



REPORT
of
DONALD T. FOX, Esq.
and
Prof. MICHAEL J. GLENNON
to the
INTERNATIONAL HUMAN RIGHTS LAW GROUP
and the
WASHINGTON OFFICE ON LATIN AMERICA
concerning

ABUSES AGAINST CIVILIANS BY COUNTERREVOLUTIONARIES
OPERATING IN NICARAGUA

APRIL 1985



Copies of this report are available for \$6.00 from the following organizations:

Washington Office on
Latin America
110 Maryland Avenue, NE
Washington, D.C. 20002
(202) 544-8045

International Human Rights
Law Group
1346 Connecticut Avenue, NW
Washington D.C. 20036
(202) 659-5023

© 1985 by the Washington Office on Latin America and
the International Human Rights Law Group

All Rights Reserved
Printed in the United States

TABLE OF CONTENTS

	<u>Page</u>
Preface.....	i
Statement of Sponsoring Organizations.....	iii
Report of Donald T. Fox and Michael J. Glennon	
A. Introduction.....	1
B. Background.....	3
C. Methodology.....	7
D. Findings.....	13
1. Sandinistas.....	13
2. Contras.....	14
3. United States Government.....	20
E. Conclusions.....	22
F. Recommendations.....	24
G. Final Thoughts.....	25
<u>Appendices</u>	
I. Terms of Reference and Biographies of Mr. Fox and Professor Glennon	
II. Itinerary	
III. Statements of Selected Individuals	
IV. Common Article III of the Geneva Conventions of 1949	

PREFACE

As part of their respective programs, the International Human Rights Law Group (Law Group) and the Washington Office on Latin America (WOLA) organized a delegation to visit Nicaragua to investigate and to report on allegations of abuses against the civilian population by the counterrevolutionary forces (Contras) fighting the Nicaraguan government. The delegation consisted of Mr. Donald Fox, senior partner in the New York law firm of Fox, Glynn and Melamed, and Mr. Michael Glennon, professor at the University of Cincinnati Law School.

The Law Group and WOLA believe that this report, prepared by Mr. Fox and Professor Glennon following their return from Nicaragua, is extremely important and relevant, given the ongoing debate regarding United States continued support for the Contras. We hope this report is read by: the Administration, which has sought to ignore and to deflect charges of abuses; by members of Congress, who must decide whether to release funds to assist the Contras; and by the American public, who should be aware of how United States funds are being used.

Because of the sensitive and controversial nature of the subject, we have included a statement, prepared by Law Group Project Director Larry Garber, which describes the Law Group's and WOLA's involvement in this project. In addition, Mr. Fox and Professor Glennon describe in detail the methodology they utilized in conducting their investigation.

The Law Group and WOLA thank Mr. Fox and Professor Glennon for their efforts in undertaking this mission on short notice and

in preparing this report. The Law Group and WOLA also thank Dr. Valerie Miller, who accompanied Mr. Fox and Professor Glennon in Nicaragua and acted as guide and interpreter. Finally, the Law Group and WOLA thank those who have provided financial assistance to the two organizations, thus permitting the mission to be carried out and this report to be published.

Joe Eldridge
Executive Director
Washington Office on
Latin America

Amy Young
Executive Director
International Human
Law Group

STATEMENT OF SPONSORING ORGANIZATIONS

On March 7th two human rights groups, the International Human Rights Law Group (Law Group) and the Washington Office on Latin America (WOLA), released findings which documented abuses by counterrevolutionary forces in Nicaragua. The reports were released at a news conference organized by the Law Group, WOLA and Congressman Sam Gejdenson (D., Conn.). The findings of the two groups were based on a mission to Nicaragua in February. Their findings substantiated a report prepared by Mr. Reed Brody, a New York attorney, which contains over 145 affidavits signed by the civilian victims of Contra abuses. The Law Group, WOLA, and Congressman Gejdenson have called for a congressional investigation of the atrocities. While acknowledging that the Law Group and WOLA were "well-respected" human rights groups, some administration officials have implied that the allegations of both groups and the Brody report were examples of "pro-Sandinista propaganda."

Mr. Brody's report came to the attention of WOLA and the Law Group in mid-January when Mr. Brody returned from Nicaragua. At first glance, the material from Mr. Brody's report appeared credible and the evidence compelling. The material in Mr. Brody's report raised serious questions as to the moral and legal responsibility of countries materially supporting the Contras, including the United States. If reliable, both organizations believed that the Brody material should be considered by members

of Congress, who would be voting on renewed United States aid to the Contras, and by the general public.

For two reasons, however, both the Law Group and WOLA declined to release the Brody report without further investigation. First, the credibility of any organization is its major asset. Reliance on a report prepared by someone unknown to either organization could place the institutional reputation of both organizations in jeopardy if the materials contained in the report proved unreliable. Both organizations also were aware that Mr. Brody received some minor assistance from the Nicaraguan government.

A second and more significant reason for refusing to release the report without investigation was Mr. Brody's relationship with Mr. Paul Reichler, a Washington attorney who represents the Nicaraguan government in its lawsuit against the United States before the World Court. Mr. Reichler had assisted Mr. Brody in initiating the project, Mr. Reichler's law firm had assisted Mr. Brody in typing the report, and Mr. Reichler introduced Mr. Brody to the Law Group and WOLA. Again without questioning Mr. Reichler's integrity, the Law Group and WOLA recognized that the credibility of such a report prepared for an advocacy hearing is subject to question.

Thus, in mid-February, the Law Group and WOLA decided to organize a joint mission for the purpose of ascertaining the truth of the evidence presented in Mr. Brody's report. Mr. Donald Fox, senior partner in the New York law firm of Fox, Glynn and Melamed, and Professor Michael Glennon, of the University of Cincinnati Law School, agreed to undertake the

mission. Mr. Fox is a member of the Executive Committee of the American Association for the International Commission of Jurists and previously conducted a fact-finding investigation into the human rights situation in Guatemala. Professor Glennon has served as legal counsel to the Senate Foreign Relations Committee and has written extensively on issues of United States law and foreign policy.

