition of sanctions against the state of Nicaragua and its citizens; and damage the supreme interests of the nation in conformity with Article 1 of the Law 1055 ‘Law of the Defense of the Rights of the People to Independence, the Sovereignty, and Self-Determination for Peace.’”³ Law 1055 has been strongly condemned by the international community for giving “the government of President Daniel Ortega the power to unilaterally declare citizens ‘terrorists’ or coup-mongers, classify them as ‘traitors to the homeland’ and ban them from running as candidates.”⁴

III. DETENTION

² Based upon MODEL QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION, U.N. WORKING GROUP ON ARBITRARY DETENTION, accessed May 22, 2021, available at <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

³ *Nota De Prensa No. 139 - 2021*, POLICÍA NACIONAL RELACIONES PÚBLICAS, June 8, 2021, available at <https://www.lavozdelsandinismo.com/nicaragua/2021-06-08/policia-nacional-nota-de-prensa-139-2021-informa-sobre-detencion-de-felix-maradiaga/> [in Spanish].

⁴ *Nicaragua Essentially Bans Opposition from 2021 Election*, ASSOCIATED PRESS, Dec. 21, 2020, available at https://apnews.com/article/elections-blockades-central-america-daniel-ortega-nicaragua-14d04033e443f6da9bf3d11aec0dae47?utm_source=dailybrief&utm_medium=email&utm_campaign=DailyBrief2020Dec22&utm_term=DailyNewsBrief

1. **Date of detention:** June 8, 2021
2. **Duration of detention:** Ongoing and indefinite. To date, it has been 142 days.
3. **Forces holding the detainee under custody:** Nicaraguan National Police
4. **Place of detention:** Dirección de Auxilio Judicial (DAJ), otherwise known as “El Chipote”
5. **Authorities that ordered the detention:** According to a Public Ministry press release from June 10, 2021, Chamorro was initially remanded to 90 days of “judicial detention” while investigations are carried out in his case.⁵ The judge is unknown. In a closed hearing on September 3, 2021, Judge Nalia Nadezhda Ubeda Obando of the Fifth Criminal Hearings Court of Managua granted the request of Assistant Prosecutor of Nicaragua’s Public Ministry Heydi Estela Ramírez Olivas to initiate criminal proceedings against Chamorro and remanded him to pretrial detention. Since no trial date has been set, his detention has been extended indefinitely.
6. **Reasons for the detention imputed by the authorities:** On August 26, 2021, the Public Ministry of Nicaragua announced that charges were filed the day prior against Chamorro and others “for being alleged perpetrators of the crime of conspiracy to undermine national integrity.” The indictment alleges that the defendants were part of an international conspiracy to funnel foreign resources “to provide logistical support and create favorable conditions to harm the supreme interests of the nation.”⁶ Additional charges leveled against him include calling for international sanctions, inciting foreign interference in internal affairs, and discrediting the duly elected government.
7. **Relevant legislation applied (if known):** The charges of conspiracy to undermine national integrity fall under Articles 410 and 412 of Nicaragua’s Penal Code. If convicted under Article 410 for “undermining national integrity,” Chamorro could be sentenced to 10-15 years in prison.⁷ If convicted under Article 412 for “provocation, proposition and conspiracy,” Chamorro could be sentenced to an additional 5-10 years in prison.⁸

Félix Maradiaga

I. IDENTITY

1. **Family name:** Maradiaga Blandón
2. **First name:** Félix Alejandro
3. **Sex:** Male
4. **Birthdate:** Sept. 23, 1976; 44 years old when arrested
5. **Nationality:** Nicaraguan
6. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Félix Maradiaga is a prominent Nicaraguan activist, political figure, academic, and outspoken critic of President Daniel Ortega. He is a candidate for the Presidency of Nicaragua from the Blue and White National Unity party. His activism, criticism of the Ortega regime, and presidential candidacy are believed to be the main reasons behind his detention.
7. **Address of usual residence:** Since May 2020, Maradiaga has resided in safehouses on account of political persecution. During this time, he has stayed in at least seven safehouses. At the time of his arrest, he alternated staying between three different safehouses in Managua.

II. ARREST

1. **Date of arrest:** June 8, 2021
2. **Place of arrest:** Park of the Bible, Managua, Nicaragua, approximately 1:00 pm local time. After being summoned to the Public Ministry for an interview on June 8, Maradiaga was allowed to leave in his own vehicle after four hours of interrogation. He was followed by numerous police officers in a

⁵ *Comunicado 011-2021*, MINISTERIO PÚBLICO, REPÚBLICA DE NICARAGUA, Jun. 10, 2021, available at <https://ministeriopublico.gob.ni/comunicado-11-2021/> [in Spanish].

⁶ *Acusación Fiscal, Juzgado Quinto de Distrito Penal de Audiencias Circunscripción Managua*, MINISTERIO PÚBLICO, FISCALÍA DEPARTAMENTAL DE MANAGUA, Aug. 24, 2021 [Spanish original and partial translation attached as annexes].

⁷ Ley No. 641: Código Penal, PODER JUDICIAL, REPÚBLICA DE NICARAGUA, accessed Oct. 5, 2021, at Art. 410, available at https://www.poderjudicial.gob.ni/pjupload/noticia_reciente/CP_641.pdf [in Spanish].

⁸ Ley No. 641: Código Penal, PODER JUDICIAL, REPÚBLICA DE NICARAGUA, accessed Oct. 5, 2021, at Art. 412, available at https://www.poderjudicial.gob.ni/pjupload/noticia_reciente/CP_641.pdf [in Spanish].

National Police pickup truck and police officers on two motorcycles. About 500 meters away from the Public Ministry, Maradiaga's car was pulled over by the National Police. He was violently removed from the car, beaten, and taken away.

3. **Forces who carried out the arrest or are believed to have carried it out:** National Police
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** N/A.
6. **Reasons for the arrest imputed by the authorities:** At the time of the arrest, no reason was given for Mr. Maradiaga's arrest.
7. **Legal basis for the arrest including relevant legislation applied (if known):** Shortly after Maradiaga's arrest, the National Police published a press release, identical to the one issued for Chamorro, indicating that Maradiaga was under investigation for violating Law 1055.⁹

III. DETENTION

1. **Date of detention:** June 8, 2021
2. **Duration of detention:** Ongoing and indefinite. To date, it has been 142 days.
3. **Forces holding the detainee under custody:** Nicaraguan National Police
4. **Place of detention:** Dirección de Auxilio Judicial (DAJ), otherwise known as "El Chipote"
5. **Authorities that ordered the detention:** According to a Public Ministry press release from June 10, 2021, Maradiaga was initially remanded to 90 days of "judicial detention" by Judge Henry Morales of the Sixth Criminal District of Managua while investigations were carried out in his case.¹⁰ In a closed hearing on September 3, 2021, Judge Nalia Nadezhda Ubeda Obando of the Fifth Criminal Hearings Court of Managua granted the request of Assistant Prosecutor of Nicaragua's Public Ministry Heydi Estela Ramírez Olivas to initiate criminal proceedings against Maradiaga and remanded him to pretrial detention. Since no trial date has been set, his detention has been extended indefinitely.
6. **Reasons for the detention imputed by the authorities:** On August 26, 2021, the Public Ministry of Nicaragua announced that charges were filed the day prior against Maradiaga and others "for being alleged perpetrators of the crime of conspiracy to undermine national integrity." The indictment alleges that the defendants were part of an international conspiracy to funnel foreign resources "to provide logistical support and create favorable conditions to harm the supreme interests of the nation."¹¹ Additional charges leveled against him include calling for international sanctions, inciting foreign interference in internal affairs, and discrediting the duly elected government.
7. **Relevant legislation applied (if known):** The charges of conspiracy to undermine national integrity fall under Articles 410 and 412 of Nicaragua's Penal Code. If convicted under Article 410 for "undermining national integrity," Maradiaga could be sentenced to 10-15 years in prison.¹² If convicted under Article 412 for "provocation, proposition and conspiracy," Maradiaga could be sentenced to an additional 5-10 years in prison.¹³

I. CIRCUMSTANCES SURROUNDING THE ARREST AND DETENTION OF JUAN SEBASTIÁN CHAMORRO AND FÉLIX MARADIAGA

A. *Statement of Facts*

1. *Background on the Conflict in Nicaragua*

Despite repeated attempts to establish a permanent democracy, Nicaragua's history has been marked by violent periods of dictatorship and civil war. In the late 1970s, the socialist party Sandinista National Liberation Front, or FSLN, led a brutal campaign to depose the Somoza dictatorship. After years characterized by extra-judicial killings, kidnappings, and torture, the Sandinistas toppled the Somoza regime on July 17, 1979, and Daniel Ortega assumed the presidency. After 11 years in power, however, economic strife led to the Sandinistas' defeat in the 1990 elections. Despite losing the presidency to Violeta Barrios de

⁹ Nota De Prensa No. 139 - 2021, *supra* note 3.

¹⁰ Comunicado 011-2021, *supra* note 5.

¹¹ *Acusación Fiscal*, *supra* note 6.

¹² Ley No. 641: Código Penal, *supra* note 7.

¹³ Ley No. 641: Código Penal, *supra* note 8.

Chamorro in 1990, Daniel Ortega remained an important opposition figure in Nicaraguan politics, mounting unsuccessful presidential campaigns in 1996 and 2001. In 2006, on a campaign of national reconciliation, Ortega was reelected with 38% of the vote, buttressed by a strong FSLN majority in parliament.

Human rights in Nicaragua have suffered during Ortega's tenure. Since his return to the presidency in 2007, Ortega has steadily eroded Nicaragua's democratic institutions and consolidated his authoritarian rule. In response to widespread civilian uprisings in 2018, the Ortega regime responded with a relentless wave of repression against protestors. At least 332 were killed and 565 were jailed; countless Nicaraguans went into hiding and exile.¹⁴ Since the 2018 protests, Ortega has systematically canceled opposition political parties, vilified civil society, and attacked free media. Freedom House has indicated the regime's response to the 2018 protests signaled the "collapse" of the rule of law in Nicaragua.¹⁵ Indeed, as the National Democratic Institute has found, confidence in Nicaragua's democratic institutions "has diminished substantially over the past decade."¹⁶

B. Campaign of Election Repression by Nicaraguan Authorities

The Ortega regime has escalated its repression against political opposition since late 2020. The National Assembly passed several broad laws and amendments that allowed for greater government persecution of dissenting voices, including the Law for the Regulation of Foreign Agents, the Special Law on Cyber-Crimes, and the Law for the Defense of the Rights of the People to Independence, Sovereignty and Self-Determination for Peace.¹⁷ This last law in particular gave "the government of President Daniel Ortega the power to unilaterally declare citizens 'terrorists' or coup-mongers, classify them as 'traitors to the homeland' and ban them from running as candidates."¹⁸ On December 21, 2020, the General Secretariat of the Organization of American States (OAS) concluded that the law granted the Nicaraguan Government the authority to transform the "2021 elections into an imposition rather than an election."¹⁹

The Ortega regime's repressive actions include illegal raids of residences, surveillance, cyberattacks on opposition websites, disruption of private meetings and gatherings, coercive distribution of resources like food and medical supplies, torture, and arbitrary arrests and detention.²⁰ Further, "[p]olice regularly station[] police vehicles outside the homes of opposition members, harassing visitors and occasionally prohibiting opposition members from leaving their houses,"²¹ including Chamorro and Maradiaga.

