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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 67/2021**

Precautionary Measure No. 584-21

**José Bernard Pallais Arana regarding Nicaragua**

August 24, 2021

Original: Spanish

**I. INTRODUCTION**

1. On June 24, 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 Nicaraguan Center for Human Rights (CENIDH) (“the applicants”), urging the Commission to request that the State of Nicaragua (“the State” or “Nicaragua”) adopt the necessary measures to protect the rights to life, personal integrity, and health of José Bernard Pallais Arana (“the proposed beneficiary”). According to the applicants, the proposed beneficiary is at risk because he suffers from serious chronic diseases and has been deprived of his liberty since June 9, 2021. His whereabouts or detention conditions are unknown.

2. Pursuant to Article 25(5) of its Rules of Procedure, the IACHR requested information from both parties on July 6, 2021, and subsequently, requested additional information from the applicants on July 9. The State submitted the requested information on July 9, while the applicants provided information on July 14. On August 4, 2021, the IACHR forwarded the information provided by the applicants to the State, which sent its observations on August 5.

3. Upon analyzing the submissions of fact and law furnished by the parties in the context in which they take place, the Commission considers that the information presented shows *prima facie* that Mr. Pallais Arana is in a serious and urgent situation, given that his rights to life and personal integrity are at risk of irreparable harm. Consequently, the Commission requests that Nicaragua: a) adopt the necessary measures to protect the rights to life, personal integrity, and health of Mr. José Bernard Pallais Arana; b) ensure that the conditions of his detention are compatible with applicable international standards on the matter; c) taking into account the situation presenting a risk to his life, personal integrity, and health as a result of the circumstances surrounding his current deprivation of liberty, assess the possibility of granting alternative measures to the deprivation of liberty, in accordance with its internal regulations and in light of the applicable inter-American standards; and d) report on the actions taken to investigate the alleged events that led to the adoption of this resolution, so as to prevent them from reoccurring.

**II. BACKGROUND INFORMATION**

4. Between May 17 and 21, 2018, the Commission visited Nicaragua and collected several testimonies on human rights violations committed in the framework of the protests that began the previous month. Subsequently, on June 21, 2018, the IACHR published a report on the serious human rights situation in the country.<sup>1</sup> In order to follow up on the recommendations issued in this report, the Special Monitoring Mechanism for Nicaragua (MESENI) was created, which remained in the country until the State suspended its presence on December 19, 2018.<sup>2</sup> For its part, the Interdisciplinary Group of Independent Experts (GIEI) for Nicaragua issued a report that analyzed the events that took place between April 18 and May 30, 2018,

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<sup>1</sup> IACHR. [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#). OEA/Ser.L/V/II. Doc. 86. June 21, 2018, para. 1.

<sup>2</sup> IACHR. [Press Release No. 135/18](#). IACHR Launches Special Monitoring Mechanism for Nicaragua (MESENI). June 24, 2018; IACHR. [Press Release No. 274/18](#). Press Release about Nicaragua. December 19, 2018. See also: IACHR. [Press Release No. 113/20](#). Two Years After Visit to Nicaragua, IACHR Condemns Lack of Compliance with its Recommendations and Calls on the State to Urgently Implement Them. May 16, 2020.

confirming the IACHR findings.<sup>3</sup> In its Annual Report 2018, the IACHR included Nicaragua in Chapter IV.B, in accordance with the grounds established in its Rules of Procedure.<sup>4</sup>

5. During 2019, the Commission continued to condemn the ongoing acts of persecution, urging the State to comply with its obligations in matters related to human rights.<sup>5</sup> In June, the State passed a Comprehensive Care for Victims Act and an Amnesty Law, both of which drew criticism for not complying with the international standards in matters of truth, justice, reparation, and guarantees of non-repetition.<sup>6</sup> On September 2019, the IACHR reported an increase in harassment against human rights defenders and persons who, despite having been released from prison, continued to be intimidated.<sup>7</sup> In the same regard, on November, 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>8</sup>

6. Subsequently, the Commission again included Nicaragua in Chapter IV.B of its Annual Report 2019,<sup>9</sup> noting that the serious human rights crisis in the country extended during 2019, due to the de facto installation of a state of emergency characterized by the abusive exercise of public force to repress any dissenting voices against the Government, the search, closure and censorship of media outlets, the imprisonment or exile of journalists and social leaders, the closure of civil society organizations without guarantees of due process, as well as the interference and control of the Executive Power over other public powers. Similarly, the Commission observed that the prolonged weakening of democratic institutions in Nicaragua has perpetuated the human rights crisis in the country and has led to structural impunity for serious human rights violations.<sup>10</sup>

