

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 37/2021**

Precautionary Measure No. 96-21

Gustavo Adolfo Mendoza Beteta and family regarding Nicaragua

April 30, 2021

Original: Spanish

**I. INTRODUCTION**

1. On February 3, 2021, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission” or “the IACHR”), received a request for precautionary measures filed by the Human Rights Collective *Nicaragua Nunca +* (“Nicaragua Never Again”), urging the Commission to require that the State of Nicaragua (“the State” or “Nicaragua”) protect the rights to life and personal integrity of Mr. Gustavo Adolfo Mendoza Beteta and his nuclear family. According to the request, the proposed beneficiary is allegedly deprived of liberty under inadequate conditions and being subjected to threats and acts of violence by state agents as a result of his political opposition to the current Nicaraguan government. In this context, his family is also being reportedly the target of harassment.

2. Under the terms of Article 25 of its Rules of Procedure, the IACHR requested information from the State on February 16, 2021, receiving a reply on February 23 and March 9, 2021. The applicants most recently submitted additional information on March 13, 2021.

3. Upon analyzing the available information, in light of the applicable context and the findings made, the Commission considers that the information presented shows *prima facie* that the rights to life and personal integrity of Mr. Gustavo Adolfo Mendoza Beteta, Ms. María del Rosario Beteta Castañeda, Mr. Domingo Mendoza and Ms. Marbely Leal López are in a serious and urgent situation. Consequently, in accordance with Article 25 of the Rules of Procedure, the Commission requests that Nicaragua: a) adopt the necessary measures to protect the rights to life and personal integrity of Mr. Gustavo Adolfo Mendoza Beteta and his nuclear family. In particular, the State must both ensure that its agents respect the rights of the beneficiaries in accordance with the standards established by international human rights law and in relation to acts of risk attributable to third parties; b) adopt the necessary measures to ensure that the detention conditions of Mr. Gustavo Adolfo Mendoza Beteta comply with the applicable international standards; c) consult and agree upon the measures to be adopted with the beneficiaries and their representation; and d) report on the actions taken to investigate the events that led to the adoption of this precautionary measure, so as to prevent such events from reoccurring.

**II. BACKGROUND INFORMATION**

4. The Commission visited Nicaragua in May 2018 and collected several testimonies on human rights violations that allegedly occurred since April, when a series of protests began, later publishing a Report that included recommendations.<sup>1</sup> To verify compliance with these recommendations, the Special Monitoring Mechanism for Nicaragua (MESENI) was created and was present in the country until December 19, 2018, when the State temporarily suspended its operations.<sup>2</sup> For its part, the Interdisciplinary Group of Independent Experts (GIEI) issued a report that analyzed the events taking

<sup>1</sup> IACHR, Serious human rights violations in the context of the social protests in Nicaragua OEA/Ser.L/V/II. Doc. 86, June 21, 2018. Available [in Spanish] at <https://www.oas.org/es/cidh/MESENI/informepais/default.html>.

<sup>2</sup> IACHR, Press Release on Nicaragua, December 19, 2018. Available [in Spanish] at <https://www.oas.org/es/cidh/prensa/comunicados/2018/274.asp>

place between April 18 and May 30, 2018, confirming the IACHR findings.<sup>3</sup>

5. During a presentation before the Permanent Council of the Organization of American States, the Commission shared the data collected by the MESENI, according to which from April 2018 to January 10, 2019, there were 325 deaths and over 2000 injured, 550 detained and prosecuted, 300 health professionals were dismissed, and at least 144 students were expelled from the National Autonomous University of Nicaragua.<sup>4</sup> For its Annual Report 2018, the IACHR included Nicaragua in Chapter IV-B in accordance with the grounds set forth in its Rules of Procedure.<sup>5</sup>

6. During 2019, the Commission continued to condemn the ongoing acts of persecution, urging the State to comply with its obligations. On April 25, the Commission shared the performance report and results achieved by the MESENI, which continued to monitor the country from Washington, D.C.<sup>6</sup> Between February and June, the State passed a Comprehensive Care for Victims Act and an Amnesty Law, both of which caused public statements by the IACHR as they did not comply with the international standards in matters of truth, justice, reparation and guarantees of non-repetition.<sup>7</sup> During the last months, the Commission continued registering serious incidents. For instance, in August it voiced its concern regarding the State's decision of ceasing the "Negotiating Table for Understanding and Peace," which started on February 27, 2019 between the government and the Civil Alliance for Justice and Democracy.<sup>8</sup> On September 6, the IACHR reported an increase in harassment against human rights defenders and persons who, despite having been released from prison, continued to be threatened.<sup>9</sup>

