



## **Joint submission to the United Nations Human Rights Council, on the Universal Periodic Review 33<sup>rd</sup> Session for Nicaragua**

### **About**

Access Now ([www.accessnow.org](http://www.accessnow.org)) is an international organization that works to defend and extend digital rights of users globally. Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the protection of fundamental rights and the internet's continued openness. Access Now engages through an action-focused global community, global convenings such as RightsCon ([www.rightscon.org](http://www.rightscon.org)), and the 24/7 Digital Security Helpline providing rapid-response assistance to users at risk.

Derechos Digitales is an independent non-profit organization based in Chile, established in 2005, working across Latin America to defend and promote the exercise of human rights in the digital environment, in particular related to freedom of expression, privacy and access to knowledge and information.

IPANDETEC is a Panama-based organization that promotes the use and regulation of information and communication technologies (ICT) and the defense of human rights in the digital environment in Central America through analysis, advocacy, research, and legislative monitoring.

The NetBlocks Group (<https://netblocks.org>) is an international civil society organization working at the intersection of digital rights, cybersecurity, and internet governance. NetBlocks uses digital forensic techniques to track the flow of information online, auditing algorithms and network protocols in support of fundamental human rights and sustainable development in the digital age.

Redes Ayuda supports Venezuelan and Latin American civil society across the full human rights spectrum, from indigenous groups, to LGBTI communities, to civil rights and gender rights activists, and many more, through digital security trainings and communications capacity building.



Sulá Batsú is a cooperative in Costa Rica encouraging and strengthening local development through work with organizations, social enterprises, community networks, and social movements at the national, regional, and global levels. Sulá Batsú initiatives utilize different approaches, including digital technologies, art and culture, collective construction and knowledge management, and social solidarity economy.

### **Domestic and international human rights obligations**

1. Nicaragua has ratified the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”).
2. Nicaragua is part of the Inter-American Commission on Human Rights, which protects the right to privacy and the freedom of thought and expression via seven independent Commissioners. The IACHR is an organ of the Organization of American States whose stated mission is to promote and protect human rights in the American hemisphere.
3. Article 26 of the Constitution of Nicaragua recognizes the right to privacy. It protects a citizen’s “privacy in his/her life,” the “inviolability” of correspondence and communication, and the right to “know about any information” that the public holds on him/her. Until 2013, Nicaragua provided as constitutional remedy the writ of amparo, which was admissible against the official, authority, or agent that by its action or omission violated or tried to violate the rights and guarantees enshrined in the political constitution. In 2013, in order to guarantee the safeguarding and protection of personal data, the Amparo Law was reformed adding the habeas data to prevent illegal disclosure of personal data.<sup>1</sup>
4. Article 30 of the Constitution of Nicaragua protects freedom of expression. It protects the right to “freely express in public or private, individually or collectively, in oral, written, or any other form.”
5. Article 66 of the Constitution guarantees the right to truthful information. This right includes the freedom to seek, receive, and disseminate information and ideas, either orally, in writing, graphically, or by any other procedure of their choice. It is also enshrined in article 67 of the same Constitution that the right to inform is a social responsibility and is exercised with strict respect for the principles established in the Constitution. This right cannot be subject to censorship, but to subsequent liabilities established in the law.

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<sup>1</sup> <https://www.iepp.org/blog/Privacidad-digital-para-defensores-y-defensoras-de/>



## Developments of digital rights in Nicaragua

6. Nicaragua enacted a General Law of Telecommunications and Postal Services (Law 200) in 1995, however this law is outdated because it does not include provisions related to broadband internet.
7. In 2007, Nicaragua released the Access to Public Information (Law 621). In 2012, due to the InforNet case<sup>23</sup> — a data breach scandal — the country enacted a Data Protection Law (Law 787).
8. In relation to cybercrimes, the Sovereign Security Law, passed in 2015 (Law 919), condemns any external cybersecurity attack that affects the national system of communication. Nevertheless, the law does not have a clear definition of what constitutes a cyber attack. Moreover, it forbids public entities of the Sovereign Security National System from doing political espionage, obtaining information from civil society, and intercepting communications, without a prior order from a judge.
9. There have been efforts to promote digital rights in Nicaragua. In 2017, Nicaragua held the first Internet Governance and Security Informatics Forum organized by the Internet Society local chapter.<sup>4</sup> The Nicaraguan Internet and Telecommunications Chamber (CANITEL),<sup>5</sup> whose members are telecom companies, has also been conducting research and developing activities to promote the internet and the digital rights. Such civil society and private sector efforts, however, have decreased lately due to the social and political situation in Nicaragua.