7. During 2020, the IACHR identified the consolidation of a fifth stage of state repression in the country, characterized by the intensification of acts of surveillance, harassment, and selective repression against people considered to be opponents of the Government.<sup>11</sup> Thus, in May 2020, the IACHR condemned the non-compliance with its recommendations and urged the State to implement them.<sup>12</sup> In October 2020, the IACHR again called on the State to immediately cease persecution of persons identified as dissidents and to reestablish democratic guarantees in Nicaragua.<sup>13</sup> Subsequently, the Commission once again included Nicaragua in Chapter IV.B of its Annual Report 2020.<sup>14</sup>

<sup>3</sup> Interdisciplinary Group of Independent Experts (GIEI) for Nicaragua. [Report on the acts of violence occurred between April 18 and May 30, 2018](#), December 2018 [only in Spanish].

<sup>4</sup> IACHR. [Annual Report 2018. Chapter IV.B Nicaragua](#).

<sup>5</sup> See in this regard: IACHR. [Press Release No. 6/19](#). IACHR denounces the weakening of the rule of law in the face of serious human rights violations and crimes against humanity in Nicaragua. January 10, 2019; IACHR. [Press Release No. 26/19](#). IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua. February 6, 2019; IACHR. [Press Release No. 90/19](#). IACHR Condemns Continuing Acts of Repression in Nicaragua during Negotiating Table Talks. April 5, 2019.

<sup>6</sup> IACHR. [Press Release No. 137/19](#). IACHR and OHCHR Express Concern Over the Passing of the Comprehensive Care for Victims Act in Nicaragua. June 3, 2019; IACHR. [Press Release No. 145/19](#). IACHR Expresses Concern Over the Passing of the Amnesty Law in Nicaragua. June 12, 2019.

<sup>7</sup> IACHR. [Press Release No. 220/19](#). IACHR Speaks Out Against Ongoing Repression in Nicaragua and Expresses Its Concern at Increased Harassment of Human Rights Defenders and People Who Have Been Released from Prison. September 6, 2019.

<sup>8</sup> IACHR. [Press Release No. 297/19](#). IACHR Condemns Persecution of Victims of Repression in Nicaragua and Calls on State to Prevent Revictimization and Promote Truth, Justice, Reparation, and Measures of Nonrepetition. November 19, 2019.

<sup>9</sup> IACHR. [Annual Report 2019. Chapter IV.B Nicaragua](#). OEA/Ser.L/V/II. Doc. 5, February 24, 2020, paras.5 and 6.

<sup>10</sup> IACHR. [Annual Report 2019. Chapter IV.B Nicaragua](#). OEA/Ser.L/V/II. Doc. 5, February 24, 2020, para. 19.

<sup>11</sup> IACHR. [Press Release No. 80/20](#). Two Years into Nicaragua’s Human Rights Crisis, the IACHR Stresses its Permanent Commitment to Victims and Confirms the Consolidation of a Fifth Phase of Repression. April 18, 2020.

<sup>12</sup> IACHR. [Press Release No. 113/20](#). Two Years After Visit to Nicaragua, IACHR Condemns Lack of Compliance with its Recommendations and Calls on the State to Urgently Implement Them. May 16, 2020.

<sup>13</sup> IACHR. [Press Release No. 249/20](#). IACHR Calls for Persecution of People Identified as Dissidents to End and for Democratic Guarantees to be Reestablished in Nicaragua. October 10, 2020.

<sup>14</sup> IACHR. [Annual Report 2020. Chapter IV.B Nicaragua](#), February 2021, paras. 5 to 29.

8. In 2021, the Commission condemned the increasing acts of harassment in the country against persons identified as opponents of the Government, human rights defenders, and the independent press,<sup>15</sup> as well as the widespread impunity and the prolonged breakdown of the rule of law that persists in Nicaragua.<sup>16</sup> More recently, the IACHR and the Regional Office of the United Nations High Commissioner for Human Rights (OHCHR) for Central America and Dominican Republic condemned the criminal prosecution of Nicaraguan opposition leaders and urged the State to release all the persons detained in the context of the crisis.<sup>17</sup> Moreover, on August 11, 2021, the Commission condemned the systematic set of state actions carried out in recent months with the aim of preventing the opposition from participating in the general elections to be held in Nicaragua in November of this year, as well as the ongoing human rights violations in this context, urging the State to cease repression against people opposed to the government.<sup>18</sup>

### III. SUMMARY OF FACTS AND ARGUMENTS

#### A. Information provided by the applicants

9. Mr. Pallais Arana is a lawyer. He was Vice-Chancellor and Vice-Minister of the Interior of Nicaragua from 1990 to 1995. He has been a member of the Blue and White National Unity (UNAB), director of the Broad Front for Democracy (FAD), and Coordinator of the International Group of that organization.<sup>19</sup>

10. According to the applicants, since 2018, the proposed beneficiary has been subjected to surveillance and harassment by police officers and paramilitaries. Thus, on November 28, 2018, in front of his house, in the city of León, there was a strong police deployment carrying war weapons and threatening everyone who entered and left. The following day, November 29, the police returned to his home, shouting insults, demanding that he leave, and trying to enter. Then, on November 30, the officers were at the main entrance of the house carrying war weapons from noon to 2:00 p.m.