The sponsoring organizations established the terms of reference for the mission as follows: 1) investigate allegations of abuses by the Contras against the civilian population; 2) investigate the documentation in Mr. Brody's report for the purpose of evaluating its reliability; and 3) evaluate the legal and moral responsibility of countries supporting the Contras, assuming allegations of abuse prove credible. The sponsors agreed that Mr. Fox and Professor Glennon could meet with whomever they deemed necessary to obtain information regarding the situation in Nicaragua. Finally, the sponsors assured the mission members complete independence and promised to publish whatever conclusions they reached.

Mr. Fox and Professor Glennon spent a week in Nicaragua. Three and a half days were spent in northern Nicaragua, near the Honduran border, interviewing victims of Contra abuses. As part of their mission, Mr. Fox and Professor Glennon met with representatives of the United States Department of State in Washington and Managua, representatives of the Nicaraguan government, and critics of the Nicaraguan government, including Archbishop Obando y Bravo.

Upon their return, Mr. Fox and Professor Glennon reported that they found considerable evidence of abuses against civilians committed by Contra forces. Based on their investigations, Mr. Fox and Professor Glennon were able to corroborate ten of the affidavits contained in Mr. Brody's report as well. Finally, they reported that the United States is practicing a policy of "intentional ignorance" with respect to abuses by the Contras. Based on the findings of these well-respected attorneys, the Law Group and WOLA organized a press conference at which their findings and Mr. Brody's report was released.

The release of the Brody report and the statement of support undoubtedly was designed to have political effect. As Mr. Fox and Professor Glennon stated, the evidence now is sufficient to put the United States on notice as to the Contras' activities. They concluded that to provide further support for the Contras, under such circumstances, would be morally and legally indefensible.

Assuming that further assistance would be requested, the Law Group and WOLA, as independent human rights groups, sought to present significant information before members of Congress. Rather than release a report for whose accuracy they could not vouch, they undertook their own investigation of the situation. Instead of attempting to discredit the Brody report and, by implication, the Law Group, WOLA, and the attorneys representing the two organizations, these very serious allegations should have caused a re-evaluation of administration policy. Administration

officials conceded they were previously "ignorant" as to the extent of the abuses.

Attention should now focus on what the Administration intends to do about the information verified by WOLA and the Law Group. Will it conduct its own investigation into the incidents described? Will it cease the shameful practice of publicly comparing the Contras to the founding fathers of the United States or the fighters of the French Resistance? As the United States should have learned from the reaction of Nicaraguans to United States support of Somoza, a policy of ignoring abuses and atrocities committed by forces allied with the United States runs contrary to the long-term national interest.

Larry Garber
Project Director
International Human
Rights Law Group

REPORT OF DONALD T. FOX & MICHAEL J. GLENNON

A. INTRODUCTION

The International Human Rights Law Group (Law Group) and the Washington Office on Latin America (WOLA) appointed us to conduct an in loco investigation into alleged human rights abuses in Nicaragua. We were asked to investigate allegations that the "Contras," or counterrevolutionaries, engaged in serious abuses against Nicaraguan civilians. We also were asked, relative to a country's supplying the Contras, to assess the responsibility of foreign governments for abuses committed by the Contras. We were asked, finally, to assess the accuracy and objectivity of a report submitted to the Law Group and WOLA by Reed Brody, a member of the New York Bar. Mr. Brody, after four years in the office of the Attorney General of the State of New York, spent several months in Nicaragua interviewing witnesses and victims of counterrevolutionary attacks (Appendix I contains the Terms of Reference for the Mission and summaries of our professional backgrounds.)

In submitting his report to our sponsors, Mr. Brody stated that the report was independent, voluntary, conducted without compensation and largely at his own expense. However, he also indicated that the idea of the investigation was initially conceived, and the report eventually typed, by the Washington law firm of Reichler & Appelbaum, which represents the Nicaraguan government before the World Court. Mr. Brody, as indicated in

1
his report, also received some minor assistance from the Nicaraguan government during his stay in Nicaragua.

The sponsoring organizations, considering that the credibility of the Brody report might be subject to impeachment, asked us to investigate the probative value of a random sample of the 145 sworn affidavits attached thereto. Four of the individuals who provided affidavits to Mr. Brody had been contacted shortly before the inception of our mission by Professor Robert Goldman and Mr. Juan Mendez during their visit to Nicaragua on behalf of Americas Watch.² In supporting the request of our sponsoring organizations that we undertake this mission, Messrs. Goldman and Mendez informed us that those four affidavits were substantially accurate.

In meeting with the staffs of the sponsoring organizations before agreeing to undertake this mission, we were satisfied of their bona fides and of their commitment to accept the conclusions of an independent study. They further agreed to publish our study, regardless of its conclusions. With this commitment we left for Nicaragua on February 23. Mr. Glennon remained in Nicaragua until March 1st, while Mr. Fox remained until March 3rd (Appendix II contains our itinerary in Nicaragua).

1

See R. Brody, Attacks By The Nicaraguan Contras on the Civilian Population in Nicaragua Preface XI (1985). Mr. Brody's Report describes twenty-eight different incidents of abuses by the Contras. The report is supported by 145 affidavits gathered by Mr. Brody during his four months in Nicaragua.

2

See Americas Watch, Violations of the Laws of War by Both Sides in Nicaragua (1981-1985) 8 (1985).

B. BACKGROUND

As Hemingway observed, the most cruel and destructive wars are civil conflicts waged between contending factions within the same country. The war which preceded the flight of the dictator Anastasio "Tachito" Somoza on July 17, 1979 exhibited these characteristics in an appalling degree. It is estimated that, in the twelve months preceding his flight, 50,000 people died and 100,000 people were wounded.

The barbarism of the Somoza regime is documented in great detail by testimony before the Foreign Affairs Committee of the United States House of Representatives and by reports of the Inter-American Commission on Human Rights.³ The Somoza armed forces, the Guardia Nacional, included individuals and units of Somoza loyalists known for their brutality and aptitude for inhuman practices of violence. These practices ranged from the destruction of entire communities to the use of concentration camps, and included terroristic acts against all possible targets, including Red Cross vehicles.⁴

The collapse of the dictatorship, referred to in Nicaragua as "the triumph," was a culmination of over 30 armed insurrections occurring from the time that General Sandino took up arms in 1927 against what he considered North American imperialism. Without delving unduly into Nicaraguan history, it is useful to point out that from 1912 to 1925 the United States

³

See, e.g., Report on the Situation of Human Rights in Nicaragua, OEA/Ser. L/V/II.45/doc. 16 rev. 1(1978).