## Violations of access to information & freedom of expression

10. Nicaragua has taken its censorship online, shutting down the internet at key political moments. In July 2018, civil society detected a series of regional internet outages and intentional disruptions of connectivity, coinciding with widespread protests and violence in Nicaragua. NetBlocks digital forensic measurements in the regions of Managua and Juigalpa show a strong correlation between the timing of attacks on civilians and observed incidents of network disruptions and blackouts, suggesting that a regime of internet controls

<sup>2</sup> <https://www.laprensa.com.ni/2003/04/17/nacionales/858447-estamos-fichados-en-infor-net>

<sup>3</sup> <https://www.laprensa.com.ni/2003/04/24/nacionales/859304-fiscalia-secuestra-bienes-de-infor-net>

<sup>4</sup> <http://isoc.org.ni/>

<sup>5</sup> <http://canitel.org.ni/>



is being deployed to restrict the flow of information in and out of protest zones at critical moments.<sup>6</sup>

11. The government announced in March of 2018 its plan for the country's legislature to take steps to regulate social media, under the pretext of limiting "online hate" and "misinformation."<sup>7</sup> The attempt came under the label of protection to childhood and family, and it was strongly rejected by civil society organizations.<sup>8</sup> The government held an open consultation, but civil society was suspicious of the level of information requested to participate.<sup>9</sup> The proposal was also widely rejected by the public and was met with protests in the streets.<sup>10</sup> These regulations bring Nicaragua a step closer to legalizing censorship and stifling disagreement with the government.
12. On April 16, 2018 the President Daniel Ortega government announced various reforms to the Nicaraguan Institute of Social Security (INSS), triggering peaceful demonstrations in various regions of the country. To counteract these social protests, the police forces used multiple forms of repression and aggression against citizens, journalists, and the media.<sup>11</sup>
13. Since nationwide protests began in April, local human rights groups estimate as many as 450 people have been killed, 600 have been disappeared and tortured, and 2,800 have been injured due to police violence and attacks by paramilitary groups.<sup>12</sup> Thousands more are fleeing for their safety each month to Costa Rica and other countries throughout Central America.<sup>13</sup>
14. In April 2018, Access Now received reports that the Nicaraguan government was cutting off access to electricity in areas where protests were taking place.

<sup>6</sup> <https://netblocks.org/reports/nicaragua-regional-internet-disruptions-amid-protests-gdAmMvA9>

<sup>7</sup> <https://panampost.com/karina-martin/2018/03/15/nicaragua-social-media-controls-dictatorship-handbook/>

<sup>8</sup> [https://www.laprensa.hn/mundo/1163592-410/rechazan-control-redes\\_sociales-nicaragua-managua-daniel\\_ortega](https://www.laprensa.hn/mundo/1163592-410/rechazan-control-redes_sociales-nicaragua-managua-daniel_ortega)

<sup>9</sup> <https://www.nacion.com/el-mundo/interes-humano/sectores-defienden-libertad-de-expresion-en-redes/2FITMVQWHBBNRDYQBWULG2BNHM/story/>

<sup>10</sup> <https://www.laprensa.com.ni/2018/03/19/politica/2393219-ciudadanos-rechazan-control-de-redes-sociales-en-nicaragua>

<sup>11</sup> <https://www.el19digital.com/articulos/ver/titulo:75972-inss-da-a-conocerreformas-de-cara-a-mejorar-el-balance-financiero-del-sistema-de-pensiones>

<sup>12</sup> [https://www.washingtonpost.com/world/the\\_americas/they-took-my-humanity-pro-government-paramilitaries-terrorize-nicaraguan-protesters/2018/08/02/349f8914-900a-11e8-ae59-01880eac5f1d\\_story.html?utm\\_term=.336bb8ef2af6](https://www.washingtonpost.com/world/the_americas/they-took-my-humanity-pro-government-paramilitaries-terrorize-nicaraguan-protesters/2018/08/02/349f8914-900a-11e8-ae59-01880eac5f1d_story.html?utm_term=.336bb8ef2af6)