11. Throughout December 2018, as well as January 22 and February 15, 2019, the proposed beneficiary continued to suffer police harassment and siege at his home by police and parastatal officers. He also received threats through social media and by phone calls, from people who did not identify themselves. During 2019 and 2020, Mr. Pallais Arana continued to be watched in front of his house and on the corners of it. In October 2020, his home was painted with threats that read: “*plomo*” [an expression that, since 2018, reportedly has a death threat connotation in Nicaragua] and “watched.” The applicants reported that the proposed beneficiary has been labeled as a “coup plotter,” “terrorist,” and “*vendepatria*” [which means “one who sells their country”], allegedly due to his social and political leadership.

12. More recently, on June 8, 2021, at night, persons in civilian clothes showed up at Mr. Pallais Arana’s home, broke the security cameras, and destroyed a gate. The following day, June 9, his home was surrounded by police officers from early morning. At approximately 11:00 a.m., the León Police Chief entered the house and detained the proposed beneficiary, without an arrest warrant and without informing the reasons for his detention or the place where he would be transferred. While inside the house, the Police Chief posed for

<sup>15</sup> IACHR. [Press Release No. 152/21](#). IACHR Condemns the Serious Escalation of Repression in Nicaragua. June 18, 2021.

<sup>16</sup> IACHR. [Press Release No. 93/21](#). Three Years After the Start of the Human Rights Crisis in Nicaragua, IACHR Condemns Ongoing Impunity. April 19, 2021.

<sup>17</sup> IACHR. [Press Release No. 145/21](#). IACHR and OHCHR Categorically Condemn Criminal Prosecution of Presidential Precandidates and Urge State of Nicaragua to Release Them Immediately. June 9, 2021; IACHR. [Press Release No. 171/21](#). Nicaragua: IACHR and OHCHR Demand an End to Arbitrary Arrests and the Release of All Individuals Detained Since the Start of the Crisis in Nicaragua. July 9, 2021.

<sup>18</sup> IACHR. [Press Release No. 209/21](#). IACHR condemns the set of state actions that aim to put an end to the participation of the opposition in the next elections in Nicaragua. August 11, 2021 [only in Spanish].

<sup>19</sup> According to the requesting party, on behalf of the FAD, Mr. Pallais Arana has been part of the Security Commission and the International Commission, both of the Blue and White National Unit. He has coordinated the development of the UNAB international strategy and advocacy work with international entities whose mandate is to ensure human rights, democracy, and anti-corruption.

pictures holding Mr. Pallais Arana's arm, which was disseminated on official social media where he was subjected to humiliation and ridicule. That same day, the National Police issued a press release announcing the proposed beneficiary's detention for having perpetrated acts related to Law No. 1055 ("Law for the Defense of the Rights of the People to Independence, Sovereignty and Self-Determination for Peace"), which, according to the applicants, is used to prosecute people opposed to the Government.

13. On June 11, 2021, the Public Ministry issued a statement, which indicates that, on the same day, a request was filed for a "Special Hearing on Constitutional Guarantees for Extension of the Investigation and Detention Period" against the proposed beneficiary because "he was being investigated for strong indications that he has attacked Nicaraguan society and the rights of the people, in accordance with Law No. 1055." The said press release also reported that, on June 11, the hearing was held, stating that the request was admitted by the court, decreeing 90 days of detention. The applicants indicated that this hearing was held in secret and without the presence of the proposed beneficiary's legal representation.

14. According to the applicants, since his detention, Mr. Pallais Arana's whereabouts have remained unknown, and he has not had access to his criminal file. Due to the lack of information from the authorities, it is said that the proposed beneficiary is being held at the Directorate of Legal Aid, known as "El Chipote," but that his relatives and lawyer have not been allowed to visit him or establish any contact with him.

15. The applicants alleged that he suffers from serious chronic diseases, and it is unknown whether he is receiving the medical care he requires. In this sense, Mr. Pallais Arana suffers from diabetes, arterial hypertension, glaucoma, obesity, sleep apnea, and edema in his lower extremities. In the first days of July 2021, rumors circulated on social media that the proposed beneficiary had been hospitalized. However, his family has not received any information from state authorities in this regard.