⁴

Id. at 31-54.

exerted a sort of protectorate over Nicaragua, similar to those which it exercised in Santo Domingo and Haiti. In 1927, Henry Stimson, a New York lawyer sent to Nicaragua as a special emissary of President Coolidge, arranged a new type of intervention designed to impose peace through supervised elections.⁵ Before the United States Marines left, after the 1933 elections, General Sandino waged an armed insurrection and the Americans created the Guardia Nacional, commanded by the first Somoza. In 1934 Somoza had Sandino executed.

The Frente Sandinista de Liberacion Nacional (FSLN) was founded in 1961. Initially, it suffered considerable defeats and most of the original leadership died prior to the 1979 triumph. Nonetheless, during the course of the struggle a strategy of "revolutionary violence ... to the extent strictly indispensable" was developed.⁶

The FSLN's strategy led to the burning of Somocista businesses and houses of informers, and to the ambushing of patrols of Somocista soldiers.⁷ The followers of the FSLN also engaged in acts of violence, including the assassination of alleged informers, the burning of buses, the construction of barricades and the installation of bombs that exploded on

5 See Fox, "Protection of Human Rights Through the Inter-American System," 44 The Virginia Quarterly Review, 369-371 (1968).

6 J. Wheelock, Raices Indigenas de la Lucha Anticolonista en Nicaragua, 87 (1974).

7 Teoria y Practica Revolucionaria en Nicaragua, 124, (1983).

8
contact. However, the FSLN strategists also believed that by treating the campesinos with patience and respect the FSLN could secure a base on which the revolution could proceed. Thus, the FSLN sought to distinguish itself from the brutal repression practiced by their Somocista enemies.

After the collapse of the Somoza regime in 1979, a number of the higher ranking officers and soldiers of the National Guard escaped Nicaragua. About several thousand former members of the National Guard are thought to have gone to Honduras, where they established the basis of the Frente Democratico Nicaraguense (FDN). Those former members of the National Guard who remained in Nicaragua were interned and tried by special popular, anti-⁹ Somoza courts. Since the death penalty was abolished, the most serious acts were punished by 30 years in prison. Many of the former Guardia Nacional members were not imprisoned for long periods, and now constitute an important element of the Sandinista army.

In addition to former members of the National Guard, the FDN has recruited, by various means, thousands of Nicaraguan campesinos and other opponents of the Sandinista government. The FDN recently claimed to have a force of 14,000 men fighting in
¹⁰
Nicaragua. This force, which operates on a mobile basis in the mountainous regions of Jinotega, Nueva Segovia and Esteli, is

8

Id. at 123.

9

See Report on the Situation of Human Rights in Nicaragua, 73-93, OEA/Ser. L/II.53 doc. 25 (1981).

10

Washington Post, Nov. 21, 1984.

aided by a force of approximately 2,000 Miskitos led by Steadman
11
Fagoth.

Both groups have received so-called "covert" funding and technical assistance from the C.I.A. In 1983 the Contra received \$19 million in U.S. funding. A further request for \$21 million in aid for covert operations was declined by the Congress in June of 1984. The Administration had indicated a desire to provide \$28 million in aid to the Contras in 1985.

The report of the "Kissinger Commission on Central America," published in January 1984, supports the policy of the Reagan Administration on the ground that "the Sandinista regime will
12
pose a continuing threat to stability in the region." The Commission describes the military activities of the Contras and the economic boycott of Nicaragua as "incentives and pressures"
13
designed to bring about progress on the negotiating front. One of the objectives of such negotiations is stated to be the termination of support to the guerrillas fighting the government in El Salvador, although the Sandinista government maintains that it has not supplied arms to the Salvadoran guerrillas for some time. Another, more recently articulated objective is to force the FSLN to abandon control of the government in favor of a more open, pluralistic society, rather than one dominated by Marxist-Leninist ideology.

11

Other forces, including one headed by Eden Pastora ("Commandante Zero"), operate from Costa Rica.

12

Report of the National Bipartisan Commission on Central America 115 (1984)

13

Id. at 116.

C. METHODOLOGY

Prior to our departure, we were aware of the controversy likely to surround a mission of this sort. Our experience following our return has confirmed this expectation. In view of the doubts that have been expressed concerning reports detailing Contra abuses, we set forth in detail the methodology we utilized in reaching our conclusions.

Our investigation was limited to the FDN group of the Contras which makes incursions into Northern Nicaragua from bases in Honduras. In seeking to assess the accuracy of allegations made concerning the FDN, we travelled to Ocotal, Jalapa, Condega, Mozonte, Esteli and neighboring communities in the war zone near the border with Honduras. See Appendix II. We selected this area because we had heard that hostilities occurred there fairly recently and we believed it important to assess whether allegations of Contra abuses continued up through recent weeks. Also, a number of the persons interviewed by Mr. Brody lived in that area, making it possible to check the affidavits he collected.

We sought to conduct our inquiry as independently and objectively as possible. Our intention was to avoid direct or indirect assistance from either the Nicaraguan or United States governments. Nonetheless, in our effort to pursue objectivity and balance, we interviewed officials of the United States and Nicaraguan governments and representatives of human rights organizations and church leaders, including Ms. Patricia Baltodano and Archbishop Obando y Bravo.

With respect to the opposition forces, we sought also to interview Contra military leaders in Honduras to determine the nature of the command control exerted over their troops in the field and to analyze operational orders relating to troop conduct. Our request to the Washington representative of the Frente Democratico Nicaraguense (FDN) was not granted, perhaps because the timing was inappropriate. After release of a preliminary statement following our return, Mr. Bosco Matamoros, the FDN's Washington representative, offered to arrange for a visit by the Inter-American Commission on Human Rights. As indicated in our recommendations, we hope the Commission will pursue this inquiry, which we believe to be of the highest importance.

