

The Sandinista Record on Human Rights in Nicaragua

Droit et Société 22-1992

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Summary

This paper critically reviews the human rights record of the Nicaraguan Sandinista governments (1979-1990). Undoubtedly, the Sandinistas were in policy and practice a dramatic improvement over the former American supported Somoza governments. There were, nonetheless, serious abuses of civil liberties; in dramatic contrast to other Latin American neighbours, the Sandinista governments seriously attempted to address and rectify these. During this decade, in Nicaragua, the most seriously perpetrated violations of human rights were those actions of the internationally (United States) supported terrorists, the *contras*. With the election of the United States supported UNO government, continued international vigilance is even more demanded of internationalist scholars.

Résumé

Cet article expose, de façon critique, l'attitude des gouvernements sandinistes (1979-1990) à l'égard des droits de l'homme. Les Sandinistes apportaient certainement une amélioration, au niveau politique et pratique, par rapport aux précédents gouvernements de Somoza soutenus par les États-Unis. Il y eut néanmoins de sérieux abus dans le domaine des libertés civiles mais les gouvernements sandinistes, contrairement à leurs voisins latino-américains, tentèrent de les corriger. Durant cette décennie, les violations les plus graves des droits de l'homme furent le fait de terroristes soutenus par les États-Unis, les *contras*. Avec l'élection du gouvernement UNO, soutenu par les États-Unis, une vigilance internationale continue est encore plus nécessaire de la part des intellectuels internationaux.

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I. Introduction

The recent electoral defeat of the Frente Sandinista in Nicaragua provides an opportune moment for assessing the impact of a decade of revolutionary rule upon controlling the abuse of state power. In addition to documenting some aspects of this process, this paper will note how the basic legal code and much of the institutional structure remained the same, although the underlying philosophy and its implementation was radically altered from that of punitive repression to justice, education, and rehabilitation.

Historically, Nicaragua suffered a prototypical seigniorial *latifundismo*. As with so many other Latin American republics, formal political independence from Spanish domination allowed only a short period of indigenous capitalist development in traditional import-export markets, followed by development of coffee exportation, sugar and cotton, gold and meat in succession (Wheelock, 1974/79). The basic social human rights to food, shelter, clothing, health, education and employment were not met for the vast majority of the population (Tefel, nd/1972?; Barry, Wood, Preusch, 1983), nor were civil liberties upheld by the Somoza state.

As Wheelock has argued (1974/1979), such an exploitative imperial system could only be maintained by dictatorship. By the 1970's, the formally public police — the (*Guardia Nacional*) — increasingly were not only actually the private police of the Somoza, but they also became the major criminal group in the country (see Diederich, 1981 : 311; Booth, 1981 :67; del Olmo, 1980 :17, 39, 78; Black, 1981 :34-36; Pearce, 1982). As insurrectional opposition to the dictatorship continued and grew more widespread in terms of popular support in the last years of the 70's, the routinized corruption and brutality of the previous decades gave way to full blown police State terror with the States of Siege (1974-77; 1978-79) where all civil liberties were ended by death squads composed of drugged recruits systematically and insidiously corrupted and twisted in a remarkably vicious training programme (del Olmo, 1980; Comisión Permanente de Derechos Humanos, 1978 : 16; Comisión Interamericana de Derechos Humanos, 1978 : 35, 49, 51, 80).

When the insurrection triumphed on July 19, 1979, Nicaragua was a country jubilant, but in ruin, bleeding and grieving : it inherited all the problems of underdevelopment, poverty, and dependency based upon an agroexport economy. Popular anger was very difficult for the new government to control, along with enforcing its immediate abolition of the death penalty and its support for international declarations of human rights.

During the 1980's, there were many charges of continued repression, especially by the United States; close international scrutiny allows an unusual opportunity to examine such charges in de-

tail. Of more narrowly criminological interest, concerns regarding ethnic minority (Amerindian) communal rights, civil liberties, and press freedoms, etc., demand investigation. Claims were made regarding illegal property confiscations, censorship, religious persecution, beatings in custody, detention without charge or trial, and even summary arbitrary executions (see *El Popular*, Oct. 31, 1984), renewed suspensions of a wide range of civil liberties (including *habeas corpus*, press freedom, freedom to associate, freedom of movement and the right to strike), for instance, in October, 1985, and again after the declaration of the new Constitution in January, 1986 (America's Watch, 1987; Amnesty International, 1986).