The summer of 2021 saw an unparalleled crackdown on Nicaragua's opposition. In late May, Ortega detained two former officials from the Violeta Barrios de Chamorro Foundation. Days later, Cristiana Chamorro was placed under house arrest and officials requested that she be disqualified from the presidential race.²² On June 8, what has since been termed "the night of the long knives in the tropics," Ortega's security forces detained four leading opposition voices, including Chamorro and Maradiaga,²³ to be "investigated" for committing acts "that undermine [Nicaragua's] independence, sovereignty, and self-determination," among

¹⁴ Frances Robles, *In Nicaragua, Ortega Was on the Ropes. Now, He Has Protesters on the Run*, NEW YORK TIMES, Dec. 24, 2018, available at <https://www.nytimes.com/2018/12/24/world/americas/nicaragua-protests-daniel-ortega.html>.

¹⁵ *Freedom in the World: Nicaragua*, FREEDOM HOUSE, accessed Oct. 13, 2021, available at <https://freedomhouse.org/country/nicaragua/freedom-world/2020>.

¹⁶ "Nicaragua," NATIONAL DEMOCRATIC INSTITUTE, accessed Sept. 22, 2021, available at <https://www.ndi.org/latin-america-and-caribbean/nicaragua>.

¹⁷ REPORT 2020/21: THE STATE OF THE WORLD'S HUMAN RIGHTS, AMNESTY INT'L, 2021, at 265–66, available at <https://www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF>; see also SILENCE AT ANY COST: STATE TACTICS TO DEEPEN THE REPRESSION IN NICARAGUA, AMNESTY INT'L, Feb. 2021, available at <https://www.amnesty.org/download/Documents/AMR4333982021ENGLISH.PDF>.

¹⁸ *Nicaragua Essentially Bans Opposition from 2021 Election*, *supra* note 4; see also *Nicaragua*, in 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, U.S. DEP'T OF STATE, Mar. 30, 2021, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/nicaragua/>.

¹⁹ Press Release, *Statement From the OAS General Secretariat on Nicaragua*, OFFICE OF THE OAS GENERAL SECRETARIAT, Dec. 21, 2020, available at https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-127/20.

²⁰ 2020 Country Reports on Human Rights Practices: Nicaragua, *supra* note 18.

²¹ 2020 Country Reports on Human Rights Practices: Nicaragua, *supra* note 18.

²² Jaclyn Diaz, *Police in Nicaragua Detain Opposition Figure at Her Home Following a Raid*, NPR, June 3, 2021, available at <https://www.npr.org/2021/06/03/1002744590/police-in-nicaragua-detain-opposition-figure-at-her-home-following-raid>.

²³ Ivana Kottasová, *Seven Nicaraguan Opposition Leaders Detained Ahead of Election*, CNN, June 9, 2021, available at <https://www.cnn.com/2021/06/09/americas/nicaragua-opposition-leaders-detained-intl/index.html>.

other transparently political allegations.²⁴ There are now more than 150 political prisoners in Nicaragua, more than 35 of whom were arrested or disappeared this summer alone.²⁵

C. Biographies of Juan Sebastián Chamorro and Félix Maradiaga

1. Juan Sebastián Chamorro

Juan Sebastián Chamorro is a Nicaraguan economist and politician. Chamorro is the nephew of former Nicaraguan President Violeta Barrios de Chamorro, who defeated Daniel Ortega in the 1990 election, and the cousin of presidential candidate Cristiana Chamorro, who has been placed under house arrest.²⁶ On February 27, 2021, he announced his own presidential campaign against Ortega, running on a platform of justice for victims of human rights violations.²⁷

Chamorro was Executive Director of Civic Alliance for Justice and Democracy (ACJD) from 2019 to January 2021. As a result of his activism,²⁸ he and his family have been the victims of “attacks, beatings, raids, insults, millionaire fines, financial terrorism, threats of confiscation, and arrest warrants”²⁹ by Ortega’s regime. On December 22, 2018, he was summoned by the police for his criticism of Ortega.³⁰ Afterwards, police began to regularly pull him over and surround his office, leading him to work remotely and sleep at different houses.³¹ Chamorro receives routine death threats from Ortega loyalists.³²

Before his arrest in June 2021, Chamorro had been subjected to increasing restrictions on his movement. On October 25, 2020, the police prevented him from traveling for his ACJD activities.³³ The police later informed Chamorro that he was not permitted to leave Managua because he was the “object of an investigation,” but would not disclose the reason for the investigation.³⁴ This restriction on Chamorro’s travel

²⁴ Berta Valle and Victoria Cárdenas, Félix and Juan Sebastián’s spouses, respectively, have spent the past four months advocating on behalf of their husbands in the U.S. and the Ortega regime convicted them *in absentia* of being “traitors to the homeland;” further illustrating the political nature of the charges against their husbands.

²⁵ *Lista-Informe Preliminar, Personas Presas Políticas en Nicaragua*, PRESAS Y PRESOS POLÍTICOS NICARAGUA, Sept. 23, 2021, available at <https://presasypresospolicosnicaragua.org/wp-content/uploads/2021/09/Lista-septiembre-personas-presas-pol%C3%ADticas.pdf> [in Spanish].

²⁶ Marlon Soto et al., *Nicaraguan Presidential Challenger Cristiana Chamorro Placed Under House Arrest*, CNN, June 3, 2021, available at <https://www.cnn.com/2021/06/03/americas/nicaragua-cristiana-chamorro-house-arrest-intl-latam/index.html>.

²⁷ Cindy Regidor, *Juan Sebastián Chamorro Anuncia Pilares de Su Plan de Gobierno*, CONFIDENCIAL, Feb. 27, 2021, available at <https://www.confidencial.com.ni/politica/juan-sebastian-chamorro-anuncia-pilares-de-su-plan-de-gobierno/>.

²⁸ Press Release, *IACHR Adopts Precautionary Measures in Favor of More Than a Hundred People at Serious Risk in Nicaragua*, *Inter-American Commission on Human Rights*, Sept. 18, 2018, available at https://www.oas.org/en/iachr/media_center/PReleases/2018/205.asp.

²⁹ Iván Olivares, *Juan Sebastián Chamorro Se “Dedicará” a la “Política”*, CONFIDENCIAL, Jan. 11, 2021, available at <https://www.confidencial.com.ni/politica/juan-sebastian-chamorro-se-dedicara-a-la-politica/>.

³⁰ *Líder de la Oposición en Nicaragua Es Citado por la Policía tras Criticar a Ortega*, EFECTO COCUYO, Dec. 22, 2018, available at <https://efectococuyo.com/internacionales/lider-de-la-oposicion-en-nicaragua-es-citado-por-la-policia-tras-criticar-a-ortega/>.

³¹ Carrie Kahn, *Stay or Go? Ortega’s Crackdown Pushes Nicaraguans to Make Hard Choices*, NPR, Feb. 9, 2019, available at <https://www.npr.org/2019/02/09/692286247/stay-or-go-ortegas-crackdown-pushes-nicaraguans-to-make-hard-choices>.

³² Emiliano Chamorro Mendieta, *Fánaticos Orteguistas Amenazan con Asesinar a Juan Sebastián Chamorro*, LA PRENSA, Dec. 16, 2019, available at <https://www.laprensa.com.ni/2019/12/16/politica/2621805-fanaticos-orteguistas-amenazan-con-asesinar-a-juan-sebastian-chamorro>.

³³ Carlos Larios, *Policía Orteguista Prohíbe Salir de Managua a Juan Sebastián Chamorro*, LA PRENSA, Nov. 13, 2020, available at <https://www.laprensa.com.ni/2020/11/13/politica/2747052-policia-orteguista-prohibe-salir-de-managua-a-juan-sebastian-chamorro>; see also Tweet by Juan Sebastián Chamorro (@Jschamorro), TWITTER, Oct. 25, 2020, 6:25 pm, available at <https://twitter.com/Jschamorro/status/1320491764390744069>.

³⁴ *Policía Orteguista Prohíbe Salir*, *supra* note 33; see also Tweet by Juan Sebastián Chamorro (@Jschamorro), TWITTER, Nov. 13, 2020, 1:04 pm, available at <https://twitter.com/Jschamorro/status/1327311491729600512> and Tweet by Juan Sebastián Chamorro (@Jschamorro), TWITTER, Nov. 14, 2020, 12:27 pm, available at <https://twitter.com/Jschamorro/status/1327664399797153794>.

remained in place until his arrest, and Nicaraguan police continued to surveil him.³⁵ Beginning on May 20, 2021, the police restricted his movement further, placing him under *de facto* house arrest.³⁶

2. Félix Maradiaga

Félix Maradiaga is a Nicaraguan activist, politician, and academic. On February 28, 2021, Maradiaga announced his presidential candidacy against Ortega as the candidate of the Blue and White National Unity Movement in the upcoming November 2021 election.³⁷ In 2007, he founded the Civil Society Leadership Institute, a civic education initiative which aims to cultivate leadership skills in grassroots activists. And in 2017, he was appointed Executive Director of the Institute of Strategic Studies and Public Policy (IEEPP), a Managua-based think tank focused on regional public policy.