While in Nicaragua, we looked primarily at violations of civilian rights by the Contras. Although we asked regularly about violations by the Sandinistas, we acknowledge that our inquiry focused, by the direction of our sponsors, principally upon the Contras. We believe that this focus was justified. Human rights violations by the Sandinistas have been investigated in depth by such organizations as the Inter-American Commission

14

on Human Rights and Americas Watch. At the time we conducted

14

Our sponsors also have monitored human rights developments in Nicaragua since the 1979 revolution. In 1982, the Law Group issued a report criticizing censorship of the press in Nicaragua. WOLA has frequently complained of abuses by the Sandinistas during visits to the country. In 1984, the organizations collaborated on a project to observe the 1984 Nicaraguan elections. Despite their previous experience in Nicaragua, our sponsors sought two individuals who had not previously worked with either organization to carry out this mission.

our investigation, abuses by the Contras had not been thoroughly
15 studied. Because the United States supported the Contras in
the past and is considering supporting them again, we believe
that our attention was properly focused on the Contras.

During the course of our mission, we found it necessary to
travel to areas of Nicaragua that State Department officials
recommended that we avoid for reasons of safety. The Nicaraguan
Ministry of the Interior, warning that our safety could not be
guaranteed, gave us a telephone number which we were asked to
call in the event an emergency arose. Happily, that was not
necessary.

Because a serious shortage of gasoline exists throughout
Nicaragua, we hired an unmarked vehicle and driver from the
Nicaragua Ministry of Foreign Affairs, for which we paid at
regular market rates. For obvious reasons, our driver stayed out
of our way once we arrived in a city and was not present during
any interviews we conducted.

We considered that to accept any other assistance from the
Government of Nicaragua could taint the credibility of our
findings. Accordingly, we did not reveal our itinerary, which
was, indeed, revised several times along the way. (See Appendix
II). We went where we wanted to go, when we wanted to go there.
We spoke with whomever we wished.

15

In March, 1985 Americas Watch issued a report examining
abuses against civilians by both sides in the Nicaraguan
civil war. See note 2 supra. Their factual findings are
consistent with the findings in this report.

Our interrogations were conducted in accordance with standard procedures of cross-examination to determine probable veracity. Furthermore, to the extent possible, we cross-checked among sources, both individual and documentary, to assure objectivity. No governmental consent was required for any interview (with the exception of the former head of intelligence at the FDN base Pino Uno, from which incursions into northern Nicaragua were launched. He is currently incarcerated at the Modelo Prison at Tipitapa.) The only limits on where we could go or whom we could meet were our own schedule and endurance.

We interviewed over 36 individuals. Ten had been interviewed previously by Mr. Brody; the remainder had not. Those who had not been interviewed previously were selected by us in a variety of ways. Some were located through conversations with local parish priests. Others were identified through persons whose veracity was already known to us. Some came to see us because they heard we were there.

We were keenly sensitive to the possibility of being "set up" and took every precaution available to ensure against it. We declined, for example, to interview anyone who was brought to us by the Nicaraguan government. In one instance, one of our contacts, unable to find a person we wished to interview, went to a local Sandinista official to help locate the person. We have not relied on that person's statement.

Further, in this report, we do not rely on the statements of persons who had not seen or heard personally the events they described, except for background information or for leads to other, first-hand witnesses. Where translation was required, we

used our own interpreter, Dr. Valerie Miller (Mr. Fox also speaks Spanish and conducted several interviews separately). Generally persons were interviewed in their own homes by both of us together; we believe this mode of examination is most effective for detecting inconsistencies and judging veracity. We asked probing questions and to the extent possible sought to identify ulterior motives for fabrication or exaggeration. We sought additional witnesses against whose earlier statements might be compared.

The people we interviewed came from all walks of life. They included housewives, doctors, day laborers, teachers, bus drivers, accountants, and farmers. Most appeared poor. Few spoke English. Nearly all (usually in answer to our questions) said they were Catholic. Some indicated (also in answer to our questions) that they were supporters of the Sandinista government; many, however, appeared to be apolitical. Most were members of large families. Ages ranged from about 20 to about 60. Some were "good witnesses" in that they answered questions concisely, without extraneous detail; others spoke disjointedly and required more extensive interrogation. Some appeared suspicious; others did not. Most seemed eager to relate their information to us.

Although the great mass of the people we saw appeared to support the government despite the country's serious economic hardships, we interviewed several who were seriously disaffected. Several were people who participated in the overthrow of Somoza, but who felt that the Sandinistas had appropriated the revolution to their own Marxist ends and to the detriment of

Nicaragua. These people longed for a more just, pluralistic and prosperous society which they believed was prevented by Sandinista rule.

These people were inclined to dismiss the reports of contra atrocities as exaggerated; when pressed, they would suggest that atrocities may occur but as part of a war dedicated to destabilizing a government that can be moved toward pluralism only by force. Their impressions concerning the frequency and gravity of contra abuses are at variance with our own findings.

In accordance with the request of our sponsors that we assess the reliability of Reed Brody's report, we interviewed 10 of the individuals previously interviewed by Mr. Brody. We sought geographic dispersion to the extent possible; 4 of those persons were therefore interviewed in Ocotal, 3 in Jalapa, and 3 in Estancia. To see whether similar incidents would be related by others who had not been interviewed by Mr. Brody, we interviewed 26 additional persons -- 16 in Ocotal, 6 in Jalapa, 3 in Estancia, and one in Condega. (Appendix III contains summaries of many of the interviews we conducted during our visit.)

D. FINDINGS

1. SANDINISTAS

On the basis of reports which we examined in the office of the Comision Permanente de Derechos Humanos de Nicaragua (CPDH) in Managua and on interviews conducted in Matagalpa, we are persuaded that abuses of power have been committed by Sandinista officials. However, the particular standard that guided our investigation in Nicaragua was Article III of the Geneva Conventions of 1949, which imposes fixed legal obligations on parties to an internal conflict for the protection of persons not, or no longer, taking up an active part in the hostilities. Article III states that such persons shall not be murdered, mutilated, tortured, taken as hostage or subjected to humiliating and degrading treatment. (Appendix IV contains the complete provisions of Common Article III).