This paper will focus concerns about the abuse of State power upon a threefold conceptualization of human rights (Nunez de Escorcia, 1989). Clearly, definitions of human rights are open to various interpretations and uses. Northern civil liberties (of free speech, assembly, union, *habeas corpus*, etc.) can be seen as a first generation of human rights issues, championed in the bourgeois liberal-democratic revolutions. Facile transposition of such narrowly legal concerns to conditions in most third world countries where the more basic social and physical human rights are not met, of course, can severely distort the analysis (see America's Watch Report, 1986; *Envío* reply, 1987). A second generation of truly more fundamental human rights, then, often downplayed in the liberal-democratic north, but championed by socialists, includes the adequate provision of fundamental human necessities to all, such as food, shelter, clothing, health, education, employment, etc. Previously ignored, of course, have been the state-perpetrated atrocities of war, riot revolt and environmental destruction : this third generation of human rights concerns includes the collective rights to social development, autonomy, self-determination, and peace (Nunez de Escorcia, Feb. 1989, Barcelona).

II. The Sandinista Revolutionary Regime 1979-1990

1. Basic Human Rights

The new Sandinista government used international aid and its nationalized inheritance of the Somozas' vast holdings to reactivate the agroexport economy under a formally mixed model (with 60 percent of the economy still privately owned, although governmentally regulated), redistributed land (especially to cooperatives — see Stalker, 1986 : 23), maintained basic real incomes through food subsidies (IHCA, 1984 : 30 July *Envío*), and inaugurated health and educational programmes.

A fundamental aspect of this provision of human needs relied upon land redistribution. The Sandinista government went through various formal schemas and plans, from the initial largesse of « inheriting » the Somozas' vast holdings, and plans of State farms, on through collectives and privatized redistribution (see *New York Times*, Sept 7, 1987; MIDINRA, 1986 : 16 de julio; *Central America Report*, 10 April, 1987 : 108; 14 August, 1987 : 244). More than 100 000 peasant families benefitted, although returning exlandlords are now filing claims for title before the new UNO government.

A central plank of Sandinista policies was the guaranteed accessibility of basic foodstuffs : some two dozen essential products (such as rice, beans, sugar, salt, cooking oil, etc.) were marketed through government-supervised stores at subsidized price (see, e.g., Reynoso *et al.*, INIES, 1984). In large part due to the economic and military effects of the U.S. « low-intensity » war via the contras, subsidies had to be ended over the last 3 years, resulting in 30 000% inflation in 1988, which fell to 1400% in 1989.

During the 1980's, major innovative child welfare and health campaigns constructed local preventive health clinics and programmes, especially aimed at childhood diseases through vaccination programmes and oral rehydration (reducing the rates of diarrhoea-caused infant deaths by about half), controlled malaria, and increased the percentage of the national health budget spent on health care from 3% to 11% (CIIR, 1987 : 78).

It must be admitted that there were also serious issues and real problems in the search for justice : the Sandinistas initially were very heavy-handed and clumsily misunderstanding towards the 10% of the population composed of « ethnic minorities » on the Atlantic coast (see Melrose, 1985; Prigent, 1985; CIDCA, nd/1985?). The most dramatic issue, fully exploited by the United States administration in its propaganda war against the Sandinistas (see below), was the relocation of some 8500 Miskitos from the initially indefensible Rio Coco on the Honduran border; in the late 1980's, they were allowed to return, with government assistance in reestablishing themselves.