For his activism, Maradiaga has long been a target of the Ortega regime. On July 9, 2018, the Inter-American Commission on Human Rights (IACHR) found that Maradiaga “faces a situation of grave and urgent risk” after being followed, harassed, and subjected to death threats since early 2018.³⁸ After being violently assaulted and falsely accused of financing terrorism, Maradiaga fled Nicaragua on July 14, 2018.³⁹ When he returned in September 2019, his passport was confiscated, and he was again subjected to police surveillance and death threats.⁴⁰ Since September 2020, the Nicaraguan Police greatly restricted Maradiaga’s movement and had a constant presence around his home, usually between 16 and 22 police officers at a time, such that he could not leave his home for three months.⁴¹

D. Arrests and Detention of Juan Sebastián Chamorro and Félix Maradiaga

1. Arrests

a. Juan Sebastián Chamorro

On June 8, 2021, while at his home in Managua, Chamorro received a summons to appear at the Public Ministry on the morning of June 9, 2021, for an “interview.” Later that day, Chamorro received a message from the front gate of the neighborhood indicating that the police presence at the front of the complex was much larger than normal; while there have usually been one or two police patrol cars at the front gate, there were six at the same time. Chamorro and his wife, Victoria Cárdenas, left their house for Mrs. Cárdenas’s mother’s house, which is adjacent to the Chamorro residence and on the same property. Later, a neighbor called to say that the police had entered the neighborhood. Chamorro and Mrs. Cárdenas then returned across the property to their own home.

Forty armed police officers arrived at the Chamorro residence, where they jumped the wall and forced open the gate. Chamorro immediately knelt down, put his hands up, and was then taken away by two police officers. Police officers remained on the property, surrounded the house of Chamorro’s mother-in-law, and at

³⁵ Tweet by Juan Sebastián Chamorro (@Jschamorro), TWITTER, Jan. 10, 2021, 3:41 pm, *available at* <https://twitter.com/Jschamorro/status/1348369312768290816>; Tweet by Juan Sebastián Chamorro (@Jschamorro), TWITTER, Feb. 13, 2021, 10:20 am, *available at* <https://twitter.com/Jschamorro/status/1360609886518857728>; and Tweet by Juan Sebastián Chamorro (@Jschamorro), TWITTER, Mar. 27, 2021, 5:51 pm, *available at* <https://twitter.com/Jschamorro/status/1375928441007190017>.

³⁶ *El Régimen de Daniel Ortega Sitió a los Aspirantes a la Presidencia en Nicaragua*, INFOBAE, May 21, 2021, *available at* <https://www.infobae.com/america/america-latina/2021/05/21/el-regimen-de-daniel-ortega-sitio-a-los-aspirantes-a-la-presidencia-de-la-oposicion-en-nicaragua/> and Tweet by Juan Sebastián Chamorro (@Jschamorro), TWITTER, May 20, 2021, 7:21 pm, *available at* <https://twitter.com/Jschamorro/status/1395517780930273282>.

³⁷ Gabriela Castillo, *Félix Maradiaga Lanza Precandidatura Presidencial Y Dice Que “No Estoy Interesado en la Vicepresidencia de la República”*, ARTÍCULO 66, Feb. 28, 2021, *available at* <https://www.articulo66.com/2021/02/28/felix-maradiaga-oficializa-precandidatura-a-la-presidencia/> [in Spanish].

³⁸ *Félix Alejandro Maradiaga Blandon Respecto de Nicaragua*, IACHR Res. 50/18, Doc. 671-18, *adopted* 2018.

³⁹ Mario Medrano, *Félix Maradiaga Denuncia Haber Sido Acosado Por Motorizados en Managua, Nicaragua*, CNN EN ESPAÑOL, Sept. 18, 2019, *available at* <https://cnnespanol.cnn.com/2019/09/18/alerta-nicaragua-felix-maradiaga-denuncia-haber-sido-acosado-por-motorizados-en-managua/>.

⁴⁰ *Información Adicional Urgente: Félix Maradiaga* (brief to Tania Reneaum Panszi, Executive Secretary, Inter-American Commission on Human Rights), CENTER FOR JUSTICE AND INTERNATIONAL LAW, June 8, 2021 [in Spanish] (on file with author).

⁴¹ Gabriela Castillo, *Régimen Exhibe Estado Policial en el Tercer Día de ‘Casa por Cárcel’ a Precandidatos Presidenciales*, ARTÍCULO 66, May 22, 2021, *available at* <https://www.articulo66.com/2021/05/22/regimen-receta-casa-por-carcel-precandidatos-felix-maradiaga/> [in Spanish]; *see also* Yubelka Mendoza and Anatoly Kurmanaev, *Nicaragua’s Democracy Hangs by Thread as Crackdown Deepens*, NEW YORK TIMES, June 6, 2021, *available at* <https://www.nytimes.com/2021/06/06/world/americas/nicaragua-daniel-ortega-crackdown.html>.

least 25 armed police officers raided Chamorro's house. During the four-hour raid, the police searched the Chamorro residence fully and put anything of possible value or interest into small bags, including notebooks, papers, electronics, including other cell phones and DVDs, the internet router, and the cable box. The police never presented an arrest warrant for Chamorro or a search warrant for his property.

In a press release on June 8, 2021, the National Police indicated that Chamorro "is being investigated for committing acts that undermine independence, sovereignty, and self-determination; incite foreign interference in internal affairs; solicit military interventions; organize with funding by external entities in order to execute acts of terrorism and destabilization; propose commercial and economic blockades and financial operations against the state and its institutions; demand, praise, and applaud the imposition of sanctions against the state of Nicaragua and its citizens; and damage the supreme interests of the nation in conformity with Article 1 of the Law 1055 'Law of the Defense of the Rights of the People to Independence, the Sovereignty, and Self-Determination for Peace.'"⁴²

b. Félix Maradiaga

On June 5, 2021, Maradiaga received a summons from the Public Ministry notifying him that he was to appear before the central offices of the Public Ministry in Managua on June 8, 2021, at 8:30 am for an "interview." The summons did not include any other information, such as the reason for the "interview."⁴³

In compliance with the summons, Maradiaga appeared before the Public Ministry on June 8, escorted by a vehicle of the National Police with at least four agents and two additional agents on motorcycles. Maradiaga remained at the Public Ministry for nearly four hours, where he gave a statement and was subjected to exhaustive questioning. Maradiaga was interrogated about his international activities, especially with the OAS and United Nations (UN) Security Council, his travel in the last 10 years, and the sources of funding for civil society organizations.⁴⁴ Maradiaga was not charged with a specific crime but was informed he would remain "under investigation"⁴⁵ while around 50 agents of the National Police surrounded the Ministry.⁴⁶

At 12:20 pm, Maradiaga exited the Public Ministry.⁴⁷ Upon his exit from the Public Ministry, Maradiaga left in his own vehicle, but was followed by numerous police officers in a National Police pickup truck and police officers on two motorcycles. Just 20 minutes after leaving the Public Ministry – having traveled only about 500 meters – police arrested Maradiaga at the Park of the Bible. According to Maradiaga's close adviser, Roger Reyes, who was later forcibly disappeared and detained by Ortega's regime,⁴⁸ the arrest must have been planned, as it took place at a police checkpoint and away from the reporters that had gathered outside the Public Ministry.⁴⁹

Although he did not resist arrest, the police hit Maradiaga in the face twice, pulled him from his car, and placed him in the police vehicle and drove off. The arresting agents of the National Police did not present any court order authorizing the arrest.⁵⁰ Later in the day on June 8, the National Police issued a press release announcing that Maradiaga was under investigation, identical to the one issued for Chamorro.⁵¹

2. Detention of Juan Sebastián Chamorro and Félix Maradiaga

For the first 84 days of their detention, Chamorro and Maradiaga were disappeared – held in undisclosed locations without any access to their families, lawyers, or doctors. On June 10, the Public

⁴² *Nota de Prensa 140-2021*, NATIONAL POLICE OF NICARAGUA, June 8, 2021, available at <https://www.lavozdelsandinismo.com/nicaragua/2021-06-08/policia-nacional-nota-de-prensa-140-2021-informa-sobre-detencion-de-juan-sebastian-chamorro-garcia/> [in Spanish].

⁴³ *Información Adicional Urgente: Félix Maradiaga*, *supra* note 40.

⁴⁴ *Id.*

⁴⁵ *Información Adicional Urgente: Félix Maradiaga*, *supra* note 40.

⁴⁶ *Id.*

⁴⁷ Javier González, *Dictadura Se Lleva a la Cárcel al Precandidato Presidencial Félix Maradiaga Después que Salió de la Fiscalía*, ARTÍCULO 66, June 8, 2021, available at <https://www.articulo66.com/2021/06/08/precandidato-presidencial-felix-maradiaga-presosanciones-soberania-regimen-orteguista/> [in Spanish].

⁴⁸ *Róger Reyes, from UNAB, becomes the 34th political prisoner in the last 85 days*, ARCHYDE, Aug. 22, 2021, available at <https://www.archyde.com/roger-reyes-from-unab-becomes-the-34th-political-prisoner-in-the-last-85-days/>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Nota De Prensa No. 139 - 2021*, *supra* note 3.

Ministry announced that it had requested special hearings in the cases of Chamorro and Maradiaga to extend the period of investigation and judicial detention to 90 days on account of “strong indications that [they have] attacked Nicaraguan society and the rights of the people in accordance with Law No. 1055.”⁵² In both hearings, the requests were granted to extend judicial detention to 90 days. Judge Henry Morales of the Sixth Criminal District of Managua, known for facilitating the illegal detentions of many political prisoners, presided over Maradiaga’s hearing. Chamorro and Maradiaga confirmed on August 31, during their first contact with family since their disappearances, that they were present for the June hearings, which took place in the early hours of the morning (around 2:00 or 3:00 am) and were secretly held inside the prison. Chamorro and Maradiaga’s lawyers were not informed of this secret hearing and were therefore not present.

On August 26, 2021, the Public Ministry of Nicaragua announced that charges were filed on August 25 against Chamorro and Maradiaga “for being alleged perpetrators of the crime of conspiracy to undermine national integrity, in accordance with Articles 410 and 412 of the Penal Code, to the detriment of Nicaraguan society and the State of Nicaragua,”⁵³ and that a “preliminary hearing was held [on August 26, 2021], [and] the judicial authority admitted the accusation for the accused.”⁵⁴ Further, Chamorro and Maradiaga would continue to be detained “as a precautionary measure.” The indictment alleges that they and other opposition leaders conspired to funnel foreign resources “to provide logistical support and create favorable conditions to harm the supreme interests of the nation.”⁵⁵ Additional charges leveled against the defendants include calling for international sanctions, inciting foreign interference in internal affairs, and discrediting the duly elected government. A conviction for “undermining national integrity” could lead to 10-15 years in prison.⁵⁶ A conviction for “provocation, proposition and conspiracy” would result in an additional 5-10 years in prison.⁵⁷

On August 31, 2021, Chamorro and Maradiaga each received visits from a family member, their first contact with family since June 8. Their family members learned that both men have been tortured. The lights in Chamorro’s cell remain on 24 hours a day, and he is interrogated daily for at least an hour. Maradiaga was held in solitary confinement for the first two months of his detention and has also been frequently interrogated. Both men had lost between 20-25 pounds in the first three months of their detention.