If a pattern of violation of the standards of Article III exists on the part of the Sandinista government, apart from those reported by other human rights organizations regarding the 1982 relocations of the Miskito Indians, we did not detect it.

16

The CPDH is a non-governmental organization that existed prior to the revolution and documented many of the abuses of the Somoza regime. It has been outspokenly critical of the present Nicaraguan government.

17

See, e.g., Report on the Human Rights Situation of a Segment of the Population of Miskito Origin, OEA/Ser. L/V/II.62/doc. 26 (1984); Americas Watch, supra note 2 at 57-62.

However, as we have said, our focus was on the allegations of violations of these standards by the conterrevolutionary forces based in Honduras. Any reliable findings concerning Sandinista violations would require a far more extensive inquiry into that subject. We believe that these alleged abuses should continue to be investigated vigorously by human rights organizations and that a regular dialogue should be established between the CPDH and the official human rights organization established by the Nicaraguan government.

2. CONTRAS

State Department officials told us that the Contras' two objectives are "debilitation of the Nicaraguan economy" and "killing Nicaraguan soldiers." Yet we found that a substantial number of Contra attacks in the Department of Nueva Segovia were associated with actions that went beyond limits established for the protection of non-combatants.

The Contras do attack "economic" targets such as lumber yards, coffee processing plants, electrical generating stations and the like. An example is the 1984 attack on Ocotal, described in the statement of Mayor Felipe Barrera (see appendix III). Not infrequently, civilians are caught in the cross-fire, and it is not always certain by which side they were injured (see the statement of Maria de Los Angeles Montalvan, recounting how, during the attack on Ocotal, she was hit by a stray bullet that also entered the child whom she was breast-feeding).

State vehicles are also targeted; because civilians often are mixed in with governmental or military passengers, these

attacks frequently result in civilian casualties, as described in the statements of Gustavo Adolpho Palacio Reyes and Santos Roger Briones Valenzuela (see appendix III). As indicated below, precise categorization is difficult; however, part B of appendix III sets forth incidents falling generally into the class relating to what arguably are military or economic targets.

The Contras also attack individuals deemed to be contributors to the country's economy or to its defense, such as telephone workers, coffee pickers, teachers, technicians, and members of the civilian-based militia. Maria Rivera Jimenez, for example, described a Contra attack on the cooperative in her village (see appendix III) during which the Contras approached her house and asked whether any mid-wives were about (her mother was a mid-wife). Noel Benevides related the brutal treatment of Mery and Felipe Barrera, community leaders in Esteli, following their kidnapping while picking coffee (see appendix III).

Substantial credible evidence exists that Contra violence is also directed with some frequency at individuals who have no apparent economic, military, or political significance and against persons who are hors de combat. It is important to emphasize that these are not persons caught in crossfire between Contra and Sandinista military units. These are unarmed civilians who have no connection with hostilities and who have been the targets of deliberate attack by Contra units.

According to Maria-Julia Ortiz, for example, the Contras broke into her house at 4:30 a.m., knocked her husband unconscious, and slit his throat. He was a carpenter, she said,

and was not involved in anything that might have incited their behavior (see Appendix III).

Gustavo Adolpho Palacio Reyes recounted a Contra attack on the pick-up truck carrying 10 people back from his son's wedding. Seven were killed, including his wife and new daughter-in-law (see appendix III). (We viewed, incidentally, the unedited film taken by two Belgian cameramen who happened upon this scene immediately after the attack. Their film, which includes interviews with the survivors and graphic pictures of the victims, is now owned by CBS.) Incidents falling generally into this category of "civilian" targets are set forth in part A of appendix III.

It must be emphasized that the broad categories corresponding to parts A and B of appendix III are only a rough classification. It is not possible to draw neat distinctions that seek to categorize one set of incidents as "atrocities" and another as involving uses of armed force that are arguably legitimate under some theory of the laws of war. Many fall on a continuum that shades gradually from one pole to the other.

What is abundantly clear, however, is that many acts of the Contras that were related to us cannot be justified under any accepted doctrine of conventional or customary international law. They include the torture of the Barredas (see the statement of Noel Benevides in appendix III); kidnappings (see the statements of Tranquilino Garmendia Castellon and Dora Alvira Rodriguez); the machine-gunning and burning of persons reasonably identifiable as non-combatants (see statement of Santos Roger Briones Valenzuela); the murder of the husband of Maria-Julia

Ortiz and the father of Maria Rivera Jimenez; the slaughter of unarmed civilians merely driving along a highway (see the statement of Orlando Palacio Ramos); and the rape and murder of a woman in the militia (see the statement of Maria Ramirez Mateo). These acts, by any standard of civilized conduct, are beyond the pale.

How frequently do such abuses occur? There are, in general, two methods of seeking to determine whether a "pattern" exists of these sorts of violations. The first is to canvass all available evidence -- in this case, to interview every one alleging some abuse by the Contras, and to delve thoroughly into the facts related by those interviews. This kind of comprehensive review is the only way of knowing with certainty whether an actual pattern exists. It obviously was not possible to conduct such a review in the period of the one week we spent in Nicaragua.

The second method is to gather as much information as possible, to make reasonable efforts to distinguish between probative and non-probative evidence, and to draw reasonable inferences from the evidence that appears probative. This method does not provide knowledge to a certainty; it merely establishes varying levels of probabilities, depending upon the care with which each stage of the investigatory process is conducted. The limited amount of time and resources available made it necessary to employ this second, inferential method. We have framed our conclusions accordingly, using concepts such as the "rebuttable presumption," "prima facie," and "shifting the burden of

persuasion" to reflect the measure of reliability we believe those conclusions merit.

Based on the probative evidence we have gathered, we believe, for three reasons, that it is reasonable to infer that terroristic violence is directed with some frequency at individuals who are not, or who are no longer, taking an active part in hostilities.