16. The applicants reported that various appeals have been submitted to the competent authorities. Thus, on June 14, 2021, an attempt was made to submit a writ to the Public Ministry informing the chronic ailments that the proposed beneficiary suffers from, but the institution refused to receive it. That same day, the proposed beneficiary's son, Mr. José Bernard Pallais Herdocia, tried to file a writ before the Directorate of Legal Aid of the National Police requesting that he undergo a medical assessment and that he be allowed visits from his relatives. However, the officers refused to receive the writ, indicating that the request should be filed to the Courts.

17. On June 15, 2021, a writ was filed with the Seventh Criminal District Court of Managua, requesting the appointment of a lawyer as defender of the proposed beneficiary, and informing about his health conditions, asking for an authorization to visit him in prison, as well as a copy of the case file. On June 18, the Court accepted the appointment of the lawyer, but rejected the other requests, arguing that the proposed beneficiary "is at the command of the police authority, which is why this is the institution in charge of administratively processing everything that has been requested."

18. On June 21, 2021, a writ of *habeas corpus* was filed, which was rejected by the Managua Court of Appeals on June 22. Then, on June 25, a writ was again submitted to the Directorate of Legal Aid of the National Police, reiterating the chronic illnesses that Mr. Pallais Arana has, which was received by the authorities at the insistence of his son. However, to date, there is still no response on this request.

19. Then, on July 6 and 7, 2021, National Police officers prevented the proposed beneficiary's relatives from entering when they visited the police complex, to bring him food. On July 6, the proposed beneficiary's wife, Ms. Jilma Herdocia Balladares, along with other relatives of "political prisoners," requested authorization to visit the proposed beneficiary before the Directorate of Legal Aid. However, no response has been received to date.

20. More recently, on July 8, 2021, a request was filed before the Seventh Criminal District Court of Managua for a new special hearing on the protection of constitutional guarantees, as well as an authorization to communicate with Mr. Pallais Arana and visit him. However, he has not received any response to date.

#### **B. Information provided by the State**

21. The State expressed that it fully complies with the principles and guarantees established in its political constitution, in addition to guaranteeing and protecting the human rights of all persons without any type of discrimination. Therefore, it was asserted that Mr. Pallais Arana's human rights are protected by the State, without any situation entailing a risk to his life, integrity, dignity, health, or any other human right, more than those that the constitution establishes as a limit to guarantee the rights of others and the domestic legal order.

22. As for Mr. Pallais Arana's situation, the State reported that the proposed beneficiary "is being investigated or prosecuted for the commission of common crimes, previously defined in [its] legal system and, as such, he is subject to the corresponding legal proceedings." Moreover, it was noted that "the criminal investigation against José Bernard Pallais Arana falls within the jurisdiction of [its] authorities and that the process is carried out under the most absolute respect for the principles and guarantees that inspire [its] legal system." In this regard, the State asserted that the corresponding authorities have guaranteed that each and every investigative and jurisdictional step is carried out respecting Mr. Pallais Arana's procedural guarantees, complying with the principles of legality, due process, and effective judicial protection. By virtue of the foregoing, the State stated that an alleged extremely serious and urgent situation demanding the adoption of measures to avoid an irreparable harm does not exist, and therefore, it requested that the IACHR not admit this request for precautionary measures in favor of Mr. Pallais Arana.

23. On another note, the State indicated that "the CENIDH entity does not have the necessary legal capacity to act before the Commission, in accordance with provisions of Article 23 of the Statute of the Inter-American Commission on Human Rights." Thus, it was reported that "the CENIDH entity is not legally recognized by the State of the Republic of Nicaragua, as the cancellation of its legal personality has been ordered by Legislative Decree No. 8509, passed on December 12, 2018, by the National Assembly and published in La Gaceta, Official Journal No. 245 of December 18, 2018, and Legislative Decree No. 381 of September 26, 1990, published in La Gaceta, Official Journal No. 206 of October 26, 1990, which granted legal personality to CENIDH."

24. Lastly, the State "emphatically rejected any interference by the Inter-American Commission on Human Rights in matters that are part of [its] sovereignty," affirming that "criminal proceedings processed under [its] domestic legal system are exclusive competence of the corresponding national authorities and institutions." In this sense, the State "strongly reproaches and does not accept that the Commission continues to support the dissemination of falsehoods created by a group of *vendepatria* opponents that seek to be the beneficiaries of precautionary measures, with the malicious intention of hiding behind them to prevent law application." The State requested from the Commission, "objectivity and true protection of the human rights of the Nicaraguan people," as well as that it "stop interfering in [its] affairs and not continue to engage in discrediting gambling against [its] legally constituted government."

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

25. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with human rights obligations, as established in Article 106 of the Charter of the Organization of American States. These general oversight functions are established in Article 18 (b) of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm.