On September 3, 2021, Chamorro, Maradiaga, and other political prisoners appeared in a hearing closed to the public pursuant to the charges of “conspiracy” and “undermining national integrity.” During the hearing, which took place inside El Chipote prison and not in a court of law, Judge Nalia Nadezhda Ubeda Obando of the Fifth Criminal Hearings Court of Managua granted the prosecutor’s request to initiate criminal proceedings. Chamorro and Maradiaga had no time alone with their lawyers, who were not given access to their case files. Further, Chamorro and Maradiaga were remanded to pretrial detention after the hearing. Because their trial date has not been set, Chamorro and Maradiaga’s detention has been extended indefinitely.⁵⁸ They both continued to be held *incommunicado* until October 11, when they were each allowed a second visit with family members who ascertained that both men have lost even more weight. On October 23, 2021, the regime indicated the trial date for the men would remain unscheduled owing to the “saturation of the agenda” of the judicial office and “force majeure,” though no details were provided to explain the delay.⁵⁹

Both men struggle to retain domestic counsel due to persecution of lawyers who defend political prisoners. Chamorro’s domestic counsel fled the country in June, citing threats made against him and his family. Maradiaga’s domestic counsel fled Nicaragua in October 2021, also citing persecution by the regime.

⁵² *Id.*

⁵³ *Comunicado 066-2021*, MINISTERIO PÚBLICO, REPÚBLICA DE NICARAGUA, Aug. 26, 2021, available at <https://ministeriopublico.gob.ni/comunicado-66-2021/> [in Spanish].

⁵⁴ *Id.*

⁵⁵ *Acusación Fiscal*, *supra* note 6.

⁵⁶ Ley No. 641: Código Penal, *supra* note 7.

⁵⁷ Ley No. 641: Código Penal, *supra* note 8.

⁵⁸ NICARAGUA: TRUMPED-UP CHARGES AGAINST CRITICS, HUMAN RIGHTS WATCH, Sept. 20, 2021, available at <https://www.hrw.org/news/2021/09/20/nicaragua-trumped-charges-against-critics>.

⁵⁹ *Comunicación Asunto No. 011964-ORM4-2021-PN*, JUZGADO QUINTO DISTRITO DE LO PENAL DE JUICIO CIRCUNSCRIPCIÓN MANAGUA, Oct. 22, 2021, [on file with author]; see also Tweet by CENIDH (@cenidh), TWITTER, Oct. 23, 2021, 4:00 pm, available at https://twitter.com/cenidh/status/1452002110426464272?t=P7fqwpeoK00T_8mQl3YtQw&s=19.

II. LEGAL ANALYSIS

For the reasons set forth below, the detention of Juan Sebastián Chamorro and Félix Maradiaga constitutes an arbitrary deprivation of liberty under Categories I, II, III, and V of the WGAD's Revised Methods of Work. Nicaragua acceded to the International Covenant on Civil and Political Rights ("ICCPR") on March 12, 1980. The WGAD may look to other instruments to determine whether a deprivation of liberty is arbitrary, including the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment ("Body of Principles"), the UN Standard Minimum Rules for the Treatment of Prisoners ("the Nelson Mandela Rules"), and the UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court ("Basic Principles").⁶⁰

Nicaragua's Constitution explicitly provides that "[a]ll persons in the national territory shall enjoy State protection and recognition of the rights inherent to the human person, as well as unrestricted respect, promotion and protection of those human rights, and the full applicability of the rights set forth in the Universal Declaration of Human Rights . . . [and] in the International Pact of Civil and Political Rights of the United Nations."⁶¹

Article 9 of the ICCPR states that "[n]o one shall be subjected to arbitrary arrest or detention," and the Universal Declaration of Human Rights ("UDHR") states that "[n]o one shall be subjected to arbitrary arrest, detention, or exile."⁶² Article 33 of Nicaragua's Constitution also prohibits arbitrary detention.⁶³ The WGAD has held that the prohibition of arbitrary arrest and detention is a peremptory norm of international law and cannot be derogated from, even during an emergency.⁶⁴ Additionally, the WGAD has emphasized that it "subjects interventions against individuals who may qualify as human rights defenders to particularly intense review."⁶⁵ Because Chamorro and Maradiaga both qualify as human rights defenders, the WGAD should review their case, and the numerous violations contained within it, using this heightened level of scrutiny.⁶⁶

A. Category I: No Legal Basis for Detention

Both Chamorro and Maradiaga have been arbitrarily detained under Category I because there is no legal basis for their detention. A detention is arbitrary under Category I when "it is clearly impossible to invoke any legal basis justifying the deprivation of liberty."⁶⁷ The WGAD has found Category I violations in six out of eight cases brought against the Ortega regime.⁶⁸

⁶⁰ REVISED METHODS OF WORK OF THE WORKING GROUP ON ARBITRARY DETENTION, U.N. HUMAN RIGHTS COUNCIL, 36th Sess., U.N. Doc. A/HRC/36/38, July 13, 2017, at ¶ 7(b), (e)–(f), (i) [hereinafter REVISED METHODS OF WORK].

⁶¹ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, 1987, at Art. 46.

⁶² International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 52 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, at Art. 9(1) [hereinafter ICCPR] and Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, adopted 1948, at Art. 9 [hereinafter UDHR].

⁶³ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, Art. 33, *supra* note 61.

⁶⁴ *Liu Xia v. China*, Opinion No. 16/2011, U.N. Doc. A/HRC/WGAD/2011/16, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 5, 2011, at ¶ 12 and *General Comment No. 29 on Article 4: Derogations During a State of Emergency*, U.N. HUMAN RIGHTS COMM., U.N. Doc. CCPR/C/21/Rev.1/Add.11, Aug. 31, 2001, at ¶ 11.

⁶⁵ See, e.g., *Dilmurod Saidov v. Uzbekistan*, Opinion No. 67/2012, U.N. Doc. A/HRC/WGAD/2012/67, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Nov. 23, 2012, at ¶ 57 and *Nega v. Ethiopia*, Opinion No. 62/2012, U.N. Doc. A/HRC/WGAD/2012/62, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Nov. 21, 2012, at ¶ 39.

⁶⁶ According to the Office of the U.N. High Commissioner for Human Rights, a human rights defender is a person who acts to promote human rights in a peaceful manner. Both Maradiaga and Chamorro act peacefully to promote free and fair elections and justice for victims of human rights abuses. See *About Human Rights Defenders*, U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, updated 2021, available at <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx>.

⁶⁷ REVISED METHODS OF WORK, *supra* note 60, at ¶ 8(a).

⁶⁸ See, e.g., *Carlos Ramón Brenes Sánchez*, Opinion No. 16/2019, U.N. Doc. A/HRC/WGAD/2019/16, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Apr. 29, 2019, at ¶¶ 27–28; *Tomás Ramón Maldonado Pérez v. Nicaragua*, Opinion No. 19/2019, U.N. Doc. A/HRC/WGAD/2019/19, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 1, 2019, at ¶¶ 33, 35; *Amaya Eva Coppens Zamora v. Nicaragua*, Opinion No. 43/2019, U.N. Doc. A/HRC/WGAD/2019/43, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Aug. 14, 2019, at ¶¶ 56–60; *Miguel Mora and Lucia Pineda v. Nicaragua*, Opinion No. 17/2020, U.N. Doc. A/HRC/WGAD/2020/17, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 1, 2020, at ¶¶ 72, 79; *16 persons v. Nicaragua*, Opinion No. 21/2020, U.N. Doc. A/HRC/WGAD/2020/21, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 1, 2020, at ¶¶ 59, 65; and *Kevin Roberto Solís v. Nicaragua*, Opinion No. 39/2020, U.N. Doc. A/HRC/WGAD/2020/39, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Aug. 24, 2020, at ¶¶ 34, 41.

1. Both men were arrested without a warrant and were not informed of the reasons for their arrest at the time of arrest.

Article 9(2) of the ICCPR provides that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest.”⁶⁹ The Body of Principles echoes this language in Principle 10.⁷⁰ The WGAD has found that arrest without a warrant is a clear violation of Article 9 of the ICCPR, and that accompanying due process deprivations simply further the existing violation, contravening Categories I and III.⁷¹ Possession of the warrant is required at the time of arrest,⁷² and under Nicaragua’s Constitution, an arrest may only be made on the basis of a warrant unless an *in flagrante delicto* exception applies.⁷³ The WGAD has also stated that arrest without a warrant is only permissible when either the arrest is *in flagrante delicto* or carried out under emergency powers that satisfy all other procedural safeguards,⁷⁴ neither of which is true in this case. In all eight cases brought before it against the Ortega regime, the WGAD found that the lack of a valid arrest warrant rendered the detention arbitrary.⁷⁵

Both Chamorro and Maradiaga have been arbitrarily detained under Category I because they were neither informed of the reasons for their arrest at the time of arrest, nor presented with an arrest warrant, as is required under Nicaragua’s Constitution. Additionally, neither man was in the process of committing a crime when he was arrested. Chamorro received a summons on June 8, 2021, for an “interview” at the Public Ministry on June 9. Later in the day on June 8, 40 members of the National Police forced their way onto the Chamorro property, arrested him in his front yard, and raided his home. Without explanation, two police officers led Chamorro away, and 25 armed officers entered the house without a search warrant – ransacking his belongings and taking electronics, notebooks, papers, the Internet router, and cable box. Similarly, on June 5, 2021, Maradiaga received a summons for an “interview” on June 8 at the Public Ministry. After he left the Ministry, the National Police stopped his car and arrested him without a warrant, court order, or other authorization.⁷⁶ They hit Maradiaga twice, forced him into their vehicle, and drove away without explanation. Charges were not filed against either man until August 25, 2021.

2. Both men were arrested pursuant to a law which does not authorize arrest or detention.

Article 9(1) of the ICCPR and the Body of Principles explain that authorities who carry out an arrest may not exceed their legal authority.⁷⁷ The WGAD has found Category I violations where individuals were arrested or detained pursuant to a law that did not authorize such actions.⁷⁸

According to two press releases from the National Police, both men were arrested on June 8, 2021, and were later to announced to be under investigation for violating Article 1 of Law 1055.⁷⁹ Law 1055 does not authorize arrest for violations.⁸⁰ Rather, offenders are punished with disqualification from running for public

⁶⁹ ICCPR, *supra* note 62, at Art. 9(2) and *Mohamed Serria v. Egypt*, Opinion No. 30/2017, U.N. Doc. A/HRC/WGAD/2017/30, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 26, 2017, at ¶ 58.