First, the seven incidents described above were learned about during only one week in Nicaragua. From the evidence we gathered we think the list could be extended -- and extended substantially -- with greater time and resources. While we were in Nicaragua we heard described to us -- by persons who had personally witnessed these events -- a total of at least 16 murders (see the statements of Noel Benevides, Maria-Julia Ortiz, Maria Rivera Jimenez, and Jorge Valenzuela); three cases of torture (see the statement of Noel Benevides); 44 kidnappings (see the statements of Noel Benevides, Tranquilino Garmendia Castellon, Dora Alvira Rodriguez, Lidia Ruiz Guillen, FNU LNU [a male of about 45 years of age interviewed in Ocotal who declined to give his name out of fear of Contra retaliation], Raimunda Calderon Raudes, and Emilia Quintero Ponce); one rape (see the statement of Maria Rameriz Mateo); and numerous instances of beatings and destruction of property. We say "at least" to emphasize that we have construed narrowly any doubtful, ambiguous, or equivocal evidence. Prudence required, we believe, that any error be on the side of the Contras, and that any doubt be resolved in their favor.

Second, a number of the individuals we interviewed gave probative evidence indicative of the presence of a command structure governing the operation of Contra units. The abuses described often were committed by groups of Contras numbering in the hundreds, leading to the reasonable inference that these acts were the work of supervised military personnel, not "free agents" acting beyond the scope and course of normally expected operations.

Third, we interviewed a random cross-sample -- 10 persons -- of the 140-some individuals interviewed by Reed Brody. These proved materially accurate. Based on our own cross-checking, as well as that performed by groups such as Americas Watch, the New York Times and CBS News,¹⁸ the probability is that a substantial number of the affidavits collected by Mr. Brody are materially accurate. The numbers of incidents described in Mr. Brody's report is further evidence that the incidents of abuse are not the work of isolated marauders.

In sum, it is unclear what level of frequency is required before a high level of frequency is properly called a "pattern," or before a pattern is called a "consistent pattern." Without engaging in semantic hair-splitting, however, it suffices to say that all probative evidence, taken together, indicates that serious Contra abuses against non-combatants occur far too often to justify any American support -- public or private -- of a sort that might enhance the ability of the Contras to commit these acts.

¹⁸

See L. Rohter, The New York Times, March 7, 1985 at A1; CBS Television also has confirmed some of the affidavits.

3. United States Government

Under section 116(d) of the Foreign Assistance Act of 1961, the Department of State annually must submit a report to Congress regarding "the status of internationally recognized human rights assistance ..., and (B) in all other foreign countries." While the Act does not require including in the report materials on groups fighting against a government, the most recent report submitted by the State Department explains that the Administration believes

it is necessary to treat violations such as torture, murder, interference with a free press, and intimidation of the judiciary whether they are committed by the government or by opposition forces.¹⁹

To fulfill this goal, the Department of State and the United States Embassy in a country must actively seek information regarding alleged abuses by forces opposing a government. This, however, is not being done with regard to abuses by the Contras.

Officials of the Department of State, who asked not to be identified, told us that they are not aware of the validity of "any or all" of the allegations regarding Contra abuses. "We have no firm knowledge of what's going on in the field," they said. These officials further told us that the intelligence community has not been "tasked" to find out, i.e., that it has not been directed to gather intelligence on the issue. Thus, the Department, for reasons that were not fully specified, has

¹⁹

Department of State, Country Reports on Human Rights Practices for 1984 4 (1985) (emphasis added).

remained in what a high ranking State Department official described as "intentional ignorance" of the situation.

This policy is illustrated by the Department of State's annual human rights report recently submitted to Congress, as it relates to Nicaragua. In considering the issue of political killing in Nicaragua during 1984, the report states:

The Government claimed that guerrillas killed around 1,000 civilians in 1984. Some civilians have died in the fighting between the Government and the guerrillas, although no reliable information is available on their number. Some reportedly died in guerrilla ambushes of government military vehicles carrying civilian passengers. The government has charged the guerrillas with torturing and summarily executing prisoners. The guerrillas have denied that they target civilians and have asserted that the security forces' indiscriminate use of heavy artillery near population centers has caused civilian casualties.²⁰

If two individuals, with no governmental connections or support, during a limited visit to Nicaragua, can obtain credible evidence regarding torture and other atrocities committed by the Contras, one would hope that the Department of State and the intelligence community can do likewise. Embassy officials in Mangua, even if they cannot investigate in loco these incidents have other sources of information available, including the statements of the many United States citizens who live in or visit the areas where abuses have occurred. To downplay or ignore these incidents, as the State Department's report does, involves a conscious and unconscionable policy.

20

Id. at 610.

E. CONCLUSIONS

It is possible that some of the statements we took are false or exaggerated. We have excluded those we doubt. But given the number of persons interviewed, the variety of sites at which the interviews took place, the multiplicity of contacts by which we identified witnesses, and the cross-checking that was on occasion feasible, the preponderance of the evidence indicates that the Contras are committing serious abuses against civilians.

Many of the incursions during which these violations occurred involved numbers of FDN troops large enough to warrant the presence of a command structure. Smaller groups were alleged to be equipped with communications equipment that kept them in contact with other elements of the FDN. The incidents described to us appear to involve intentional attacks on unarmed civilians, persons who are protected under international law.

The affidavits on which Mr. Brody's report is based that we investigated are materially accurate. Based on our random sampling of these affidavits, and the other samplings performed by Americas Watch and others, the probability is that other of the affidavits relied on by Mr. Brody are also probative. Given the number of incidents examined by Mr. Brody, the weight of evidence indicates that the Contras engage with some frequency in acts of terroristic violence against unarmed civilians.

Sufficiently reliable evidence is now available to place the United States government on notice with respect to the actions for which its assistance has been and would be used. To the extent that it is reasonably foreseeable that they will continue

to engage in such acts, any provision of aid to the Contras, directly or indirectly, by the government of the United States would render our government indirectly responsible for their
21
acts.

The United States government cannot hide behind a veil of intentional ignorance. Although the evidence of frequent Contra abuses may be rebuttable by an affirmative effort of the United States government, as of this date, no such effort has been made. It is the obligation of the United States government to investigate such matters to ensure even-handed reporting on human rights.

In the absence of any showing to the contrary, the evidence now extant of grievous Contra violations of the rights of protected persons under international law must be presumed prima facie valid. The burden of persuasion has effectively shifted to those who assert that the Contras have conducted themselves in a manner that permits the support of the United States. Unless it can be established that the Contras do not engage in such acts of illegal terroristic violence, regardless of any other considerations, further support by the United States is indefensible.