26. 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.<sup>20</sup> Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.<sup>21</sup> To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and how vulnerable the persons proposed as beneficiaries would be left in case the measures are not adopted.<sup>22</sup> Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. The purpose of precautionary measures is to preserve the rights at risk until the petition pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations.<sup>23</sup> In the process of reaching a decision, and according to 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 injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

27. When analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. The information provided should be assessed from a *prima facie* standard of review to determine whether a serious and urgent situation exists.<sup>24</sup> Similarly, the Commission recalls that it is not called upon to make determinations on the criminal liability of individuals, nor to determine through this mechanism any violation of due process in the local investigations or proceedings, which is specific to a petition or case. The Commission will only analyze whether the proposed beneficiary is

<sup>20</sup> See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures. Order of July 6, 2009, considerandum 16.

<sup>21</sup> See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca Velásquez](#). Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional Measures regarding Mexico. Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish].

<sup>22</sup> See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish]; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6 [only in Spanish].

<sup>23</sup> See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 7; I/A Court H.R. [Matter of “El Nacional” and “Así es la Noticia” newspapers](#). Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, considerandum 23; I/A Court H.R. [Matter of Luis Uzcátegui](#). Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

<sup>24</sup> See in this regard: I/A Court H.R. [Matter of Members of the Miskitu Indigenous Peoples of the North Caribbean Coast regarding Nicaragua](#). Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018, considerandum 13 [only in Spanish]; I/A Court H.R. [Matter of Children Deprived of Liberty in the “Complexo do Tatuapé” of the Fundação CASA](#). Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006, considerandum 23.

at risk pursuant to Article 25 of the Rules of Procedure, which can be done without making any determinations on the merits.<sup>25</sup>

28. As a preliminary issue, regarding CENIDH legal capacity, the Commission recalls that Article 25(1) of the Rules of Procedure establishes that precautionary measures may be filed “at the request of a party,” and Article 25(6) of the Rules of Procedure indicates that “whenever the request is filed by a third party,” it will consider “the express consent of the potential beneficiaries [...] unless the absence of consent is duly justified.” Although the State indicated that the organization’s legal personality has been canceled at the domestic level, the Commission observes that this request was filed by natural persons who indicate to be part of the CENIDH organization and not only by the organization itself. The Commission also observes that the request contains information from close relatives of the proposed beneficiary, as well as information on the proposed beneficiary that could only be obtained from having contact with his relatives. Consequently, the Commission considers that this request was filed at the “request of a party” and that Article 25(6) of the Rules of Procedure has been complied with. In view of the above, the Commission will undertake the analysis of the request for precautionary measures.

29. In addition to this, in the matter at hand, the Commission observes that the alleged risk faced by Mr. Pallais Arana is framed in the current context of Nicaragua,<sup>26</sup> as well as in the special exposure in which the aforementioned persons find themselves as “dissidents” and persons who have demonstrated against the government actions.<sup>27</sup> In the same vein, it is noted that the proposed beneficiary’s situation is not an isolated one; rather, it is part of a practice of arbitrary detentions, criminalization of human rights defenders and opponents, and a subsequent lack of adequate medical care for persons deprived of liberty for political reasons.<sup>28</sup> In this regard, the IACHR has granted several precautionary measures<sup>29</sup> and the Inter-American Court a provisional measure to persons identified as dissidents who are deprived of liberty in Nicaragua.<sup>30</sup>

<sup>25</sup> In this regard, the Court has indicated that “[it] cannot, in a provisional measure, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons.” See in this regard: I/A Court H.R. [Matter of James et al. regarding Trinidad and Tobago](#). Provisional Measures. Order of the Inter-American Court of Human Rights of August 29, 1998, considerandum 6; I/A Court H.R. [Case of Barrios Family v. Venezuela](#). Provisional Measures. Order of the Inter-American Court of Human Rights of April 22, 2021, considerandum 2 [only in Spanish].

<sup>26</sup> See in this regard: IACHR. Press Release No. 80/20. [Two Years into Nicaragua’s Human Rights Crisis, the IACHR Stresses its Permanent Commitment to Victims and Confirms the Consolidation of a Fifth Phase of Repression](#). April 18, 2020; IACHR. Press Release No. 220/19. [IACHR Speaks Out Against Ongoing Repression in Nicaragua and Expresses Its Concern at Increased Harassment of Human Rights Defenders and People Who Have Been Released from Prison](#). September 6, 2019.

<sup>27</sup> IACHR. Press Release No. 80/20. [Two Years into Nicaragua’s Human Rights Crisis, the IACHR Stresses its Permanent Commitment to Victims and Confirms the Consolidation of a Fifth Phase of Repression](#). April 18, 2020; IACHR. Press Release No. 220/19. [IACHR Speaks Out Against Ongoing Repression in Nicaragua and Expresses Its Concern at Increased Harassment of Human Rights Defenders and People Who Have Been Released from Prison](#). September 6, 2019; I/A Court H.R. [Matter of Juan Sebastián Chamorro et al. regarding Nicaragua](#). Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 24.