7. On November 19, 2019, the Commission once again called attention to the ongoing repression, noting that "[...] in addition to the closure of democratic spaces that currently characterizes the human rights crisis in Nicaragua, the families of people who have been deprived of their freedom during this crisis are increasingly becoming the targets of state persecution in the form of surveillance and the obstruction of peaceful actions."<sup>10</sup>

8. During 2020, the IACHR verified the intensification of acts of surveillance, harassment, and selective repression against people considered to oppose the Government, and identified a fifth stage of repression in the context of the crisis implemented since mid-2019, which it described as "the most intense and systematic attack on public liberties to have occurred in the country since the beginning of

<sup>3</sup> GIEI, Report on the events of violence that occurred between April 18 and May 30, 2018. December 2018. Available [in Spanish] at [http://gieinicaragua.org/giei-content/uploads/2018/12/GIEI\\_INFORME\\_DIGITAL.pdf](http://gieinicaragua.org/giei-content/uploads/2018/12/GIEI_INFORME_DIGITAL.pdf)

<sup>4</sup> IACHR, IACHR reports the weakening of the rule of law in the face of serious human rights violations and crimes against humanity in Nicaragua, January 10, 2019.

<sup>5</sup> IACHR, IACHR Annual Report 2018, Ch. IV.B. Available [in Spanish] at <http://www.oas.org/es/cidh/docs/anual/2018/docs/IA2018cap.4B.NI-es.pdf>.

<sup>6</sup> QUOTATION

<sup>7</sup> IACHR, IACHR and OHCHR express their concern over the approval of the Law on Comprehensive Attention to Victims in Nicaragua, June 3, 2019. Available [in Spanish] at <http://www.oas.org/es/cidh/prensa/comunicados/2019/137.asp>

See also: IACHR, IACHR expresses its concern over approval of Amnesty Law in Nicaragua, June 12, 2019. Available [in Spanish] at <http://www.oas.org/es/cidh/prensa/comunicados/2019/145.asp>; IACHR considers the Law on Dialogue, Reconciliation and Peace in Nicaragua incompatible with international standards on truth, justice and reparation, February 1, 2019. Available [in Spanish] at <http://www.oas.org/es/cidh/prensa/comunicados/2019/021.asp>

<sup>8</sup> IACHR, IACHR expresses its concern at the announcement by the State of Nicaragua not to continue with the dialogue and calls on the State to comply with its obligations to guarantee and respect human rights, August 6, 2019. Available [in Spanish] at <http://www.oas.org/es/cidh/prensa/comunicados/2019/194.asp>

<sup>9</sup> IACHR, IACHR reports the persistence of repression and expresses its concern over increased harassment against human rights defenders and those released from prison in Nicaragua, September 6, 2019. Available [in Spanish] at <http://www.oas.org/es/cidh/prensa/comunicados/2019/220.asp>

<sup>10</sup> IACHR, IACHR condemns persecution of victims of repression in Nicaragua and calls on the State to avoid re-victimization and to promote truth, justice, reparation and measures of non-repetition, November 19, 2019. Available [in Spanish] at <http://www.oas.org/es/cidh/prensa/comunicados/2019/297.asp>

the crisis.”<sup>11</sup> In May, 2020, the IACHR noted and condemned the non-compliance with its recommendations and urgently called on the State to implement them.<sup>12</sup> In October, 2020, the IACHR again called for an immediate end to the acts of persecution against persons identified as opponents of the government and the restoration of democratic guarantees in Nicaragua.<sup>13</sup>

9. In 2021, the IACHR condemned the increased harassment in Nicaragua.<sup>14</sup> As reported to the IACHR, these acts are manifested in the deployment of police teams including civilians outside targeted homes during whole days. This is carried out to prevent these persons or their relatives from leaving, or otherwise identify and search any person who enters or leaves the place. In other cases, the targets are being followed and are subjected to arrests, threats, and house searches.<sup>15</sup>

### **III. SUMMARY OF FACTS AND ARGUMENTS**

#### **1. Information provided by the applicants**

10. The applicants indicated that the proposed beneficiary Gustavo Adolfo Mendoza Beteta actively participated in the protests that took place in April 2018, mainly by going to the aforementioned demonstrations. As a result, he was detained by the police on May 11, 2018. On that occasion, he was allegedly beaten up by state agents and taken to the Police District II in Managua, where he continued to be assaulted even resulting in a broken collarbone. His family purportedly only learned of his situation two days later as he was “under investigation.” On June 7, 2019, Mr. Mendoza Beteta was convicted in a process purportedly “filled with irregularities” and “political overtones” of the crimes of aggravated robbery against a police officer, who “admitted having been pressured to incriminate him.”