<sup>13</sup> <https://www.theguardian.com/world/2018/jul/29/nicaragua-refugees-costa-rica-daniel-ortega-violence>



- This kind of denial of service impacts internet access and communications more broadly, which are critical for free expression, access to information, and access to emergency services during periods of unrest.
15. The government has blocked many television channels in the midst of anti-government protests. In addition, a radio station in Leon, Radio Dario, was set on fire by government supporters in April 2018. Radio Dario is often critical of the government.
  16. Other independent radio stations have suffered serious attacks, harassment, and death threats to their journalists as in the case of Radio Camoapa, the Canal 100% Noticias, Radio Darío, Radio Yes, Radio Ya, or Radio Nicaragua.<sup>14</sup>
  17. Several journalists have been attacked while covering the protests. One, Carlos Herrera from the digital newspaper El Confidencial, was knocked down by a National Police officer who tried to steal his photographic equipment. Another reporter, Alfredo Zuniga, was attacked at the same protest and had his camera stolen by a member of a pro-government armed group.<sup>15</sup>
  18. A journalist, Angel Gahona, died by gunshot while live broadcasting about protests in the city of Bluefields. The Attorney General's Office has charged two young people in connection with the crime, but many doubt the investigation and believe the charge was to mask government responsibility. One reporter, Ileana Lacayo, accused the police of being responsible for Angel's death, and shortly after, her house was raided by unidentified men.<sup>16</sup>
  19. Distributed denial-of-service (*DDoS*) attacks, understood as a malicious attempt to disrupt normal traffic to a web property, have been reported by La Prensa and El Confidencial, both websites of newspapers of great circulation in the country, precisely when they informed about the deadly results of government repression.<sup>1718</sup> Likewise, reports indicate Anonymous utilized DdoS attacks to target and temporarily bring down government websites, including that of the National Assembly.<sup>19</sup>

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<sup>14</sup><https://www.laprensa.com.ni/2018/06/08/nacionales/2432247-queman-parcialmente-las-instalaciones-de-radio-nicaragua>

<sup>15</sup> <https://www.amnesty.org/download/Documents/AMR4384702018ENGLISH.PDF>

<sup>16</sup> <https://www.amnesty.org/download/Documents/AMR4384702018ENGLISH.PDF>

<sup>17</sup> <https://confidencial.com.ni/confidencial-sufre-ciberataque-de-enemigos-de-libertad-de-prensa/>

<sup>18</sup> <https://es.globalvoices.org/2018/04/30/netizen-report-protestas-en-nicaragua-resultan-en-bloqueos-de-medios-ataques-ddos-y-la-muerte-del-periodista-angel-gahona/>

<sup>19</sup> <https://revistaitnow.com/anonymous-ejecuto-ataque-masivo-paginas-gubernamentales-nicaragua/>



20. As of September 2018, the Nicaraguan government has also started to arrest individuals who administer opposition Facebook pages — in addition to journalists, community organizers,<sup>20</sup> and even police officers<sup>21</sup> who criticize the use of violence against protesters — on charges of terrorism and threatening national security.
21. Owners of Facebook pages and other social media accounts have been targeted for doxxing — maliciously publishing someone's personal information, like their address or phone numbers — leading to cases of online harassment, intimidation, and physical acts of violence. In extreme cases, Facebook pages designed to appear like official government accounts have reportedly posted the personal information of activists or journalists calling for their assassination in exchange for a reward.<sup>22</sup>
22. The benefits of Freedom of Information laws in Nicaragua are uncertain and limited because of ambiguities and exceptions in the Sovereign Security Law. It classifies any information related to national security as confidential, and no statistics on the number of interception requests are available.<sup>23</sup>

### Violations of the right to privacy

23. In the current situation of social repression from the government, journalists and activists have been victims of "doxxing" attacks in which personal data have been disclosed,<sup>24</sup> in an attempt to discourage their actions, and they had suffered also other cyber attacks, such as unauthorized access or control of their social media accounts.<sup>25</sup>
24. In Nicaragua, the state, local telecommunications firms, and Google, Twitter, and Facebook do not release transparency reports. In many surrounding countries, including Chile, Peru, Colombia, and Brazil, Google, Twitter, and

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<sup>20</sup> <https://www.elnuevodiario.com.ni/nacionales/473890-edwin-carchache-detenido-chipote-presos-politicos/>