<sup>28</sup> IACHR. [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#). OEA/Ser.L/V/II. Doc. 86. June 21, 2018; Interdisciplinary Group of Independent Experts (GIEI) for Nicaragua. [Report on the acts of violence that occurred between April 18 and May 30, 2018](#). December 2018, p. 194; IACHR. [Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018](#). OEA/Ser.L/V/II. Doc. 287. October 5, 2020, para. 5; IACHR. [Annual Report 2020. Chapter IV.B Nicaragua](#). February 2021, para. 154.

<sup>29</sup> See in this regard: IACHR. [Resolution 49/2021](#). Precautionary Measure No. 480-21. Cristiana María Chamorro Barrios et al. regarding Nicaragua. June 24, 2021; IACHR. [Resolution 37/2021](#). Precautionary Measure No. 96-21. Gustavo Adolfo Mendoza Beteta and his family regarding Nicaragua. April 30, 2021; IACHR. [Resolution 33/2021](#). Precautionary Measure No. 205-21. Kevin Roberto Solís regarding Nicaragua. April 22, 2021; IACHR. [Resolution 82/2020](#). Precautionary Measure No. 489-20. [Maycol Antonio Arce and 40 other persons deprived of their liberty, regarding Nicaragua](#). November 2, 2020; IACHR. [Resolution 62/2019](#). Precautionary Measure No. 1105-19. [Amaya Coppens et al. regarding Nicaragua](#). December 24, 2019.

<sup>30</sup> I/A Court H.R. [Matter of Juan Sebastián Chamorro et al. regarding Nicaragua](#). Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021. See also: I/A Court H.R. [Matter of Juan Sebastián Chamorro et al. regarding Nicaragua](#). Adoption of urgent measures in favor of Daisy Tamara Dávila Rivas and her family. Order of the President of the Inter-American Court of Human Rights. July 19, 2021.

30. On another note, the Commission recalls that, in relation to persons deprived of liberty in general, the State is in a special position of guarantor that implies the duty to respect their life and personal integrity, inasmuch as prison authorities exercise a strong control or command over the persons in their custody.<sup>31</sup> This is due to the unique 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 their rights and obligations, and by the very circumstances of imprisonment, where prisoners are prevented from satisfying on their own a series of basic needs that are essential for the development of a dignified life.<sup>32</sup> More specifically and in light of the facts narrated by the applicants, the Commission recalls that the Inter-American Court has indicated that the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.<sup>33</sup>

31. Taking into account the aforementioned particular context of Nicaragua, the Commission will analyze the procedural requirements with respect to Mr. José Bernard Pallais Arana.

32. As for the requirement of seriousness, the Commission considers that it has been met. When assessing this requirement, based on the above-described context, the Commission observes that Mr. Pallais Arana's alleged risk is related to his profile as an activist and opponent of the Government. In addition, it is noted that the proposed beneficiary suffers from various chronic diseases and is deprived of his liberty, and the alleged facts are being attributed to state authorities.

33. Thus, the Commission observes that Mr. Pallais Arana was deprived of his liberty on June 9, 2021, and until the last information sent by both parties, his whereabouts or conditions of detention were not known with certainty. The IACHR also takes note of the information provided by the applicants on the various chronic diseases that the proposed beneficiary purportedly suffers from, the rumors circulated on social media indicating that he had been hospitalized, and the fact that his relatives have not received any information from the authorities in this regard. The Commission notes that, although the State has confirmed the detention of the proposed beneficiary through two press releases issued on June 9 and 11, 2021, respectively, to date, his family members and legal representatives have not been informed officially from his place of detention and have not been able to communicate with him or visit him, even despite having filed at least six requests before judicial and police authorities for this purpose. In this regard, the Commission notes that the lack of access by family members and lawyers to persons deprived of liberty may increase their vulnerability, inasmuch as they remain defenseless in the face of potential incidents or circumstances placing their rights to life, personal integrity, and health at risk.<sup>34</sup> In the same sense, the Inter-American Court has considered that prolonged isolation and coercive solitary confinement represent, by themselves, forms of cruel and inhuman treatment, harmful to the mental and moral integrity of the person and to the right to respect that every detainee has, due to the inherent

<sup>31</sup> See in this regard: I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 38; I/A Court H.R. Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260. para. 188; IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II. Doc. 64. December 31, 2011. para. 49.

<sup>32</sup> IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II. Doc. 64. December 31, 2011. paras. 49-50.