11. On December 30, 2019, the proposed beneficiary was released along with 91 “political prisoners” by the Nicaraguan government. According to the applicants, he was harassed by state and parastatal agents in his home after his release. Whenever he left home, “the police usually searched his wallet, his phone.” Similarly, his family including his parents, Ms. María del Rosario Beteta Castañeda and Mr. Domingo Mendoza, were also harassed by police officers, who “came to their house to photograph them.” On February 1, 2020, State agents “broke into” the home of Mr. Mendoza Beteta’s parents. While visiting, he was violently detained with the police officers pointing guns at everyone including children, even going as far as pointing a gun at his mother’s head. The proposed beneficiary was reportedly released two days later.

12. According to the applicants, the proposed beneficiary had a lot of difficulty working and keeping a steady job after his release because “if he started a business, people began to say that the police came a lot, he set up a tortilla stand where people did not want to stop by because the police followed him often.”

13. On July 29, 2020, Mr. Mendoza Beteta was allegedly detained in a violent manner once more. Someone managed to record the moment of his detention (a copy of the video was provided). It was possible to see “how they strongly held Mr. Mendoza Beteta by the neck, and when he was forced onto the

<sup>11</sup> IACHR, Two years upon the beginning of the human rights crisis in Nicaragua, the IACHR reiterates its permanent commitment to the victims and notes the consolidation of a fifth stage of repression, April 18, 2020. Available [in Spanish] at <http://www.oas.org/es/cidh/prensa/comunicados/2020/080.asp>

<sup>12</sup> IACHR, Two years upon its visit to Nicaragua, the IACHR warns and condemns the non-compliance with its recommendations and urgently calls on the State to implement them, May 16, 2020. Available [in Spanish] at <http://www.oas.org/es/cidh/prensa/comunicados/2020/113.asp>

<sup>13</sup> IACHR, IACHR calls for immediate cessation of acts of persecution against persons identified as opponents of the government and the reestablishment of democratic guarantees in Nicaragua, October 10, 2020. Available [in Spanish] at <http://www.oas.org/es/cidh/prensa/comunicados/2020/249.asp>

<sup>14</sup> IACHR, IACHR Condemns Escalation of Harassment in Nicaragua, January 6, 2021. Available [in Spanish] at <http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/002.asp>

<sup>15</sup> *Idem*.

back of the pick-up, bumps and bruises could be seen on his right cheekbone and eyebrow due to blows by the police officers at the time of the detention.” As indicated in the request, the family was initially informed that “[...] he would be released the following day as he was detained for an alleged alteration of public order; on the third day, police officers reported that they had found drugs on him, for which he was prosecuted.” Additionally, it was added that “the political prisoners who have been detained for a second or third time have been charged with common crimes, mainly organized crime, drug trafficking, among others.”

14. The proposed beneficiary was held in the Jorge Navarro Penitentiary Center (known as “La Modelo”) where he was allegedly subjected to inappropriate conditions of imprisonment including harassment, threats, and acts of violence by state agents. In that sense, he was placed in a small cell shared with 20 others and without the minimum hygiene conditions as there was no bathroom, water, sunlight, or ventilation. The proposed beneficiary had to sleep on the floor and was offered “raw food.” Similarly, over the first days of detention, “he was taken out of his cell in the early hours of the morning so that prison agents could beat him up.”

15. On October 5, 2020, according to the applicants, “the deputy director of the Penitentiary Center made Gustavo [Mendoza Beteta] and other political prisoners sign a document which they could not read. They were simply told that those were orders from above and that they had to comply with them, and they took photos of them as they signed.” Presumably, during the signing of the document, the proposed beneficiary and other prisoners, referred to as “political prisoners” by the applicants, were threatened saying that “Commander Daniel Ortega will remain in power and they cannot not and will not overthrow him.” The request also indicated that “they were verbally mistreated, differently from other inmates.”

16. In November 2020, a group of “political prisoners” purportedly went on a hunger strike as a “protest for their freedom.” As indicated, the proposed beneficiary was threatened of “being forced to disappear” by state agents at the time. It was also added that after the proposed beneficiary’s refusal to “work as an ‘infiltrator’” for the penitentiary agents, he was threatened again being told that “he would face consequences.”

17. On December 31, 2020, Mr. Mendoza Beteta and other “political prisoners” started a hunger strike where, presumably as a form of protest, he stitched his lips together. In response, they received threats by the authorities who ordered that the strings be removed from their mouths which was done violently, “with one pull only” by a prison officer. The applicants also alleged that, during the first week of January 2021, “an ordinary prisoner entered the cell where Gustavo Mendoza was. This person threatened to kill him with a shiv in his hand.” As indicated in the request, “common inmates are constantly encouraged to attack the integrity and life of political prisoners by the guards.” On January 16, 2021, the proposed beneficiary allegedly showed intent to stitch his lips again after the food his family brought him was refused. That same day, prison agents entered his cell “in a hostile manner” and took his belongings and food.