⁷⁰ Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, G.A. Res. 43/172, U.N. Doc. A/RES/43/173, *adopted* Dec. 9, 1988, at Principles 2, 10 [hereinafter Body of Principles].

⁷¹ *Solis v. Nicaragua*, Opinion No. 39/2020, *supra* note 68, at ¶¶ 34, 41; *Di Dafeng, et al. v. China*, Opinion No. 44/1993, U.N. Doc. E/CN.4/1995/31/Add.1, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Sept. 30, 1993, at ¶ 7 and *Reynaldo Bernardo v. Philippines*, Opinion No. 30/1993, U.N. Doc. E/CN.4/1994/27, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 30, 1993, at ¶¶ 11, 17(a).

⁷² *Id.*

⁷³ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 61, at Art. 33(1).

⁷⁴ *Reynaldo Bernardo v. Philippines*, *supra* note 71, at ¶¶ 11, 17(a).

⁷⁵ See *supra* note 68; see also *Puracal v. Nicaragua*, Opinion No. 10/2012, U.N. Doc. A/HRC/WGAD/2012/10, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* May 4, 2012, at ¶¶ 25, 30 and *Jose Daniel Gil Trejos v. Nicaragua*, Opinion No. 16/2016, U.N. Doc. A/HRC/WGAD/2016/16, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 25, 2016, at ¶¶ 21, 24, 25.

⁷⁶ *Id.*

⁷⁷ ICCPR, *supra* note 62, at Art. 9(1) and Body of Principles, *supra* note 70, at Principle 9.

⁷⁸ *Laçin Akhmadjanov v. Afghanistan and the United States*, Opinion No. 53/2016, U.N. Doc. A/HRC/WGAD/2016/53, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Nov. 23, 2016, at ¶ 44 and *Abdul Fatah and Sa'id Jamaluddin v. Afghanistan and the United States*, Opinion No. 56/2016, U.N. Doc. A/HRC/WGAD/2016/56, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Nov. 24, 2016, at ¶ 40.

⁷⁹ *Nota De Prensa No. 139 - 2021*, *supra* note 3 and *Nota de Prensa, 140-2021*, *supra* note 42.

⁸⁰ *Dictadura Se Lleva a la Cárcel al Precandidato Presidencial Félix Maradiaga Después que Salió de la Fiscalía*, *supra* note 47.

office.⁸¹ Law 1060, critically discussed below, served as the basis for remanding both men to 90 days of judicial detention and was not invoked against Maradiaga until June 9 and against Chamorro until June 10. Being under investigation for violating Law 1055 was the only basis for their arrests and detention on June 8.

3. Both men were remanded for 90 days of pretrial detention pursuant to Law 1060, a statute which violates international human rights law.

The ICCPR contains a presumption against pretrial detention. Article 9(3) stipulates that pretrial detention on a criminal charge “shall be the exception rather than the rule” and “must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.”⁸² Although Article 9(3) applies after a criminal defendant has been charged, the Human Rights Committee has explained that “a similar requirement prior to charging results from the prohibition of arbitrary detention in [ICCPR Article 9(1)].”⁸³ Where a domestic court cannot make an individualized determination of the lawfulness, necessity, and proportionality of detention, the WGAD has found Category I violations.⁸⁴ Further, the WGAD has held that individuals must not be held pursuant to vague statutes.⁸⁵

Despite being detained for 142 days, no court has made an individualized determination that pretrial detention is reasonable and necessary in the cases of Chamorro and Maradiaga. In fact, both men are being detained pursuant to Law 1060, which does not even require such an individualized determination. Law 1060 amended the Nicaragua Code of Criminal Procedure to allow the judicial authority, at the request of the prosecutor, to detain suspects for up to 90 days to allow for more time to gather evidence for potential criminal charges.⁸⁶ Law 1060 merely requires the court, in ordering pretrial detention, to consider factors unrelated to the necessity or reasonableness of detention, such as the seriousness of the facts; the complexity of the investigation; the number of those affected, accused, or the alleged actions; whether the alleged crimes relate to organized crime; whether the investigation concerns crimes of social relevance and national significance; and any other information or evidence that helps to substantiate the origin of the request.⁸⁷ Thus, Law 1060 itself is contrary to international human rights law.

Law 1060’s vague provisions allow for an excessively broad interpretation and provide the court with discretion to apply them on a political basis.⁸⁸ For instance, Law 1060 was invoked during a preliminary hearing on June 7 as a basis to detain another opposition candidate, Arturo Cruz Sequeira.⁸⁹ Upon the requests

⁸¹ *Nicaragua Essentially Bans Opposition from 2021 Election*, *supra* note 4; *see also Nicaragua*, in 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, *supra* note 18.

⁸² *General Comment No. 35 on Article 9: Liberty and Security of Person*, U.N. HUMAN RIGHTS COMM., U.N. Doc. CCPR/C/GC/35, Dec. 16, 2014, at ¶ 38 [hereinafter *General Comment No. 35*].

⁸³ *Id.*

⁸⁴ *Zeinab Jalalian v. Iran*, Opinion No. 1/2016, U.N. Doc. A/HRC/WGAD/2016/1, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 18, 2016, at ¶ 34.

⁸⁵ *Hassan Zafar Arif v. Pakistan*, Opinion No. 8/2017, U.N. Doc. A/HRC/WGAD/2017/8, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 19, 2017.

⁸⁶ *Comunicado 011-2021*, *supra* note 5; *see also* Norma Gutierrez, *Nicaragua: Amendment to Code of Criminal Procedure Extends Pretrial Preventive Detention Period*, LIBRARY OF CONGRESS, Mar. 11, 2021, *available at* <https://www.loc.gov/law/foreign-news/article/nicaragua-amendment-to-code-of-criminal-procedure-extends-pretrial-preventive-detention-period/> and *Ley de Reforma y Adición a la Ley No. 406, Código Procesal Penal de la República de Nicaragua*, No. 1060, Feb. 5, 2021, at Art. 2 [hereinafter *Law 1060*], *available at*

[⁸⁷ *Law 1060*, *supra* note 86, at Art. 2](http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/49c912ed7dde58ce062586760053c890?OpenDocument&Highlight=2, Penal (adding Article 253 bis to the Code of Criminal Procedure) [in Spanish].</p></div><div data-bbox=)

⁸⁸ In addition to finding to Category I violations when individuals are detained pursuant to vague statutes, the WGAD has also found violations where individuals are detained under a general pretext of national security. *See Nestora Salgado García v. Mexico*, Opinion No. 56/2015, U.N. Doc. A/HRC/WGAD/2015/56, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Dec. 4, 2015, ¶ 4.

⁸⁹ *Nicaragua Judge Orders Opposition Figure Jailed for 90 Days*, WASHINGTON POST, June 7, 2021, *available at* https://www.washingtonpost.com/world/nicaragua-judge-orders-opposition-figure-jailed-for-90-days/2021/06/07/3dd15ce4-c7cd-11eb-8708-64991f2acf28_story.html and *IACHR and UN Human Rights Categorically Condemn the Criminal Prosecution of Presidential Pre-Candidates and Urge the State of Nicaragua to Immediately Release Them*, OHCHR REGIONAL OFFICE FOR CENTRAL AMERICA, June 9, 2021, *available at* <http://www.oacnudh.org/iachr-and-un-human-rights-categorically-condemn-the-criminal-prosecution-of-presidential-pre-candidates-and-urge-the-state-of-nicaragua-to-immediately-release-them/>.

of the prosecutor during closed hearings on June 9 and 10, 2021, Maradiaga and Chamorro, respectively, were remanded to 90 days of pretrial detention.

4. *Neither man was promptly informed of the charges against him and was held for 78 days without charge.*

According to the WGAD, Article 9(2) of the ICCPR “has two elements: information about the reasons for arrest must be provided immediately upon arrest, and there must be prompt information about the charges provided thereafter.”⁹⁰ “Prompt information about the charges” does not mean immediately subsequent to the arrest,⁹¹ but the WGAD has found a period of 36 hours between an arrest and being informed of the charges renders detention arbitrary.⁹² The WGAD has also found that being held *incommunicado* for a period of three months without charge is detention without a legal basis.⁹³

Neither Chamorro nor Maradiaga was promptly informed of the charges against him. Both men were arrested without a warrant on June 8, 2021, and charges were not filed against them until August 25, 2021.⁹⁴ By August 25, Chamorro and Maradiaga had been held without charge, *incommunicado*, for a period of 78 days, or almost three months, which is clearly not prompt.

5. *Neither man had an opportunity to challenge the legality of his detention.*

Under Article 9(4) of the ICCPR, “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”⁹⁵ The Basic Principles reiterate, “the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation.”⁹⁶ To ensure the effective exercise of this right, the WGAD has held that detained persons must have access to legal assistance of their choosing from the moment of their arrest.⁹⁷

Chamorro and Maradiaga have been denied access to lawyers of their choice since their arrest. During the first 84 days of their detention, both men were subjected to enforced disappearance and were completely denied access to a lawyer, as well as to family. At a second preliminary hearing, neither man’s lawyer was ever notified and therefore, could not have attended. Following a hearing on September 3, Chamorro and Maradiaga were detained *incommunicado*, without access to a lawyer, for another 41 days. Their trial date has not been set, and they remain unable to challenge their prolonged pretrial detention.

Despite being formally accredited as defense counsel, Chamorro and Maradiaga’s lawyers have been impeded from challenging the legality of their clients’ detention. They have faced government obstructions, such as refusal to inform them of when hearings take place, denial of access to their clients’ case files, and outright persecution, which resulted in two former lawyers fleeing the country. Therefore, Chamorro and Maradiaga were effectively prevented from challenging the legality of their detention, amounting to a Category I violation.

B. *Category II: Detention Based on the Exercise of Fundamental Rights and Freedoms*

Detention is arbitrary under Category II when it results from the exercise of fundamental rights or freedoms protected under the ICCPR and UDHR.⁹⁸ The detention of Chamorro and Maradiaga is arbitrary

⁹⁰ *Mohamed Serria v. Egypt*, *supra* note 69, at ¶¶ 58-62.

⁹¹ *Id.*, at ¶ 59.

⁹² *Id.*

⁹³ *Bertrand Mamour v. Central African Republic*, Opinion No. 15/2007, U.N. Doc A/HRC/10/21/Add.1, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Sept. 13, 2007, at ¶ 10.

⁹⁴ *Acusación Fiscal*, *supra* note 6.

⁹⁵ ICCPR, *supra* note 62, at Art. 9(4).

⁹⁶ Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court, 72nd Sess., U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/30/37, *adopted* Apr. 29, 2015, at ¶ 2 [hereinafter Basic Principles].