<sup>33</sup> I/A Court H.R. Matter of seventeen persons deprived of liberty regarding Nicaragua. Provisional Measures. Adoption of Urgent Provisional Measures. Order of the President of the Inter-American Court of Human Rights of May 21, 2019 [only in Spanish]. Considerandum 23.

<sup>34</sup> IACHR. Resolution 49/2021. Precautionary Measure No. 480-21. Cristiana María Chamorro Barrios et al. regarding Nicaragua. June 24, 2021, para. 29; see also: I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 36.

dignity of the human being.<sup>35</sup> This is particularly relevant, insofar as the proposed beneficiary has been publicly identified as an opponent of the current Nicaraguan government, as well as due to the illnesses he has.

34. The Commission also notes that the recent detention of the proposed beneficiary has been preceded by a series of acts against him, at least since 2018: (i) on November 28, 29, and 30, 2018, he was subjected to surveillance and harassment by police and paramilitaries carrying war weapons at his home, who shouted offenses and threats at the persons who entered and left; (ii) on January 22 and February 15, 2019, he was besieged and harassed in his home by police and parastatal officers; (iii) during 2019, he received threats through social media and by phone calls from persons who did not identify themselves; (iv) during 2019 and 2020, he was watched in front of his house and at the corners of it; (v) in October 2020, his home was painted with threats that read: “*plomo*” and “*watched*”; and, (vi) he has been labeled as a “*coup plotter*,” “*terrorist*,” and “*vendepatria*.” In this sense, the Commission understands that Mr. Pallais Arana’s current situation is allegedly part of the ongoing risk that has persisted over time.

35. The Commission takes note of the response provided by the State. In this regard, the IACHR observes that, beyond stating that there is no extremely serious situation and informing that the proposed beneficiary’s criminal proceeding is being processed under the most absolute respect for the principles and guarantees that inspire the Nicaraguan legal system, the State did not provide further elements to disprove, from the applicable *prima facie* standard, the applicants’ claims. In the same vein, the IACHR notes that the State did not report where Mr. Pallais Arana is detained, the circumstances of his deprivation of liberty, including the alleged situation of incommunicado detention, whether his detention conditions are in line with applicable international standards and if he is receiving the medical care that he requires. The State also did not comment on the allegations that State officers were the persons responsible for the alleged facts.

36. Taking the foregoing into account, the Commission recalls the verified situation regarding the conditions of detention of persons deprived of liberty in Nicaragua, which includes mistreatment, retaliation, lack of medical care, and isolation regimes, among others, especially in case of being perceived as opponents of the Government.<sup>36</sup> In this sense, the Commission has observed that most of the detentions carried out in the context of demonstrations and social protests in Nicaragua have been accompanied by different forms of cruel, inhuman, and degrading treatment, with some of the treatments described reaching the threshold of torture at the time of the detentions and while the persons were deprived of their liberty.<sup>37</sup> According to the information available to the IACHR, “mistreatment has constantly occurred since the first detentions registered in the context of the social protests of April 2018, to date.”<sup>38</sup> Furthermore, information has been received indicating that complaints persist about the lack of adequate and timely medical care for persons with conditions prior to their deprivation of liberty, and that there is excessive bureaucracy to access health services in prison.<sup>39</sup> The Commission has also verified that arbitrary detentions and deprivation of liberty have been used by the State of Nicaragua with the main intention of repressing any stance opposed to the current regime, and transmitting a message of fear and control to the population.<sup>40</sup>

<sup>35</sup> I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 36.

<sup>36</sup> IACHR. Annual Report 2020. Chapter IV.B Nicaragua, February 2021, para. 154; IACHR. Resolution 62/2019. Precautionary Measure No. 1105-19. Amaya Coppens et al. regarding Nicaragua, December 24, 2019.

<sup>37</sup> IACHR. Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018. OEA/Ser.L/V/II. Doc. 287. October 5, 2020, para. 152.

<sup>38</sup> IACHR. Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018. OEA/Ser.L/V/II. Doc. 287. October 5, 2020, para. 152; IACHR. Annual Report 2020. Chapter IV.B Nicaragua, February 2021, paras. 156 and 158.

<sup>39</sup> IACHR. Annual Report 2020. Chapter IV.B Nicaragua, February 2021, paras. 159-63.

<sup>40</sup> IACHR. Annual Report 2020. Chapter IV.B Nicaragua, February 2021, para. 155; IACHR. Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018. OEA/Ser.L/V/II. Doc. 287. October 5, 2020, para. 5; I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, paras. 34 and 40.

37. Although the above does not necessarily show the specific situation of the proposed beneficiary, the Commission considers that this contextual information is relevant when assessing the plausibility or credibility of the applicants' allegations, especially upon verifying that the State, under the *prima facie* standard, has not properly disproved the existence of a risk concerning the proposed beneficiary.