18. The request further alleged that the family of the proposed beneficiary, particularly his wife, Ms. Maribel Leal, and his parents are also subjected to harassment. For example, it was indicated that Ms. Maribel Leal “is forced to sign a document stating that her partner is in optimal conditions and is treated with respect every time she visits. However, at the time of signing this document, she frequently has armed men behind her who also threaten to cancel her visit if she does not sign.” Similarly, the parents of the proposed beneficiary allegedly noticed their house under surveillance by state agents who reportedly park in front of the house and take photos. As indicated, the last time they became aware of these events was in November 2020.

## **2. Response from the State**

19. The State alleged that the proposed beneficiary Gustavo Adolfo Mendoza Beteta “has innumerable arrests and police investigations on record for various common crimes (robbery with intimidation, robbery with force, homicide, psychological violence, threats and drugs).” On December 17, 2018, he was sentenced to four years in prison for the crime of aggravated robbery in the form of intimidation. However, on December 30, 2019, Mr. Mendoza Beteta “was released, as were 90 other detainees for common crimes, under the Special Family Living Arrangement.”

20. On February 3, the proposed beneficiary was allegedly detained in flagrante delicto at his parents’ home for assault to the detriment of his wife Marbely Leal López, “who refused to file a complaint, [...] and released on February 05, 2020.” On July 29, 2020, the proposed beneficiary was detained again upon being found in possession of 205.9 grams of marijuana. It was indicated that due to this, he was sentenced to ten years in prison on November 5, 2020, a sentence appealed on February 2, 2021 (a copy of the court decisions was provided). In this regard, the State alleged that “Mr. Gustavo Adolfo Mendoza Beteta is currently detained in the “Jorge Navarro” (“La Modelo”) National Penitentiary Center in Tipitapa, serving a sentence for an ordinary crime, not for political reasons as he claims.”

21. Regarding the alleged acts of mistreatment by prison authorities, the State indicated that “their databases do not have any records on complaints filed by either Gustavo Adolfo Mendoza Beteta, his wife Marbely Leal López or his family members against any officer in the exercise of their powers or attributions.” Specifically regarding the indications of inadequate detention conditions, the State alleged that Mr. Mendoza Beteta “is placed in a collective cell which he shares only with 3 other prisoners although the cell has the capacity to house 10 people, so clearly there is no overcrowding; this cell has the basic necessary conditions such as water for human consumption, personal hygiene, natural and electric light, ventilation, bathroom, hygienic services and a mat to rest; 3 meals are guaranteed.”

22. Similarly, the State classified as “unfounded” and “false” the allegations of the applicants regarding mistreatment and threats allegedly received in jail by the proposed beneficiary Mendoza Beteta. It was indicated that the prison staff’s surveillance and control system is permanent 24 hours a day and that there were no reported events such as the entry of a prisoner into Mr. Mendoza Beteta’s cell to threaten him with a shiv. Additionally, the proposed beneficiary purportedly received timely medical attention in jail, with the most recent event on February 18, 2021, “adding up to a total of 21 medical care check-ups with healthy physical and psychological results.”

23. Regarding the documents that Mr. Mendoza Beteta’s relatives reportedly had to sign, the State indicated that they refer to “the notification of dates for his next family and conjugal visits as part of the procedure established in the penitentiary regulations.” Specifically regarding the alleged events of January 16, 2021, the State declared that there is no record of any visits or packages by relatives of the proposed beneficiary. “Therefore, the claims by the inmate and his relatives are totally false.” It is also “false” that he stitched his lips together or that he was forced to sign documents. What the proposed beneficiary was allegedly asked to sign were package receipts and information on upcoming family visits. In 2021, he purportedly received six family visits (January 7, 20 and 21, February 4 and 16, and March 1) and three conjugal visits (January 27, February 9 and 23). The State provided photographs of the proposed beneficiary in jail.

24. Given the allegations of the applicants, the State affirmed that “there is no evidence whatsoever of what was biasedly expressed to draw attention and evade his responsibility to serve the sentence imposed. At no time has he been mistreated physically or psychologically, as the prisoners’ human rights are respected and dignified and humane treatment is guaranteed.” In this sense, the State alleged that “there are not enough elements or indications to grant precautionary measures because there is no serious and urgent situation presenting a risk of irreparable harm to Mr. Gustavo Adolfo Mendoza Beteta,

proposed beneficiary of such measures.” Similarly, “the proposed beneficiary did not provide any single documentary, photographic, video or any other evidence that shows at least reasonable indications that his life and physical integrity, that of his family or other third parties’ are threatened or that he has been subjected to beatings or any other form of physical or psychological torture. Finally, “regarding the detentions of Gustavo Adolfo Mendoza Beteta, the National Police and the Penitentiary System have acted in accordance with the rights and guarantees enshrined in the Political Constitution of Nicaragua, and in accordance with the doctrinal principles and actions that govern each State institution.”