In terms of overall economic growth, the United Nation's Economic Commission for Latin America found that since 1979 until 1984, Nicaraguan growth exceeded 22 per cent aggregate (7 per cent per capita), while in the same time period Central America generally declined -5.7 (-14.7 per capita) (Vilas, 1986 : 231). The regional structural problems have remained serious : Nicaraguan exports have continued to be weak, falling from some \$600 million US to \$250 in 1986, while imports have remained relatively constant at some \$800 million; needless to add, the foreign debt has escalated dramatically! (*Envío*, 1987 :20; Ryan, 1987 :30). Most observers agree (see, e.g., Marin, and Gorostiaga in *Pensamiento*

Propio, n° 68, marzo, 1990; *Envío*, March/April 1990, n° 104) that the failure of the Sandinista mixed economy project to provide basic necessities of human rights was a crucial factor in their 1990 electoral defeat. But as will become clear below, we attribute this failure not to the Sandinistas disregard for such fundamental human rights, but rather to the U.S. strategy of so-called « low-intensity » warfare targeting economic and social programmes and personnel.

2. Civil Liberties

The 1979 Sandinista dominated *Gobierno de Reconstrucción Nacional* immediately declared adherence to international declarations of human rights, and maintained the 1974 Criminal Code (based on a continental system), subject to its being superceded by new decrees, such as the abolition of the death penalty. International observers declared fair the 1984 and 1990 general elections (avoiding the assassinations of oppositional candidates and newspaper editors so common on the Central American isthmus, offering public financing and free media exposure to all interested political parties, and registering an extremely high voter turnout — and allowing obvious intervention by the United States !) (see, e.g., *Envío*, 1990; *Pensamiento Props*, 1990). It was, however, civil liberties kinds of human rights which were especially singled out by the United States administration as indicating « totalitarian », « Marxist-Leninist » tendencies within the Sandinista government (see Valenta and Duran, 1987, Christian, 1986; CPDH, nd/1984?). Let us examine some of them.

a) Policing Abuses and Pre-Trial Detention

The « instant » building after the disintegration of the Guardia by the Ministry of the Interior of an increasingly efficient, modern and just public police force from the FSLN guerrillas and the Popular Militias must be noted (Nunez de Escorcía, 1984 :30).

Nonetheless, there were very serious problems, including well-documented cases of murder by government forces. America's Watch has documented close to 400 cases of killings and disappearances in total since 1981 (America's Watch, 1989; 1985; 1987). (In contrast, it would seem that the contras have been responsible for at least 1 185 civilian deaths between 1982 and 1985 (CIIR, 1987 : 53)). In a situation of total war, it is highly likely some such admittedly grisly incidents are likely to occur, and evidence will not be easily obtainable.

But what is absolutely remarkable in Latin America, is that not only were most such police (and army) officials disciplined, but some 600 were imprisoned for misconduct ranging from drunken

deportment, through arbitrary arrest and imprisonment, to assault, rape, and murder (see CAHI/IHCA, Update, April 2, 1984, vol. 3, n° 1; vol. 7, #1, Jan 25, 1988; 6, 38, Nov. 1987; CIIR, 1987). In 1987 alone, there were 147 prosecutions of military personnel for murder and homicide; in 1988 there were 197 such cases (America's Watch, 1989). Amnesty International and America's Watch reports (e.g., AW, 1986; AI, 1986) have repeatedly concluded that there was no Sandinista governmental policy of extra-judicial executions nor disappearances.

Throughout most of the 1980's, the State of Emergency regulations and the Law for the Maintenance of Order and Public Security allowed indefinite holding of prisoners pending State security investigations. Nonetheless, while Latin America averages some 68% of the incarcerated penal population awaiting sentence (i.e., awaiting trial), Nicaragua managed to lower its figure from 54% in 1983 to 34% by 1986 (Carranza *et al.*, 1983; Montealegre, 1986). Following complaints on irregular detention, the Sandinista government was quite responsive, especially since 1986.

b) The Judicial Power

After the July 19, 1979 triumph, popular fury was raging, and there were doubtlessly a number of extrajudicial executions; Amnesty International estimated some one hundred ex-Guardia were summarily executed by civilians. Almost all the corrupt Somoza-appointed judges, officials and police having fled or being in custody, the new government had to appoint new office holders, many untrained and inexperienced.