Even if the Contras were not committing abuses against the civilian population, support of a force seeking to overthrow a recognized government raises serious issues under the United

21

Cf. , The Commission of Inquiry into the Events at the Refuge Camps in Beirut 26-29 (1983), reprinted in, 22 I.L.M. 473, 496-99 (1983). The Israeli commission found various Israeli officials indirectly responsible for the events in the Palestinian refugee camps even though the Israeli officials "did not intend [the massacres] to happen and merely disregarded the anticipated danger." Id. at 496.

RAIMUNDA CALDERON RAUDES, age 40 (Ocotal)

On January 23, 1985, I was in my house in Jicaito. It was about 5:00 a.m. There were six children and five adults in my house. We were just getting up. The Contras came and banged down the door. They came by foot, about 10 of them. They were wearing blue uniforms; the chiefs wore the same overalls as the Sandinistas--but they said, "We're the FDN and don't be mistaken about that." A little boy opened the door, and let them in. They grabbed him, in his pajamas, and they shoved him to the ground. They told us to get out so they could kill us all right then. (I worked as a health volunteer--in the vaccination program--and now I work in the cooperative.) Four of the boys had been in the militia four months ago. The FDN used AKAs and FALs. We went outside, and lay face down. They tied my hands behind my back. Then they took me and the three kids to kill nearby and about 100 yards from the house my son escaped (even though his hands were tied). More of the Contras were higher up--about 100 in all, and they had other captives, about five. They took about five from our house; four were still captive up there.

"Here are those awful evil people that we've been trying to get." one Contra told another. They asked my name; I told them. They hit us with rifles; they tied up the kids and kicked them. They took a big stick--a club--and beat me so badly I still have terrible pains in my chest. I thought I was going to die. Then they said they would let me go back to the home. But I have to stop working for the revolution, they said, or we'll come back

and kill you. They said someone from the valley had told them that I worked for the revolution. I said I have to go and take care of my kids because they're alone. One of my sons escaped from them also that same day. One remained, with another child from the house. I've heard no word from either. I had trouble walking back because it hurt with burning and pain when I walked.

I have not stopped working for the revolution. I will continue until they kill me.

I'm not a Communist. I am a Catholic. I go to church every Sunday. I'm a Sandinista.

Nations Charter, the OAS charter and customary international law. Because we were not charged with investigating this issue, we reach no conclusion as to the propriety of United States support for a group whose goal is to overthrow the established government in Nicaragua. Nor do we reach any conclusion concerning the propriety of United States insistence upon Sandinista negotiations with the Contras.

F. RECOMMENDATIONS

In view of the findings and conclusions discussed above, we recommend the following:

1. The appropriate committees of the Congress should investigate fully and completely acts of violence committed by the Contras.
2. Congress should not approve further assistance to the Contras unless it determines that the Contras acts do not exhibit a consistent pattern of violation of the rights of persons who are not or are no longer taking an active part in hostilities. The proposal of the executive branch currently under consideration by the Congress, because it would allow a renewal of military assistance to the Contras upon the mere certification by the Contras that talks with the Sandinistas have broken down, should be rejected.
3. Private persons and organizations providing financial and material assistance to the Contras should be aware of how their assistance is being used. Absent affirmative evidence that the Contras have ceased committing the types of abuses described

in this report, no assistance from the United States, public or private, should be provided to the Contras.

4. The appropriate committees of the Congress also should investigate whether relevant executive departments and agencies have remained "intentionally ignorant" of these serious abuses committed by forces supported by the United States.

5. The Inter-American Commission on Human Rights should accept the FDN's offer of cooperation for a full investigation. This should include, at a minimum, a review of the following:

- a. The sensitivity of the command structure to violations of the sort described herein;
- b. Specific orders concerning such violations given to troops in the field;
- c. Guidance concerning such violations imparted during training; and
- d. Discipline imposed for such violations.

G. FINAL THOUGHTS

We have not examined in this report any of the broader policy questions raised by United States support of the Contras -- whether support for the Contras has solidified support for the Sandinistas among the people of Nicaragua, whether it has caused the Sandinistas to move more quickly towards Cuba and the Soviet Union, whether the United States is discredited through its affiliation with the Contras, or whether the United States' standing to oppose terrorism elsewhere in the world is undermined by our support for the Contras. We have not examined, in short,

whether United States support for the Contras is a policy that furthers or undercuts our national interests in Central America. These questions are seminal, however, and need to be addressed by the Congress in assessing the merits of renewed United States support.

Nor have we commented on the emotional impact of what we saw and heard in Nicaragua. We have sought in this report to present our observations and conclusions as objectively and unemotionally as possible. We think that fundamental policy questions of the sort now confronting this nation should be decided dispassionately, on the merits. We hope that this report furthers that objective by focusing narrowly on one distinct strand of United States policy toward Nicaragua -- the issue of support for the Contras.

Nonetheless, we would be remiss if we failed to make some effort to convey the horror we experienced -- the looks of agony and desperation in the faces of the victims. It was stomach-wrenching, and it stays with you. American policy-makers, in the executive branch and in the Congress, need urgently to re-examine the preconceptions on which this policy is based, and to become aware of the terrible pain and suffering being inflicted on scores of innocent people, people who told us over and over again that they were Catholics, not communists, and who asked us again and again why the United States government is doing this to them.

There are, today in Nicaragua, tremendous well-springs of affection for the American people. A surprising number of Americans are in Nicaragua, living and working with the people -- doctors, teachers, technicians and religious leaders from all

parts of the United States. These are the Americans that the people of Nicaragua see and know -- people who are kind and concerned and selfless and who represent the best in the American tradition.

Many of the Nicaraguans we talked with cannot believe that the American people really know what is being done to the people of Nicaragua. They think that support for the Contras is a policy of the American government, not of the American people. They think that if the American people controlled American policy toward Nicaragua, the United States would be aligned with their friends from the United States, and like their friends would recognize that they are people who are desperately poor, who finally have "their own" country, who will accept help from fellow human beings but not from patrons, who will fight and die for that country -- but who wish ill toward no one and who, as we were told over and over again, "just want to live in peace."