### **3. Information provided by the applicant party**

25. In light of the State’s allegations, the applicants provided additional observations. In the first place, it was alleged that there is inconsistency on the side of the State in indicating that the proposed beneficiary is not a “political prisoner,” since he was released along with a group of 91 “political prisoners” on December 30, 2019 “as part of ‘the will to contribute to national reconciliation’ as expressed in the statement by the Ministry of the Interior.”<sup>16</sup>

26. Second, the applicants emphasized, regarding the State’s allegation that the proposed beneficiary Mendoza Beteta had been detained in flagrante delicto for violence against his wife, that she and other relatives “fully” deny that information. They even claimed that “at the time of the detention, the agents trespassed on his home and pointed weapons at the children and relatives present and stated that they were detaining Mr. Mendoza due to an alleged robbery. However, he was released after two days of detention.” In this regard, the applicants stated that “it is important to clarify that this version [the State’s] is consistent with a practice at the domestic level involving discrediting and smearing a person in order to allegedly evade its obligation to protect and guarantee their rights.”

27. Third, it was pointed out that the State “conveniently” did not make any statement regarding the “violence used at the time of his detention on June 19, 2020, which was proven by video”; or the “surveillance, threats, and harassment suffered by Gustavo Mendoza and his family in their home since his release with the group of 91 political prisoners on December 30, 2019”; as well as failed to provide a copy of legal reports on the health status of the proposed beneficiary although it was alleged that he had received medical attention. In this regard and considering that some of the applicants’ allegations refer to facts against relatives of the proposed beneficiary, the applicants argued that “upon learning of these facts, the State should not limit itself to denying them, but, on the contrary, should have initiated serious, exhaustive, and impartial investigations,” mainly in light of allegations such as torture.

28. In relation to the State’s assertion that no supporting documentation (e.g., photographs or documents) has been submitted in support of the allegations herein, the applicant further alleged that the proposed beneficiary “is under the prison authorities’ control, and that it is not possible to obtain these elements, since the entry of cell phones is forbidden.” At the same time, the applicant recalled that Ms. Marbely Leal López had publicly reported the torture and mistreatment purportedly received by Gustavo Mendoza in prison on August 21, 2020.<sup>17</sup>

29. Finally, the applicant alleged that, on February 23, 2021, the proposed beneficiary reported that “he continues to be a victim of mistreatment and psychological torture, always subjected to discrimination due to his political position.”

<sup>16</sup> Nicaragua, Ministry of the Interior, “Press Release”, December 30, 2019. Available [in Spanish] at <https://www.el19digital.com/articulos/ver/titulo:98456-comunicado-del-ministerio-de-gobernacion>.

<sup>17</sup> La Prensa, UDJ and relatives of political prisoners condemn the arbitrary conditions and risky conditions in which political prisoners live, August 21, 2020. Available [in Spanish] at <https://www.laprensa.com.ni/2020/08/21/derecho-humano-ni/2710711-cenidh-udj-y-familiares-de-reos-politicos-condenan-las-detenciones-arbitrarias-y-condicion-de-riesgo-en-que-viven-los-presos-politicos>.

#### **IV. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY, AND IRREPARABLE HARM**

30. Precautionary measures are one of the Commission’s mechanisms for overseeing compliance with human rights obligations, as set forth in Article 106 of the OAS Charter. These general oversight functions are established in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the IACHR’s Statute. The mechanism of precautionary measures is set forth in Article 25 of the Commission’s Rules of Procedure. In accordance with that article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid irreparable harm to persons.

31. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have repeatedly established that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while it is being considered by the IACHR. Their precautionary nature aims at safeguarding the rights at risk until the request pending before the Inter-American System is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, in this way, to prevent the alleged rights from being violated, a situation that could render the final decision innocuous or detract from its useful effect (*effet utile*). In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, to implement the remedies required. For purposes of decision making, and in accordance with Article 25(2) of the Rules of Procedure, the Commission considers that:

- a. “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;
- b. “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. “irreparable harm” refers to impact on rights which, due to their nature, would not be susceptible to reparation, restoration, or adequate compensation.

32. The Commission recalls that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.<sup>18</sup>

33. As a preliminary matter, the IACHR notes that it is not called upon to find any criminal liability of individuals in these proceedings. Nor is it appropriate, through precautionary measures, to rule on State responsibility in light of the American Convention in relation to alleged violations of due process. Given the analysis on the merits required, the Commission recalls that such allegations can be assessed as part of an eventual petition or case. In this regard, the analysis below will focus exclusively on the requirements of Article 25 of the Rules of Procedure.