The most immediate practical problem for the new government in 1979 was how to deal with the 7 000 to 8 000 Guardia prisoners. Detention centres were overflowing, with inadequate food and exercise, etc. Special courts (*los Tribunales Especiales*) operated from Dec. 1979 to Feb. 81 with speedier processing and relaxed rules of evidence and due process, and usually staffed by one « legally inexperienced » lawyer or law student, and two lay judges; they regularized the processing of the huge numbers of prisoners, cleared up the backlog. A public defender represented indigent accused persons, the trials were open to the public and media (although purposely held in relative small rooms to prevent them become show trials), their decisions were subject to appeal and review by the regular courts, which — because of the abolition of the death penalty — did effectively reverse many decisions.

Furthermore, the clearance rates were higher than in normal courts. Many suspects were released outrightly and immediately for lack of credible evidence, and of the 6 310 tried, 1 760 were pardoned or had their cases dismissed, 229 were acquitted, and 4 331 received prison sentences (Barricada, 12 of Apr, 1983; CIIR,

1987 : 48). 1 158 prisoners were released by decree, and 595 received pardons. By 1983 only some 3 000 Guardia remained in custody (Lopez, 1984); by 1986, only some 2 157 of the 4 331 remained incarcerated (Borge, in CIIR, 1987 :49). The Esquipulas II agreement resulted in the release of the final 39 ex-Guardia prisoners in 1989.

The 1983 establishment of the *Tribunales Populares Anti-Somozistas* to deal with the increasing backlog of war prisoners brought similar complaints, although they operated with various legal safeguards remarkable for Latin America States under such severe insurrections. In general, despite the emergency war situation engendered by the U.S. sponsored contra attacks (IHCA, 1984), and the inevitable mistakes of a new system with previously inexperienced and untrained personnel (see Borge, 1982), the formal court system maintained the independence of the judiciary, operated under the formal rule of law with progressive new legislation and programmes, and focussed on ordinary crimes. The courts have on notable occasions ruled against the government, often using the 1980 law of *amparo* to guard against administrative abuses (Lawyers Committee for International Human Rights, April 1985 : 30-31).

c) Prison Conditions

The prison system itself has been remarkably innovative and successful at rehabilitation (see del Olmo, 1980, 1983; McCabe, 1985). Obviously, the new Sandinista regime mainly had to utilize previously existing physical facilities, which were not particularly adequate due to some destruction during the insurrection, and the quite horrendously dungeon-like quality of others. The large number of ex-Guardia prisoners also meant overcrowding initially after 1979, although this eased considerably with amnesties and early release; maintenance and basic sanitation and health improved noticeably (America's Watch, 1986, March 4). Basically a five-stage regime was instituted : from maximum security, a medium working regimen (in which time 30% of sentence must be completed), a minimum semi-open regimen (an additional 20%), to the new « open farm » system (requiring 10%), to at-home family living supervision by local police (with prison authorities responsible for employment). Work-training and re-education were the guiding Sandinista philosophies, with a noticeable optimism about possibilities of reformation (see Sistema Penitenciario Nacional, « Documento Base », 1986; Barricada International, n° 27, Oct. 1986; 18 of Sept., 1986); 1 200 inmates learned literacy skills during the National Crusade; by late 1990 60% worked voluntarily, and received pay. Family visits have been encouraged, and even marriages between inmates permitted; conjugal visiting facilities

expanded. Women's facilities have had a similar education and work emphasis.

« Best estimates » of « political prisoners » have been that of 8 523 prisoners, 2 157 were former guardsmen, and 777 were sentenced counterrevolutionaries, with 1025 awaiting trial (CAHI/IHCA, Update, vol. 5, 31, July 24, 1986; 6, 38, Nov. 1987; see also, e. g., *El Nuevo Diario*, 27 June, 1983; *Barricada*, June 11, 1984; *En-vío*, 1986; CNPPDH, 1987; Amnesty International, 1986; America's Watch, 1986 — summarized in CIIR, 1987). By 1987, there remained only 3 039 « political prisoners » (only some 1 860 of the originally arrested 8 000 Guardsmen and Somozistas) (with some 985 « political » prisoners released as part of the Peace Plan).