⁹⁷ *Iskander Yerimbetov v. Kazakhstan*, Opinion No. 67/2018, U.N. Doc. A/HRC/2018/67, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Nov. 20, 2018, at ¶¶ 71–73 (finding a Category I violation where an individual’s ability to challenge the legality of his detention was “adversely impacted” by a denial of access to counsel of choice).

⁹⁸ REVISED METHODS OF WORK, *supra* note 60, at ¶ 8.

because it is a direct result of their exercise of their rights to freedom of expression, freedom of association, and freedom to participate in public affairs, which are protected under both Nicaragua's Constitution⁹⁹ and international law.¹⁰⁰ In assessing whether the exercise of a fundamental human right was the cause for arrest or detention, the WGAD examines documentation of an individual's extensive work as a human rights defender,¹⁰¹ among other factors.

1. Both men were deprived of their liberty as retaliation for exercising their rights to freedom of expression and association.

Under Article 19(2) of the ICCPR, "everyone shall have the right to freedom of expression" and under Article 22, "everyone shall have the right to freedom of association with others."¹⁰² In cases against the Ortega regime, the WGAD has found Category II violations where well-known government critics were placed in pretrial detention, harassed, or otherwise coerced on the basis of their political opinions;¹⁰³ and expressed in a 2018 case that it "was not the first time" that the Ortega regime used arbitrary arrest and detention to repress government opposition in violation of the rights to freedom of expression and association.¹⁰⁴ The WGAD has also stated that "[t]o act as head of a political opposition movement . . . is simply lawful exercise of the rights to freedom of expression and opinion and to political association."¹⁰⁵

Chamorro has been targeted by the regime since 2018 for his criticism of Ortega and leadership in the ACJD, a prominent opposition organization.¹⁰⁶ On December 22, 2018, the National Police summoned him for interrogation about his television interviews in which he criticized Ortega.¹⁰⁷ The National Police began to regularly harass and intimidate him by pulling him over when he was driving and by surrounding his office building, forcing Chamorro to work remotely and to sleep at different houses.¹⁰⁸ Chamorro has been under *de facto* house arrest since May 20, 2021, when guards outside his home and neighborhood would not allow him to leave his residential complex.¹⁰⁹ These guards follow and surveil him.¹¹⁰ His family members have been targeted with fabricated arrest warrants and criminal charges.¹¹¹ Apprehending Chamorro on June 8, 2021 was clearly retaliation for his public criticism of Ortega and for his membership in the ACJD.

Maradiaga has also been targeted by the Ortega regime for his criticism and for his leadership in the Blue and White National Unity party. He has been subjected to death threats, surveillance, and periods of arbitrary house arrest since early 2018, when he was falsely accused of financing anti-government protests.¹¹² After the National Police brutally assaulted him, he fled Nicaragua on July 14, 2018. When he returned in September 2019, he was subjected to reprisals, including having his passport confiscated, between 16 and 22 guards being placed outside his home, and a three-month *de facto* house arrest.¹¹³ Like in 2018, he again faces fabricated charges of using foreign funding to commit vague crimes against Nicaragua through his former

⁹⁹ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 63, at Arts. 53–55.

¹⁰⁰ UDHR, *supra* note 62, at Arts. 19, 20(1), 21 and ICCPR, *supra* note 62, at Arts. 19(2), 21, 22(1), 25. Although some of these rights may be curtailed during an emergency, Nicaragua is not currently in a state of emergency.

¹⁰¹ *Nasrin Sotoudeh v. Iran*, Opinion No. 21/2011, U.N. Doc. A/HRC/WGAD/2011/21, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* May 6, 2011, at ¶¶ 5, 31–32.

¹⁰² ICCPR, *supra* note 62, at Arts. 19, 22(1).

¹⁰³ *Carlos Ramón Brenes Sánchez v. Nicaragua*, *supra* note 68, at ¶¶ 31–32.

¹⁰⁴ *Kevin Roberto Solís v. Nicaragua*, *supra* note 68, at ¶ 43.

¹⁰⁵ *Yndamiro Restano Díaz v. Cuba*, Opinion No. 12/1993, U.N. Doc. E/CN.4/1994/27, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 29, 1993, at ¶ 6(f).

¹⁰⁶ Persecution of members of the ACJD has been the subject of a different WGAD petition, *Kevin Roberto Solís v. Nicaragua*, where the WGAD found that the source, a member of ACJD, was arbitrarily detained under Category II (at ¶¶ 43–44).

¹⁰⁷ *Líder de la Oposición en Nicaragua Es Citado por la Policía tras Criticar a Ortega*, *supra* note 30.

¹⁰⁸ *Stay or Go? Ortega's Crackdown Pushes Nicaraguans to Make Hard Choices*, *supra* note 31.

¹⁰⁹ Although Chamorro's *de facto* house arrest is not the subject of this petition, it would factor into finding a Category I violation, since he was confined to a closed space and not allowed to leave without a legal basis.

¹¹⁰ Tweet by Juan Sebastián Chamorro (@Jschamorro), Twitter, Jan. 10, 2021, 3:41 pm, *supra* note 35; Tweet by Juan Sebastián Chamorro (@Jschamorro), Twitter, Feb. 13, 2021, 10:20 am, *supra* note 35; and Tweet by Juan Sebastián Chamorro (@Jschamorro), Twitter, Mar. 27, 2021, 5:51 pm, *supra* note 35.

¹¹¹ *Nicaraguan Presidential Challenger Cristiana Chamorro Placed Under House Arrest*, *supra* note 26.

¹¹² *Nicaraguan Opposition Activist Félix Maradiaga Faces Arrest*, BBC, Sept. 25, 2018, available at <https://www.bbc.com/news/world-latin-america-45637087>.

¹¹³ *Información Adicional Urgente: Félix Maradiaga*, *supra* note 40.

think tank, IEEPP.¹¹⁴ Apprehending Maradiaga on June 8, 2021 was clearly retaliation for both his outspoken criticism of the Ortega regime and for his leadership of opposition organizations.

2. Both men were deprived of their liberty in retaliation for exercising their freedom to participate in government affairs.

Under Article 25 of the ICCPR, “[e]very citizen shall have the right and opportunity to . . . take part in the conduct of public affairs,” as well as the rights to be elected and to have equal access to public service, without unreasonable restrictions.¹¹⁵ This right protects a person’s ability, individually or by association with political groups, to engage in political activity through criticism of the government or participating in meetings or debates concerning political affairs.¹¹⁶ The WGAD will examine an individual’s prior activities, history and mode of participation, and content of political views to infer a connection between the individual’s political participation and detention.¹¹⁷ The WGAD has found a violation of Article 25 when longtime government critics are arrested in a manner inconsistent with international law.¹¹⁸ In a case against the Ortega regime, the WGAD found both Article 25 and Category II violations where an activist and government critic had been previously arrested in connection with the public expression of his opinions.¹¹⁹

As discussed in section II(A)(1)–(3) above, both Chamorro and Maradiaga were arrested because they were opposition political candidates. They were arrested during an election year and at the same time as another five opposition candidates.¹²⁰ Further, both men are under investigation for violating Law 1055, the penalty for which is prohibition from running for public office.¹²¹ Based upon these facts, their past activities, the political context of their arrest, and the penalty for violations of Law 1055, Chamorro and Maradiaga’s exercise of their right to participation in government affairs is connected to their detention.

C. Category III: Due Process Violations

A detention is considered arbitrary under Category III “[w]hen the total or partial nonobservance of the international norms relating to the right to a fair trial, established in the UDHR and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”¹²² To make decisions concerning Category III violations, the WGAD draws upon the ICCPR and the Body of Principles, among other sources. In this case, both Chamorro and Maradiaga have been subjected to numerous violations of Articles 7, 9, and 14 of the ICCPR, as well as violations of the Body of Principles, and their detention is therefore arbitrary under Category III.

1. Both men were subjected to enforced disappearance.

Under Article 9(1) of the ICCPR, “[e]veryone has the right to liberty and security of the person.”¹²³ The Human Rights Committee has explained, “[e]nforced disappearances violate numerous substantive and procedural provisions of the [ICCPR],”¹²⁴ including the rights to personal liberty and security,¹²⁵ and

¹¹⁴ *Acusación Fiscal*, *supra* note 6.

¹¹⁵ ICCPR, *supra* note 62, at Art. 25.

¹¹⁶ *Aduayom, et al. v. Togo*, Communication No. 422-24/1990, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/57/D/422-424/1990, Aug. 19, 1996.

¹¹⁷ *Antonio José Ledezma Díaz v. Bolivarian Republic of Venezuela*, Opinion No. 27/2015, U.N. Doc. A/HRC/WGAD/2015/27, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Sept. 3, 2015, at ¶¶ 4, 27.

¹¹⁸ *Pham Hong Son v. Viet Nam*, Opinion No. 13/2007, U.N. Doc. A/HRC/7/4/Add.1, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* May 11, 2007, at ¶¶ 30–31.

¹¹⁹ *Kevin Roberto Solís v. Nicaragua*, *supra* note 68, at ¶¶ 43–44.

¹²⁰ *Letter to Nicaraguan Government from Special Procedures of the UN Human Rights Council*, Jul. 19, 2021 [attached as annex]; *Nicaragua Arrests 7th Presidential Contender Ahead of November Vote*, ASSOCIATED PRESS, July 24, 2021, *available at* https://www.voanews.com/a/americas_nicaragua-arrests-7th-presidential-contender-ahead-november-vote/6208678.html.

¹²¹ Law of the Defense of the Rights of the People to Independence, the Sovereignty, and Self-Determination for Peace (Law 1055), at Art. 1, *available at*

[http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/C4084E2665A5610F06258642007E9C3F/\\$File/Ley%20N%C2%B0%201055,%20Ley%20Defensa%20de%20los%20Derechos%20del%20Pueblo.pdf?Open](http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/C4084E2665A5610F06258642007E9C3F/$File/Ley%20N%C2%B0%201055,%20Ley%20Defensa%20de%20los%20Derechos%20del%20Pueblo.pdf?Open) [in Spanish].

¹²² REVISED METHODS OF WORK, *supra* note 60, at ¶ 8.

¹²³ ICCPR, *supra* note 62, at Art. 9(1).

¹²⁴ *General Comment No. 35*, *supra* note 82, at ¶ 17.