34. When assessing compliance with the procedural requirements, the Commission takes Nicaragua’s current context into account, which was verified by the Commission and is being monitored by MESENI, as well as the special situation of exposure in which the persons who demonstrated against the repressive actions of the current government are allegedly found. In this context, in its report on “Persons Deprived

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<sup>18</sup> In this regard, for example, referring to provisional measures, the Inter-American Court has indicated that a minimum of detail and information is required to *prima facie* assess an extremely serious and urgent situation. IACHR, Matter of Children and adolescents deprived of liberty in the “Complexo do Tatuapé” of the Fundação CASA. Request for extension of provisional measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

of Liberty in Nicaragua,”<sup>19</sup> the IACHR has gathered testimonies that show practices in line with the allegations in this request. In this regard, the Commission received information that allegedly identified in 2020 a “phenomenon of ‘revolving door,’ that is, a dynamic in which a similar number of people are detained and released in the same period of time, which, [...] allegedly has the purpose of maintaining the pattern of arbitrary detentions as a strategy to inhibit the opposition and deny the existence of ‘political prisoners’.”<sup>20</sup> Moreover,

the information available to the IACHR reportedly indicates a change in the patterns of criminalization against opponents that, in addition to revealing the complete absence of an impartial and independent justice system, allegedly has the purpose of hiding the fact that the prosecution of individuals was based on political reasons. In particular, those arbitrarily detained were charged with ordinary crimes such as robbery, threats and illegal possession of weapons instead of the pre-established charges for the commission of various crimes such as terrorism and organized crime.

35. Similarly, the IACHR has gathered information on the conditions of detention in Nicaragua, which indicated that “[...] most of the testimonies received on cruel, inhumane, or degrading treatment or punishment reveal that they were committed during deprivation of liberty, in El Chipote and/or police stations in different departments of the country, and later, in La Modelo and La Esperanza.”<sup>21</sup> Particularly in the Jorge Navarro Penitentiary (“La Modelo”), where the proposed beneficiary is located, a “[...] worsening of the situation of conditions of deprivation of liberty was observed, including reprisals by the Government against those who remained in detention [...]”. In this regard, the IACHR warned of “the repeated occurrence of operations by riot police who burst into the cells unexpectedly to attack people with blows, kicks and police batons.”<sup>22</sup>

36. In addition, the Commission deems it appropriate to make reference to the findings of the Inter-American Court, in the adoption of provisional measures in the Case of Seventeen Persons Deprived of Liberty Regarding Nicaragua<sup>23</sup> in relation to the “La Modelo” prison, observing that “[...] the hygienic conditions were precarious because the inmates lacked adequate access to electricity and drainage services, and were exposed to the presence of insects; [...] that they received food in poor condition, and that they lacked natural light for prolonged periods of time,” among others. Furthermore, the IACHR received information indicating that “[...] the tension between the persons deprived of liberty and the prison system officers was constant. The poor conditions of confinement and overcrowding, in addition to the daily humiliations to which the inmates were subjected, generated a climate of dispute inside the prison.”<sup>24</sup>

37. In its report on “Persons Deprived of Liberty in Nicaragua,” the IACHR also emphasized that “[...] in Nicaragua there persists a systematic practice of violations of the rights of relatives [of persons deprived of liberty], consisting of harassment, threats, intimidation and denial of justice.”<sup>25</sup> Additionally, the IACHR has noted

the practice of using persons deprived of liberty in montages to show that they were receiving

<sup>19</sup> IACHR, Persons Deprived of Liberty in Nicaragua, OEA/Ser.L/V/II. Doc. 287. October 5, 2020. Available [in Spanish] at <http://www.oas.org/es/cidh/informes/pdfs/Nicaragua-PPL-es.pdf>.

<sup>20</sup> IACHR, Persons Deprived of Liberty in Nicaragua, October 5, 2020, para. 269.

<sup>21</sup> IACHR, Persons Deprived of Liberty in Nicaragua, October 5, 2020, para. 155.

<sup>22</sup> IACHR, Press Release No. 51/19 - IACHR urges to ensure conditions conducive to the enjoyment of human rights in Nicaragua ahead of dialogue process, Washington, D.C., February 28, 2019.

<sup>23</sup> I/A Court H.R. Matter of Members of the Nicaraguan Center for Human Rights and the Permanent Commission on Human Rights (CENIDH-CPDH) regarding Nicaragua. Adoption of Urgent Provisional Measures. Resolution of the President of the Inter-American Court of Human Rights of July 12, 2019.

<sup>24</sup> IACHR, Persons Deprived of Liberty in Nicaragua, October 5, 2020, para. 165.