There were then some 4 400 « ordinary » prisoners (*Central America Report*, 27 Nov., 1987). Overall, these would amount to some 240 prisoners per 100 000 population, somewhat equal to that of the United States — which has an admittedly high rate, but is not suffering a recent revolution and a present low — intensity war!

d) The States of Emergency

Extended States of Emergency legally decreed since 1982 by a country under extreme external aggression suspended some civil liberties (such as freedom to strike, speak, publish, organize demonstrations, *habeas corpus*, etc.). There were incidents of Sandinista police harassment of opposition political activities, personnel, and rallies. Yet basic rights (to life, food, shelter, etc.) have continued (CIIR, 1987), and most civil liberties were observed for most people. As thousands of tourists attested, Nicaragua even under the Sandinista State of Emergency was not a tropical Gulag: there was no curfew, no restrictions on movement except in the war zones, the army and police were friendly and helpful, there was religious freedom, late night discos, etc. In January, 1988, the State of Emergency was lifted, allowing full freedom of assembly and association; party activists were purposely exempted from the draft; full freedom of speech was guaranteed after earlier suspensions of publishing (e.g., by the virulently anti-Sandinista *La Prensa*, which has received funding from the U.S. Government, and whose editors openly supported the contras). The electoral process itself was supervised by the Supreme Electoral Council, which received complaints and monitored activities.

3. State Abuse of the Rights to Development, Autonomy, and Peace

In Nicaragua in the 1980's, however, clearly the most serious violations of human rights occurred through the abuse of State

power involving the third generation of human rights. By the middle of the decade, the U.S. administration openly admitted (*Time*, 4 of March, 1985; 19 of August, 1985; *New York Times*, March 14, 1982; *Newsweek*, Nov. 8, 1982; CRIES, in *Barricada*, Sept. 8, 1986; Ruchwarger, 1987 : 32) that since 1981 it had been organizing, recruiting, training (originally by Argentinian death-squad colonels!), supplying, and directing counter-revolutionary terrorists (*los contras*) in a « low-intensity » warfare operation to unseat the Sandinista Nicaraguan government. This consisted of economic, political/ideological, and military interventions (Barry, 1986, LIW) : low intensity conflict is « total war at the grass roots level » (Miles, NACLA, April/may 1986, quoted in CIIR, 1987 : 10) : the principal targets in Nicaragua were economic and civilian.

First, the U.S. military buildup in the region was enormous (with constant manoeuvres, the building of some dozen landing strips and bases in Honduras and Costa Rica, upgrading of weapons systems, etc.) (Leogrande, 1985 : 437). In response, whereas Nicaraguan military spending constituted only 7% of the 1980 and 1981 national budgets, the figure had to rise through 13% (1982), 19% (1983), 25% (1984) to about 50% since (IHCA, *Envío*, July 1984 : 21). Secondly, warfare brought increasing damages to some key coffee and cattle producing areas, as well as seriously affecting the smaller mining, forestry, and fishing sectors (Vilas, 1987 : 13; Melrose, 1985 : 38; Fitzgerald, 1987 : 198). By the end of 1984, Coventry (1986 : 12) estimated that direct material damage totalled \$97.1 million, and production losses some \$282.6 million. Thirdly were the international treaty-violating American cut-offs in aid and trade. Even before the formal 1985 American embargo of all trade (estimated to cost Nicaragua some \$50 to 90 million (Barry, 1986 : 20), which clearly violated GATT trade agreements and bilateral treaties, American policies dictated a 90% reduction in the Nicaraguan quota for sugar imports (a \$23 million loss in Nicaraguan exports, 5% of the 1983 exports (see Melrose, 1985, chp. 4)). Fourthly, the Americans began a strategy of contriving technical objections to and pressuring politically against any international loans for Nicaragua (Maxfield and Stahler-Sholk, 1985 : 258-9); from November 1981 onward the U.S. voted against all loans to Nicaragua from the Inter-American Development Bank and the World Bank (Leogrande, 1985 : 434).