¹²⁵ *Id.*, at ¶ 55.

themselves “constitute a particularly aggravated form of arbitrary detention.”¹²⁶ Enforced disappearances occur when there is an “arrest, detention, abduction, or any other form of deprivation of liberty by agents of the State . . . followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”¹²⁷

For the first 84 days of their detention, both men were disappeared – held in undisclosed locations without any access to their families, lawyers, or doctors. Both men were arrested by the National Police on June 8, 2021, without an explanation or disclosure of their intended destination. Their family members suspected that Chamorro and Maradiaga were being held in El Chipote prison, but whenever they tried to visit, the guards would not confirm that the two men were being detained there.¹²⁸ The government did not confirm Chamorro and Maradiaga’s whereabouts until August 31, 2021, when each man was permitted a short visit with a family member at El Chipote prison.¹²⁹

2. Both men were denied access to a fair and impartial tribunal.

Article 14(1) of the ICCPR provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law,” which is reiterated in Article 10 of the UDHR.¹³⁰ The Body of Principles also requires a “judicial or other authority” to have the “strongest possible guarantees of competence, impartiality and independence.”¹³¹ States must ensure the “actual independence of the judiciary from political interference by the executive branch.”¹³²

During the June 9, August 26, and September 3 hearings, Maradiaga and Chamorro were denied access to a fair and impartial tribunal. This is clear from the Ortega regime’s general control over the judiciary and the regime’s escalating repression against political opposition before the November 2021 election. It is internationally recognized that Nicaragua’s judiciary is completely controlled by the executive. The U.S. State Department, for example, has reported that Ortega’s FSLN “exercises total control over” the judiciary and that the “Supreme Court and lower-level courts remained particularly susceptible to bribes, manipulation, and political influence, especially by the FSLN.”¹³³

On June 9, Judge Henry Morales of the Sixth Criminal District of Managua, notorious for facilitating the illegal detentions of political prisoners,¹³⁴ presided over Maradiaga’s hearing and remanded him to 90 days in judicial detention during a secret hearing in the middle of the night without Maradiaga’s lawyer present. Chamorro, without his lawyer, was remanded to 90 days in judicial detention in a secret hearing on June 10.

On August 26, the charges were admitted against both men in a preliminary hearing. Chamorro and Maradiaga were charged with violations of Articles 410 and 412 of the Penal Code, which punish “undermining national integrity” and “provocation, proposition, and conspiracy.”¹³⁵ These transparently political charges are intended to keep Chamorro and Maradiaga, if convicted, in prison for 15-25 years. On September 3, in a hearing inside El Chipote prison and not in a court of law, Judge Nalia Nadezhda Ubeda Obando of the Fifth Criminal Hearings Court of Managua granted the prosecutor’s request to initiate criminal

¹²⁶ *Id.*, at ¶ 17.

¹²⁷ International Convention for the Protection of All Persons from Enforced Disappearance, 2716 U.N.T.S. 3, entered into force Dec. 23, 2010, at Art. 2, available at <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>.

¹²⁸ *Urgent Appeal to UN Special Rapporteur on Torture, or Cruel, Inhuman, or Degrading Treatment or Punishment in the case of Félix Maradiaga/Nicaragua*, PERSEUS STRATEGIES, June 11, 202, available at <https://www.perseus-strategies.com/wp-content/uploads/2021/06/Felix-Maradiaga-SRT-Urgent-Appeal-06.11.21.pdf>.

¹²⁹ Press Release, *Media Release Announcing Proof of Life of Juan Sebastián Chamorro and Félix Maradiaga, Closed Hearing to Be Held September 3, 2021*, PERSEUS STRATEGIES, Sept. 1, 2021, available at https://www.perseus-strategies.com/wp-content/uploads/2021/08/Nicaragua-Press-Release_08.27.21_ENG_ESP.pdf.

¹³⁰ ICCPR, *supra* note 62, at Art. 14 and UDHR, at Art. 10.

¹³¹ Body of Principles, *supra* note 70.

¹³² General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, at ¶ 19.

¹³³ *Nicaragua*, in 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, *supra* note 18.

¹³⁴ *Judge Henry Morales, executioner of political prisoners, is promoted to TAM magistrate*, TODAY IN 24, Oct. 7, 2021, available at <https://today.in-24.com/News/amp/423088>.

¹³⁵ *Comunicado 066-2021*, *supra* note 53.

proceedings. Like Judge Henry Morales, Judge Nalia Nadezhda Ubeda Obando is known for allowing the Ortega regime's attorneys to initiate political and fabricated charges against his political opponents.¹³⁶

The egregious due process violations in this case further demonstrate that the court is acting on a political basis. As previously discussed, both men were arrested under a law which penalizes offenders by disqualifying them from running for political office. They and five other political candidates have been subjected to prolonged pretrial detention without any individualized determination that it is necessary or reasonable. Thus, the judiciary is not fair or impartial, in violation of Category III.

3. Both men were denied the right to a public hearing.

Article 14(1) of the ICCPR provides that individuals are entitled to "a fair and public hearing by a competent, independent and impartial tribunal established by law" in the determination of criminal charges against them, and Article 14(3) provides that they must be tried without undue delay.¹³⁷ The Body of Principles affirms these critical due process rights.¹³⁸ The Human Rights Committee has noted that "courts have the power to exclude all or part of the public from hearings for reasons of morals, public order, or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice."¹³⁹ Beyond these circumstances, hearings must be open to the public.¹⁴⁰

From the Ortega regime's perspective, allowing public hearings would be prejudicial to its political agenda. None of the proceedings against Maradiaga and Chamorro have been public, and the regime has not explained why they were conducted in secret. Their June 9 and June 10 hearings took place around 2:00 or 3:00 am local time and the Public Ministry did not announce that the hearing had occurred until the afternoon of June 10. The August 26 hearing was also held secretly – neither man's chosen counsel was notified that it had taken place, and the Public Ministry did not announce it had occurred until the next day. The September 3 hearing took place inside the El Chipote prison and was likewise closed to the public.

4. Both men were denied access to counsel of their choice.

Under Article 14(3)(b) of the ICCPR, everyone has the right, "[i]n the determination of any criminal charge against him," to "communicate with counsel of his own choosing."¹⁴¹ The right to choose one's own counsel is also protected under Nicaraguan law.¹⁴² This right requires that an accused be given "prompt access to counsel,"¹⁴³ and, under the Basic Principles, counsel must be provided "immediately after the moment of apprehension."¹⁴⁴ The WGAD has held "[t]hat contraventions of the rules of due process, such as holding persons *incommunicado* for periods of up to more than 15 days, not specifying the reasons for their detention, or inability to communicate with counsel during that period constitute violations of the rules of due process of law and that such contraventions make the deprivation of freedom, during the first 15 days, arbitrary."¹⁴⁵ The WGAD has further held that counsel must have the necessary time to prepare an adequate defense and that gaining access to the defense's case file mere minutes before a proceeding is insufficient time to prepare.¹⁴⁶

Chamorro and Maradiaga have been denied access to counsel of their choice. Following their arrest on June 8, both men were disappeared for 84 days before they were permitted access to their lawyers, far

¹³⁶ *Acusan por narcotráfico y tenencia ilegal de armas al opositor Benjamín "Tikay" Gutiérrez*, ARTÍCULO66, Jan. 17, 2021, available at <https://www.articulo66.com/2021/01/17/benjamin-gutierrez-tikay-acusacion-presos-politicos-nicaragua/>.

¹³⁷ ICCPR, *supra* note 62, at Art. 14(1)–(3).

¹³⁸ Body of Principles, *supra* note 70, at Principles 32, 37.

¹³⁹ General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, *supra* note 132, at ¶ 29.

¹⁴⁰ *Id.*

¹⁴¹ ICCPR, *supra* note 62, at Art. 14(3)(b).

¹⁴² *Código Procesal Penal de Nicaragua (Ley No. 406)*, MINISTERIO PÚBLICO DE LA REPÚBLICA DE NICARAGUA, at Art. 95.10, accessed Oct. 14, 2021, available at https://web.oas.org/mla/en/Countries_Intro/Nica_intro_textfun_esp_2.pdf.

¹⁴³ General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, *supra* note 132, at ¶ 34.

¹⁴⁴ Body of Principles, *supra* note 70, at Principles 11, 15, 17-18; Basic Principles, *supra* note 34, at ¶ 12.

¹⁴⁵ *José Gabriel Pastor Vives, et al. v. Peru*, Opinion No. 50/1993, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Sep. 30, 1993, at ¶¶ 5(e), 6(a).

¹⁴⁶ *Solis v. Nicaragua*, *supra* note 8, at ¶ 50 (holding, in a case against the Ortega regime, that the lawyer was given access to the case file only minutes before a hearing, and that the inability to prepare an adequate defense directly impacted his client's due process rights).

beyond the 15-day period specified by the WGAD. Moreover, two of Chamorro and Maradiaga's lawyers have since fled the country, citing persecution by the Ortega regime as the reason that they fled.¹⁴⁷

Neither man's lawyer had an opportunity to prepare an adequate defense. The lawyers were not informed of the June 9 hearing, even though Maradiaga's lawyer filed for accreditation beforehand. Neither man's lawyer was notified about or present for the August 26 hearing in which both men were charged, by which time both men had accredited lawyers. Accordingly, Chamorro's lawyer presented a motion at the September 3 hearing to void the charges, but this motion was denied. Although Chamorro and Maradiaga's lawyers were present for the September 3 hearing, neither man was given any time alone with his lawyer, and the lawyers were denied access to the investigative case file.

5. Both men were denied access to family.

Detainees also have the right to have access to their family. The Body of Principles states that "communication of the detained or imprisoned person with the outside world, and in particular his family . . . shall not be denied for more than a matter of days."¹⁴⁸ The Nelson Mandela Rules similarly assert: "Prisoners shall be allowed . . . to communicate with their family and friends at regular intervals," including "[b]y receiving visits."¹⁴⁹ Under Nicaraguan law, an accused has the right to communicate with family within the first three hours of arrest or detention.¹⁵⁰ For the first 84 days of their detention (approximately three months), Chamorro and Maradiaga were disappeared, and their families did not know where they were or if they were alive. Chamorro's sister and Maradiaga's brother-in-law visited El Chipote prison in the afternoon of June 8 and the morning of June 9, hoping to find their arrested family members. Although the guards accepted a package brought for Maradiaga, they did not actively confirm that Maradiaga was detained there or alive. Further, both men were allowed a short visit with family on August 31, 2021 – but were subjected to another 41 days of *incomunicado* detention afterwards without access to family or counsel.