<sup>25</sup> IACHR, Persons Deprived of Liberty in Nicaragua, October 5, 2020, para. 200.



adequate treatment, visits and medical care. For example, on January 23, 2019, when a delegation from the European Parliament had access to detainees in La Esperanza and El Chipote, it confirmed concerns about the health of the detainees and about the general confinement conditions.<sup>26</sup>

38. As a reference, the IACHR has also identified specific situations of risk for which it has issued precautionary measures. For example, the Commission is aware of the case of Maycol Antonio Arce and 40 other persons deprived of their liberty,<sup>27</sup> in which it was observed that the beneficiaries, who identified themselves as “political prisoners,” were also subjected to harassment, aggression, threats and other acts of violence as a result of their opposition. On that occasion, the IACHR noted that “[...] there allegedly is a special animosity or hostility from the penitentiary authorities towards the identified persons. Such qualification made by the applicants, [...] have as a common element that they occur in the context of a human rights crisis, which began in April 2018 and lasts to this day [...]”.<sup>28</sup>

39. In view of this context, the IACHR considers that the requirement of seriousness has been met, since the proposed beneficiary Gustavo Adolfo Mendoza Beteta is allegedly being subjected to inadequate conditions of detention, threats, and harassment, allegedly as a result of actions in opposition to Nicaragua’s current government, in circumstances substantially similar to those previously found. In particular, the Commission notes that the proposed beneficiary purportedly is in a “small cell that he shares with 20 people, without the minimum hygiene conditions, as there allegedly is no bathroom, well water, sunlight or ventilation. He reportedly sleeps on the floor and is offered raw food” (see *supra* para. 14). It is also noted that he had been subjected to aggressions and threats by prison officers or other state authorities, providing examples of beatings, acts of violence —including one officer having “yanked” the threads out of his darned mouth in protest— and threats, including threats of “being disappeared” (see, respectively, *supra* paras. 14-17).

40. The IACHR takes note of the seriousness of these allegations and observes that, according to the applicant, Mr. Mendoza Beteta’s treatment is purportedly connected to his actions in opposition to the Government. Although it is not appropriate to determine at this time the legality of the proposed beneficiary’s criminal conviction or even whether he is in fact a “political prisoner” —since this allegedly necessarily implies assessing the arbitrariness of his detention and prosecution, which is not within the scope of the precautionary measures mechanism—, the Commission holds that, based on the information provided by the applicants (see *supra* paras. 15-17), it can be reasonably concluded that there is some animosity against the proposed beneficiary, which in turn may have an impact on the worsening of his situation of risk. In this regard, it should be recalled, as already stressed (see *supra* paras. 35-36), the information received on harassment and aggressions against persons perceived as opponents of the Government of Nicaragua in prison, including the granting of precautionary measures in specific situations<sup>29</sup> (see *supra* para. 38).

41. In addition, the IACHR notes that the applicant also alleged the existence of events of risk prior to Mr. Mendoza Beteta’s current deprivation of liberty, purportedly related to his political opposition work, with the alleged participation of State agents. In this regard, the IACHR notes that the applicant indicated acts of harassment by state and “para-statal” agents at the proposed beneficiary’s house, as well as police surveillance, reporting, for example, that when he went out, “the police usually searched his wallet, his phone” and that he was unable to keep a job because “people did not even want to associate with him

<sup>26</sup> IACHR, Persons Deprived of Liberty in Nicaragua, October 5, 2020, para. 136.

<sup>27</sup> IACHR, Maycol Antonio Arce and 40 other persons deprived of their liberty regarding Nicaragua, Resolution 82/2020 (PM 489-20), November 2, 2020. Available [in Spanish] at <https://www.oas.org/es/cidh/decisiones/pdf/2020/82-20mc489-20-ni.pdf>.

<sup>28</sup> IACHR, Maycol Antonio Arce and 40 other persons deprived of their liberty regarding Nicaragua, Resolution 82/2020 (PM 489-20), November 2, 2020, para. 110.

<sup>29</sup> IACHR, Amaya Coppens *et al.* regarding Nicaragua, Resolution 62/2019 (PM 1105-19), December 24, 2019. Available [in Spanish] at <https://www.oas.org/es/cidh/decisiones/pdf/2019/62-19mc1105-19-ni.pdf>.

because they said that the police a lot followed him” (sic) (see *supra* paras. 11-12). In this regard, the Commission observes that these allegations, which have not been refuted by the State, reinforce the allegations made by the applicant that the proposed beneficiary allegedly faces a particular situation of risk, as well as the alleged relation to his opposition to the Government.

42. Moreover, it is noted that the alleged situation presenting a risk against Mr. Mendoza Beteta purportedly extends to his family, including his parents María del Rosario Beteta Castañeda and Domingo Mendoza, and his wife, Marbely Leal López. According to the information provided by the applicant, State agents “burst” into the house of Mr. Mendoza Beteta’s parents, reportedly to arrest him, and children and other persons present were reportedly threatened (see *supra* para. 11). Furthermore, Mr. Mendoza Beteta’s parents alleged that there was surveillance in their house, also by state agents, who reportedly stand in front of the house and take pictures. Moreover, Ms. Marbely Leal López allegedly continues to be harassed on the occasions she visits Mr. Mendoza Beteta in prison (see *supra* para. 18). In this context, the Commission understands that, despite the purported involvement of State agents, the State has not implemented any protective measures in favor of the proposed beneficiary’s family or informed about relevant investigative actions.