<sup>21</sup> <https://www.aljazeera.com/news/2018/09/nicaragua-police-threat-criticizing-deadly-crackdown-180906102312617.html>

<sup>22</sup> <https://www.accessnow.org/new-wave-of-online-attacks-in-nicaragua-puts-opposition-voices-at-risk-of-physical-violence/>

<sup>23</sup> <https://necessaryandproportionate.org/comparative-analysis-surveillance-laws-and-practices-latin-america>

<sup>24</sup> <http://nicaleaks.com/?s=vendepatrias>

<sup>25</sup> <https://www.asuntosdelsur.org/doc/construyendo-resiliencia-digital-con-activistas-en-nicaragua>



Facebook have published transparency reports.<sup>26</sup> These reports provide essential information for monitoring government surveillance and violations to privacy.

25. In fact, Nicaragua has placed an affirmative duty of confidentiality upon telecommunications providers, preventing them from notifying users about governmental requests for information.<sup>27</sup> This “duty of confidentiality” does not seem to expire. There is also no legal obligation that compels the State or companies to notify users when they are the subjects of surveillance.
26. Chapter VIII, Article 65 of the “Law on the Prevention, Investigation and Prosecution of Organized Crime and the Administration of Seized, Confiscated, and Abandoned Assets” creates a mandate that technological companies design their services to be friendly and easy to use for surveillance.

## Recommendations

27. The government of Nicaragua should immediately cease the arrest, detention, persecution, intimidation, or any other measure targeting individuals who exercise their basic right to voice their disagreement with the government and its policies, actions, or representatives.
28. The government of Nicaragua should properly investigate and prosecute, with full respect to due process, the many acts of violence carried out against peaceful demonstrators, journalists, members of civil society, and others who have exercised their right to free expression since April 2018. More broadly, it should ensure effective remedies for human rights violations, including those relating to the internet, in accordance with its international obligations.
29. The government should immediately stop all acts of intimidation and threats generated by violent groups identified with the government that act to illegally disclose private information of independent journalists and opposition activists on social media, gain illicit access to their accounts, or block access to the media by technical means.
30. The government should immediately restore full access to all television channels, radio stations, websites, and other forms of media that have been blocked or censored for publishing content that is critical of the government.

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<sup>26</sup> <https://necessaryandproportionate.org/comparative-analysis-surveillance-laws-and-practices-latin-america>

<sup>27</sup> <https://necessaryandproportionate.org/comparative-analysis-surveillance-laws-and-practices-latin-america>



31. The government should not shut down the internet, SMS, or other fixed or mobile networks and services. Rather, Nicaragua should comply with Art. 19 of the ICCPR, as interpreted by General Comment 34, and UN resolutions that condemn such intentional disruptions, including A/HRC/RES/38/7 and A/HRC/RES/38/11. Any laws and regulations allowing shutdowns should be reformed to comply with international law.
32. Stakeholders should integrate the work of civil society initiatives which perform digital observation of internet access, to identify and hold accountable states which suppress reporting and documentation of fundamental human rights violations by means of telecommunication network disruptions.
33. Nicaragua should implement comprehensive legislative updates to ensure human rights are protected, including in the online environment, in particular the right to privacy, freedom of expression, and freedom of association. These updates should include restrictions on censorship and network disruptions, limitations on surveillance and other violations of privacy that are in line with the internationally recognized Necessary and Proportionate Principles, and mechanisms for independent oversight and human rights monitoring.
34. Any updates to the legislative framework should be developed through widely inclusive, multistakeholder consultations that are open to the public.
35. We also stand in support of the recommendations made by a coalition of Venezuelan human rights organizations, including the need to “[e]stablish immediate and efficient protection mechanisms that safeguard the life, integrity, and security of journalists and info-citizens who are covering and transmitting conflicts live, through traditional and digital platforms,” and to “not hinder the work of human rights organizations in the country, generating the conditions for their work to be carried out without threats to the freedom or physical integrity of its members.”<sup>28</sup>
36. Broadly, the government of Nicaragua must reinstate the rule of law, and faithfully implement all existing domestic and international legal obligations to uphold human rights and due process.

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<sup>28</sup> <https://redesayuda.org/2018/04/25/45-ong-venezolanas-exigen-investigar-y-sancionar-violaciones-de-derechos-humanos-en-nicaragua/>



The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. The undersigned are grateful to make this submission.

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