6. Both men were denied the presumption of innocence.

Article 14(2) of the ICCPR guarantees that "[e]veryone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law."¹⁵¹ This right is affirmed by the Body of Principles.¹⁵² The WGAD has explained that excessive recourse to pretrial detention can violate the presumption of innocence.¹⁵³ The Human Rights Committee has explained that media coverage that affirms the accused's guilt, or portrays the accused in a way that undermines the presumption of innocence, must be avoided.¹⁵⁴ The WGAD has affirmed this principle.¹⁵⁵ In cases against the Ortega regime, the WGAD has held that the presumption of innocence was violated when the judiciary and members of the regime publicly treated individuals in pretrial detention as though they were convicted criminals,¹⁵⁶ and where individuals were automatically placed in pretrial detention without an opportunity to challenge its legality.¹⁵⁷ Nicaragua's Constitution also protects the right to the presumption of innocence.¹⁵⁸

Chamorro and Maradiaga were denied the presumption of innocence on June 8, when Vice President and First Lady Rosario Murillo publicly referred to them and other individuals being investigated under Law

¹⁴⁷ Mayor Curtis, *Abogado de Presos Políticos: "Al Menos Siete Colegas Se Han Tenido que Ir del País Porque Dijeron que Tenían Amenazas"*, LA PRENSA, Sept. 19, 2021, available at <https://www.laprensa.com.ni/2021/09/19/suplemento/la-prensa-domingo/2881579-maynor-curtis-abogado-de-presos-politicos-al-menos-siete-colegas-se-han-tenido-que-ir-del-pais-porque-dijeron-que-tenian-amenazas> [in Spanish].

¹⁴⁸ Body of Principles, *supra* note 70, at Principle 15.

¹⁴⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), G.A. Res. 70/175, U.N. Doc. A/RES/70/175, adopted Dec. 17, 2015, at Rule 58(1), available at <https://undocs.org/A/RES/70/175>.

¹⁵⁰ *Código Procesal Penal de Nicaragua (Ley No. 406)*, at Art. 95.3, *supra* note 142.

¹⁵¹ ICCPR, *supra* note 62, at Art. 14(2).

¹⁵² Body of Principles, *supra* note 70, at Principle 36.

¹⁵³ *Report of the Working Group on Arbitrary Detention: Mission to Brazil*, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/27/48/Add.3, June 30, 2014, at ¶ 100.

¹⁵⁴ General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, *supra* note 143, at ¶ 30.

¹⁵⁵ *Aguilar v. Bolivia*, Opinion No. 12/2005, U.N. Doc. E/CN.4/2006/7/Add.1, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 26, 2005, at ¶¶ 9–10.

¹⁵⁶ *Carlos Ramón Brenes Sánchez v. Nicaragua*, *supra* note 68, at ¶ 55.

¹⁵⁷ *Solís v. Nicaragua*, *supra* note 68 at ¶ 46.

¹⁵⁸ CONSTITUTION OF THE REPUBLIC OF NICARAGUA, *supra* note 63, at Art. 34(1).

1055 – all opposition leaders and/or potential opposition presidential candidates – as “terrorists” and “criminals,” adding that: “They believe they’ll be forever unpunished, [but] justice arrives, late but it arrives in this Nicaragua that had been prospering and in reconciliation. How much we would have done with what this mountain of thieves stole, not just thieves but also terrorists, criminals.”¹⁵⁹ Publicly treating Chamorro and Maradiaga as though they are convicted criminals is a violation of the presumption of innocence.

Both men’s prolonged pretrial detention constitutes an additional violation of their right to the presumption of innocence. In June 2021, both men were remanded to 90 days of judicial detention to allow the Government to further investigate the allegations against them – this is the practical equivalent of a criminal sentence, despite the fact they have not been convicted of any crime. On September 3, when the judge granted the prosecutor’s request to initiate criminal proceedings against both men, they were once again remanded to prolonged *incommunicado* detention. Their indefinite pretrial detention is equivalent to the government presuming them guilty of the charged offenses.

7. Chamorro and Maradiaga have been subjected to torture or cruel, inhuman or degrading treatment.

The ICCPR and UDHR both prohibit torture and cruel, inhuman or degrading treatment.¹⁶⁰ Nicaragua has also ratified the Convention Against Torture. Enforced disappearance is not only a risk factor for torture,¹⁶¹ but may itself constitute a form of torture.¹⁶² The Human Rights Committee has found that the “anguish and stress” experienced by a disappeared person’s family members can also constitute ill treatment prohibited by Article 7 of the ICCPR.¹⁶³ It is widely recognized that both prolonged *incommunicado* detention¹⁶⁴ and prolonged solitary confinement¹⁶⁵ facilitate the perpetration of torture and cruel, inhuman or degrading treatment, and may themselves constitute such treatment.¹⁶⁶ Under the Nelson Mandela Rules, prolonged solitary confinement refers to solitary confinement for a period longer than 15 days.¹⁶⁷

Both Chamorro and Maradiaga were disappeared for 84 days, during which time they did not have access to counsel or family. The Ortega regime did not actively confirm that the men were alive and being detained, thereby causing their families severe anguish and stress. Both men were confirmed alive on August 31, 2021, when they were briefly reappeared and a family member was permitted to visit. However, both men were subjected to renewed *incommunicado* detention, without access to counsel or family, following their hearing on September 3 and until October 11. Chamorro and Maradiaga’s trial date has not been set following

¹⁵⁹ *Nicaragua Arrests Potential Challengers to President Daniel Ortega*, NBC NEWS, June 9, 2021, available at <https://www.nbcnews.com/news/latino/nicaragua-arrests-potential-challengers-president-daniel-ortega-rcna1154>.

¹⁶⁰ UDHR, *supra* note 62, at 5; ICCPR, *supra* note 62, at 7.

¹⁶¹ REPORT OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES, U.N. COMMISSION ON HUMAN RIGHTS, 62nd Sess., U.N. Doc. E/CN.4/2006/56, Dec. 27, 2005, at ¶ 22, available at <https://undocs.org/E/CN.4/2006/56> (“As is well documented, disappearance is often a precursor to torture . . .”).

¹⁶² *S. Jegatheeswara Sarma v. Sri Lanka*, Communication No. 950/2000, U.N. Doc. CCPR/C/78/D/950/2000, U.N. HUMAN RIGHTS COMMITTEE, July 16, 2003, at ¶ 9.3, available at <https://juris.ohchr.org/Search/Details/1051> (“Any act of such disappearance [as defined under the Rome Statute] constitutes a violation of many of the rights enshrined in the Covenant, including . . . the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7) . . .”).

¹⁶³ *Id.*, at ¶ 9.5 (“[N]oting the anguish and stress caused to the author’s family by the disappearance of his son and by the continuing uncertainty concerning his fate and whereabouts, the Committee considers that the author and his wife are also victims of violation of article 7 of the Covenant.”).

¹⁶⁴ REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION, HUMAN RIGHTS COUNCIL, 16th Sess., U.N. Doc. A/HRC/16/ 47, Jan. 19, 2011, at ¶ 54, available at <https://undocs.org/A/HRC/16/47> (“Prolonged *incommunicado* detention may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment, and may in itself constitute such treatment.”)

¹⁶⁵ General Comment No. 20 on Article 7: Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. HRI/GEN/1/Rev.1, Mar. 10, 1992, at ¶ 6 (“The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7.”); *see also* Nelson Mandela Rules, *supra* note 149, at Rule 44.

¹⁶⁶ UN Special Rapporteur on Torture Calls for Prohibition of Solitary Confinement, OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, Oct. 18, 2011 (describing how the use of solitary confinement, when used during pretrial detention or indefinitely, amounts to torture).

¹⁶⁷ Nelson Mandela Rules, *supra* note 149, at Rule 44.

the September 3 hearing, and both men now indefinitely remain in *incommunicado* detention.¹⁶⁸ As indicated above, the trial date remains unscheduled due to unexplained “force majeure.”¹⁶⁹

During their first three months in custody, both men lost between 25 and 30 pounds. Maradiaga was kept in solitary confinement for the first two months of his detention, a clear violation of both the ICCPR and the Nelson Mandela Rules. As of October 7, Chamorro is being held in a cell where the lights are kept on for 24 hours and is subjected to repeated interrogations. As long as both men remain in arbitrary detention, they remain at risk of further torture and cruel, inhuman or degrading treatment.

D. Category V: Discrimination Based on a Protected Class

A detention is arbitrary under Category V when it “constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status.”¹⁷⁰ The Working Group has clarified that this includes discrimination based on “a person’s status as a human rights defender,” and in particular, “discrimination in the exercise of rights elaborated under declaratory instruments such as the Declaration on Human Rights Defenders.”¹⁷¹ As discussed in Section II(B) above, both Chamorro and Maradiaga have been targeted by the Ortega regime for their outspoken criticism of the government, advocacy for government accountability and human rights, association with civil society groups, and meetings domestically and abroad.¹⁷² All of these activities are protected activities under the UN Declaration on Human Rights Defenders.¹⁷³ Therefore, Chamorro and Maradiaga’s detention is arbitrary under Category V.

III. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN

Both Chamorro and Maradiaga are beneficiaries of precautionary measures of the Inter-American Commission on Human Rights, as well as of provisional measures of the Inter-American Court of Human Rights. In its June 24, 2021, judgment, the Inter-American Court resolved to “require that the State [of Nicaragua] proceed with the immediate release” of Chamorro and Maradiaga and to require Nicaragua to “immediately take the necessary measures to effectively protect the life, integrity and personal liberty” of Chamorro, Maradiaga, and their immediate families.¹⁷⁴ The State of Nicaragua has manifestly not complied with this order and has rejected attempts by the Inter-American Court to monitor compliance with the provisional measures. Domestic legal teams for both men continue to contest their detention.

¹⁶⁸ Additionally, their prolonged *incommunicado* detention is occurring during the COVID-19 pandemic. See *Urgent Appeal to UN Special Rapporteur on Torture, or Cruel, Inhuman, or Degrading Treatment or Punishment in the case of Félix Maradiaga/Nicaragua*, *supra* note 128.

¹⁶⁹ *Comunicación Asunto No. 011964-ORM4-2021-PN*, *supra* note 59.

¹⁷⁰ REVISED METHODS OF WORK, *supra* note 60, at ¶ 8(e).

¹⁷¹ *Ny Sokha v. Cambodia*, Opinion No. 45/2016, U.N. Doc. A/HRC/WGAD/2016/45, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Nov. 21, 2016, at ¶¶ 44–45.

¹⁷² *Acusación Fiscal*, *supra* note 6.

¹⁷³ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144, adopted Dec. 9, 1998, at Arts. 5–6, 8, 12–13, 16.

¹⁷⁴ *Resolución de Medidas Provisionales: Asunto Juan Sebastián Chamorro y Otros Respecto de Nicaragua*, CORTE INTERAMERICANA DE DERECHOS HUMANOS, June 24, 2021, available at https://www.corteidh.or.cr/docs/medidas/chamorro_se_01.pdf [in Spanish].