43. The Committee takes note of the response provided by the State regarding the proposed beneficiary’s situation. Although the Commission appreciates what has been stated regarding the circumstances of the deprivation of liberty and subsequent prosecution of the proposed beneficiary, the Commission notes that, beyond arguing that the applicants’ allegations lack sufficient credibility, the State did not provide further evidence to disprove them under the applicable *prima facie* standard. In particular, no medical certificates have been attached to demonstrate the proposed beneficiary’s state of health, nor information on investigations, determination of those responsible or relevant protection measures implemented, which is particularly relevant given the seriousness of the allegations, which include alleged acts of “mistreatment” by state agents. Regardless of the reasons for which a person is deprived of his or her liberty, the State has the obligation to guarantee his or her rights to life and personal integrity. On this point, the Commission recalls that the State is in a position of special guarantor of the rights of the proposed beneficiary, who is in its custody. This is the result of the special relationship and interaction of subordination between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate his rights and obligations [...] due to the very circumstances of confinement, in which the inmate is prevented from satisfying on his own a series of basic needs essential for the development of his life with dignity.”<sup>30</sup>

44. In these circumstances, the Commission considers that the facts alleged by the applicant, which were not adequately contested by the State, and in light of Nicaragua’s current context, are likely to seriously affect the rights to life and personal integrity of the proposed beneficiary and his nuclear family. Thus, the Commission concludes, from the applicable *prima facie* standard, that the rights to life and personal integrity of Mr. Gustavo Adolfo Mendoza Beteta, Ms. María del Rosario Beteta Castañeda, Mr. Domingo Mendoza and Ms. Marbely Leal López are at serious risk.

45. Regarding the requirement of urgency, the Commission considers that it has also been met. If the proposed beneficiary were to remain in the situation described, he is likely to be exposed to imminent harm to his rights due to the recurring threats in a short period of time and the materialization of acts of violence against him. Consequently, the Commission deems that it is necessary to immediately adopt protective measures to safeguard his rights to life and personal integrity.

46. With regard to the requirement of irreparable harm, the Commission maintains that it has been

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<sup>30</sup> I/A Court H.R. Case of the “Juvenile Reeducation Institute” v. Paraguay, Judgment of September 2, 2004, paragraph 152. Available [in Spanish] at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_112\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_112_esp.pdf).

met, since the possible impact on the rights to life and personal integrity, by their very nature, constitutes the maximum situation of irreparability.

## **V. BENEFICIARIES**

47. The Commission declares that the beneficiaries of this precautionary measure are Mr. Gustavo Adolfo Mendoza Beteta, Ms. María del Rosario Beteta Castañeda, Mr. Domingo Mendoza and Ms. Marbely Leal López, who are duly identified in these proceedings.

## **VI. DECISION**

48. The Commission considers that this matter meets, *prima facie*, the requirements of seriousness, urgency and irreparable harm set forth in Article 25 of the Rules of Procedure. Consequently, the Commission requests that Nicaragua:

- a) adopt the necessary measures to protect the rights to life and personal integrity of Mr. Gustavo Adolfo Mendoza Beteta and his nuclear family. In particular, the State must ensure that its agents respect the rights of the beneficiaries in accordance with the standards established by international human rights law and in relation to acts of risk attributable to third parties;
- b) adopt the necessary measures to ensure that the detention conditions of Mr. Gustavo Adolfo Mendoza Beteta comply with the applicable international standards;
- c) consult and agree upon the measures to be adopted with the beneficiaries and their representation; and
- d) report on the actions taken to investigate the events that led to the adoption of this precautionary measure, so as to prevent such events from reoccurring.

49. The Commission also requests that the Government of Nicaragua inform the Commission within 15 days from the date of this resolution, on the adoption of the precautionary measures agreed upon and to update this information on a regular basis.

50. The Commission emphasizes that, in accordance with Article 25(8) of the Commission's Rules of Procedure, the granting of precautionary measures and their adoption by the State does not constitute a prejudgment regarding the possible violation of the rights protected in the American Convention or other applicable instruments.

51. The Commission instructs its Executive Secretariat to notify the State of Nicaragua and the applicants of this Resolution.

52. Approved on April 30, 2021 by: Antonia Urrejola, President; Julissa Mantilla, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay; Esmeralda Arosemena de Troitiño; Joel Hernández; and Stuardo Ralón, members of the IACHR.

Marisol Blanchard  
Assistant Executive Secretary