While the above-described economic aggression has been devastating to the Nicaraguan people, the central horror of this intervention was the terrorist assault, rape, kidnap, torture, and murder of tens of thousands of Nicaraguans, civilians as well as military (see West, 1986; 1987). Using a wide variety of government, international, and independent sources, Hemisphere Initiatives *et al.*, 1990, cite figures on the effects of the Contra War by the end of 1989 as : 29 270 deaths, 28 012 wounded, 10 449 kidnapped or

captured, and 16 470 orphaned. UNICEF documents some 150 000 persons displaced, 64 schools destroyed, 600 educational centres and 840 popular (adult) educational collectives abandoned, and some 100 health centres and hospitals destroyed along with 15 childcare centres; they estimate the total economic war damage at some \$12 billion, equivalent to some 45 years of exports at the current rate! (UNICEF, 1989).

Clearly, these abuses of State power by the United States have constituted a massive violation of the rights of the Nicaraguan people for self-determination, social development, and peace. The deaths and material damages far outweigh those from any Nicaraguan government abuse of State power; rather, they can be regarded as largely having fomented most such abuses, as well as prevented a fuller achievement of basic social and economic rights.

On Friday, June 27, 1986, the International Court of Justice in the Hague brought down its findings on the merits of Nicaragua's suit against the United States for its undeclared war on the Nicaraguan people (The International Court of Justice, 1986; *Envío*, 5 :61, July 1986 : 22-34). Among other items, it found the United States guilty of violating international law by training, arming, equipping and financing the contra forces in their attacks on Nicaragua, violating the sovereignty of a national State. Furthermore, the United States violated sovereignty by interrupting peaceful maritime commerce by laying mines in internal or territorial waters of Nicaragua; the U.S. acted against and in breach of the Treaty of Friendship, Commerce, and Navigation signed with Nicaragua on 21 January, 1956 by declaring a general embargo on trade with Nicaragua on May 1, 1985. The Court ordered that the U.S. is under a duty to immediately cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations; and that the U.S. is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under customary international law.

But just as the United States steadfastly avoided any diplomatic solution to the war, crippling the Latin American based Contadora process at every turn, even when the Sandinistas accepted draft treaties (e.g. 1984 — see *MacLeans*, Feb. 23, 1987 : 25), to this point the adjudicated culprit remains a fugitive from international justice.

III. Conclusion

Of course the Sandinista revolution has not been perfect : there have been errors, mistakes, tragedies. Such a social upheaval inevitably produces food shortages, breakdowns, intolerance for dissent under extreme conditions of war, restrictions on liberal

democratic civil liberties. Inevitably, some have felt coerced; there have been police inordinacies and over-exuberances, delayed trials, over-reliance on police evidence, limited real access to legal counsel, and abuse of the police courts (Nunez de Escorcia, 1989). There has been censorship of a scurrilous yellow press financed in part by the Washington administration, and the local bourgeoisie has screamed about restrictions on their previously free-wheeling activities (IHCA, « Human Rights », *Envío*, # 96, July 1989).

We clearly must recall the historical context, and maintain a comparative perspective : unlike in El Salvador and Guatemala, there has never been credible accusation, let alone proof, of systematic, government-condoned death squads or genocidal military attacks on unarmed civilians under the Sandinista government.

Clearly, in the difficult years ahead, scholarly and international solidarity in support of human rights efforts by the Sandinista opposition and others of good will to curb the abuse of State power in Nicaragua (and elsewhere in Latin American and the world) are even more demanded. Daniel Ortega Saavedra, and Violeta Barrios, viuda de Chamorro, clearly know and recognize the problems in the abuse of State power from below as well as from above. But — in this « New World Order » — does George Bush?

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Les protagonistes du débat

The United States govern-
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desiring to resurrect the bru-
tality of former dictator So-

moza and his colonial capital-
ists, has incessantly criticized
the Nicaraguan Sandinista ef-
forts to construct a new justice
under counter-revolutionary at-
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