We can understand also the concerns expressed by several opponents of the Sandinista regime. We make no comment on the ethical choices faced by persons living under a government that does not promote life, liberty and the pursuit of happiness, nor do we make any judgement concerning whether the Government of Nicaragua is such a government. Regardless, civilians and non-combatants have inalienable civil rights that must not be violated, even by the most highly justified revolutionaries. Even more pertinent, there is no legal justification for the

United States to support revolutionaries who systematically violate the rights of civilians.

We believe that it should be possible to forge a policy that seeks to determine whether good will is indeed the predominant sentiment of the Nicaraguan people toward the American people; a policy that seeks to discriminate between a Catholic peasant who admires the United States and a Marxist bureaucrat who does not, a policy precisely calibrated to safeguard legitimate American interests without trampling ground on which the United States need not walk. Many vexing questions face the policy-maker who undertakes such a task. The objective may be unattainable. The enterprise may be fraught with false-starts. Mid-course corrections may be required. But there is one initiative that clearly should be eliminated from any such process, and that is a renewal of United States military assistance to the Contras.

APPENDIX I



INTERNATIONAL HUMAN RIGHTS LAW GROUP

1346 Connecticut Ave., N.W.

Suite 502

Washington, D.C. 20036

(202) 659-5023

Cablegram: INTLAWGRP

BOARD OF DIRECTORS

David Carliser

CHAIR

Robert H. Kapp

VICE-CHAIR

Stuart Lemle

TREASURER

Charles E.M. Kolb

SECRETARY

Millard W. Arnold

Hodding Carter, III

Nancy Folger

Robert K. Goldman

(Rev.) J. Bryan Hehir

Robert Herzstein

Joan McEneaney

Burt Newhouse

Roberts B. Owen

Steven M. Schneesham

Mark L. Schneider

ADVISORY COUNCIL

Richard B. Bilder

Theo C. van Boven

Roberta Cohen

Martin Ennals

Thomas M. Franck

Hurt Hanesius

Monroe Leigh

Richard B. Lillich

Bert B. Lockwood, Jr.

Fali S. Nariman

Louis Pentziti

Charles Runyon

EXECUTIVE DIRECTOR

Amy Young

ELECTION OBSERVER

PROJECT DIRECTOR

Larry Garber

REPRESENTATIVES

New York

Richard N. Dean

Grant A. Hansman

TERMS OF REFERENCE

FOR A MISSION OF INQUIRY INTO ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS BY COUNTERREVOLUTIONARY FORCES IN NICARAGUA

The International Human Rights Law Group and the Washington Office on Latin America have agreed to send a mission of inquiry to investigate alleged incidents of abuse by counterrevolutionary forces (Contras) against the civilian population in Nicaragua. Should these allegations prove true, they would raise serious questions as to the propriety of providing assistance to these forces.

The Law Group and WOLA have received several reports of civilians in conflictive zones being subject to murder, rape and torture by the Contras. Among the reports received by the two organizations is a detailed report prepared by Mr. Reed Brody, a New York attorney, who spent four months in Nicaragua in the fall of 1984. The Law Group and WOLA were made aware of Mr. Brody's report from Mr. Paul Reichler, attorney for the Nicaraguan government.

Because of the serious nature of the allegations included in Mr. Brody's report and the serious implications of these allegations for United States policy in Central America, the Law Group and WOLA are sending two independent fact-finders to investigate the allegations and to provide an evaluation of the material in Mr. Brody's report. The members of the mission will visit Nicaragua from February 23rd until March 1st. They will travel to the conflictive zones, and may visit neighboring countries as they deem necessary.

The mission will investigate the incidents included in Mr. Brody's report; focusing in particular on the most recent incidents. The mission will seek meetings with individuals named in Mr. Brody's report, for the purpose of verifying the information contained in the affidavits in Mr. Brody's report. In addition, the mission will seek meetings with government officials, U.S. officials, church leaders and others.

In preparing a report, the mission will consider the following issues:

1. Is there reliable evidence that the rights of the civilian population in Nicaragua are being violated by the Contra forces?
2. Based on the interviews conducted, does the material in Mr. Brody's report appear reliable?
3. What is the legal and moral responsibility of countries supplying the Contras for the acts committed by the Contras?

The members of the mission are Mr. Donald Fox and Professor Michael Glennon.

February 1985

APPENDIX II

ITINERARY

Saturday, February 23, 1985

Arrival in Managua

Sunday, February 24, 1985

Interviews in Ocotal

Monday, February 25, 1985

Interviews in Jalapa and La Estancia

Tuesday, February 26, 1985

Interviews in Condega, Esteli and Ocotal

Wednesday, February 27, 1985

Return to Managua

Thursday, February 28, 1985

Interviews in Managua

Friday, March 1, 1985

Glennon -- return to New York

Fox -- further interviews in Managua

Saturday, March 2, 1985

Fox -- further interviews in Matagalpa

APPENDIX III

STATEMENTS OF SELECTED INDIVIDUALS

<u>Part A</u>	<u>Page</u>
Noel Benevides.....	1
Gustavo Adolpho Falaciss Reyes.....	4
Orlando Palacio Ramos.....	6
Maria Ramirez Mateo.....	7
Tranquilino Garmendia Castellon.....	9
Mercedes Corea Merlo.....	10
Dora Alvira Rodriguez.....	13
Lidia Ruiz Guillen.....	14
Emelda Jesus Zamora.....	15
"FNU LNU".....	16
Maria Los Angeles Lopez and Santiago Florian Francisca Lopez.....	17
Maria-Julia Ortiz.....	18
Maria Rivera Jimenez.....	20
 <u>Part B</u>	
Francisco Lopez Ramirez.....	21
Raimunda Calderon Raudes.....	22
Santos Roger Briones Valenzuela.....	24
Jorge Valenzuela.....	26
El Muerto.....	30
Luis Carrion.....	32
Maria Christina Olivas Gahona.....	36
Emilia Quintero Ponce.....	38
Luis Villareyna Vilches.....	39
Felipe Barrera.....	40
Maria De Los Angeles Montalvan.....	42
Dr. Ed Meyer.....	43