38. Taking the foregoing into account, the Commission considers that from the *prima facie* standard and in the context of Nicaragua, it is sufficiently proven that the rights to life, personal integrity, and health of José Bernard Pallais Arana are at serious risk.

39. With regard to the requirement of urgency, the Commission deems that it has been met, given that if the proposed beneficiary remains facing the situation described, he is likely to be imminently exposed to a greater impact on his rights. This, mainly in view of the lack of information about Mr. Pallais Arana's place and conditions of detention, especially when more than two months have gone by since his detention, considering that he suffers from chronic diseases, and taking into account the apparent lack of protection measures provided by competent authorities, especially when they are said to be responsible for his alleged risk. Similarly, the Commission notes that not knowing the proposed beneficiary's whereabouts prevents his relatives and representatives from being able to intervene in time and ensure that his detention conditions are adequate, and therefore, he requires the adoption of immediate measures. In this regard, as previously indicated, the Commission does not have concrete or detailed information provided by the State sufficient to assess the actions that are being taken to address the alleged risk faced by Mr. Pallais Arana.

40. As it pertains to the requirement of irreparable harm, the Commission finds that it is met, since the possible impact on the rights to life and personal integrity constitutes the maximum situation of irreparability.

41. Lastly, upon identifying compliance with the procedural requirements, the Commission notes that, in the specific case of Nicaragua, on June 24, 2021, the Inter-American Court of Human Rights granted provisional measures to four persons identified as opponents, associated with the Civic Alliance and the Blue and White National Unit. This, due to "the circumstances in which the detentions were carried out, the subsequent lack of information from the State on the whereabouts and conditions of detention of the proposed beneficiaries, their current situation of being held incommunicado, as well as the alleged delicate state of health and the lack of access to medicines and health care required by most of them."<sup>41</sup> In addition, "the lack of information on the procedural status, such as the secrecy of the place of detention, the impossibility of legal assistance from trusted lawyers, the prolonged solitary confinement, the fact that the detainees are active politicians," added to the context of the aforementioned country, led the I/A Court H.R. to conclude that those were "*prima facie*, arbitrary detentions."<sup>42</sup> In view of all the foregoing, the Court considered it necessary, due to the exceptional circumstances of the matter, to order the immediate release of the beneficiaries.<sup>43</sup>

42. Similarly, in May 2019, at the time of granting urgent measures in favor of 17 persons deprived of their liberty, the Presidency of the Inter-American Court of Human Rights indicated that in the Nicaraguan legal system there are possibilities for granting alternative measures to [deprivation of] liberty to persons, even when they are been subjected to criminal proceedings or have already been convicted.<sup>44</sup> On that occasion, given the risk assessment based on the confinement conditions of the persons deprived of their liberty, the Presidency of the Court asked the State to assess, immediately, the granting of alternative measures to

<sup>41</sup> I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 39.

<sup>42</sup> I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 40.

<sup>43</sup> I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 42.

<sup>44</sup> I/A Court H.R. Matter of seventeen persons deprived of liberty regarding Nicaragua. Provisional Measures. Adoption of Urgent Provisional Measures. Order of the President of the Inter-American Court of Human Rights of May 21, 2019 [only in Spanish]. Considerandum 30.

deprivation of liberty, in accordance with its domestic regulations and the inter-American standards.<sup>45</sup> These provisional measures were subsequently lifted by the plenary session of the Inter-American Court when all the beneficiaries were released.<sup>46</sup>

43. In light of these criteria, the Commission notes that in the matter at hand, the information sent by the State does not include sufficient elements to dismiss the applicants' submissions and the findings made by the Commission through its monitoring mechanisms with regard to the proposed beneficiary's conditions of detention and lack of adequate medical care. In this regard, as already indicated, the Commission considers that the requirements of Article 25 of the Rules of Procedure have been met.

44. Based on the above, the Commission requires that the State assess the possibility of granting alternative measures to deprivation of liberty, taking into account the particular situation of the proposed beneficiary with a view to protecting his rights to life, personal integrity, and health, in response to the assessments made in this resolution in light of the available information.

#### **V. BENEFICIARY**

45. The Commission declares as beneficiary José Bernard Pallais Arana, who is duly identified in this proceeding.

#### **VI. DECISION**

46. The Inter-American 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, it requests that Nicaragua:

- a) adopt the necessary measures to protect the rights to life, personal integrity, and health of Mr. José Bernard Pallais Arana;
- b) ensure that the conditions of his detention are compatible with applicable international standards on the matter;
- c) taking into account the situation presenting a risk to his life, personal integrity, and health as a result of the circumstances surrounding his current deprivation of liberty, assess the possibility of granting alternative measures to the deprivation of liberty, in accordance with its internal regulations and in light of the applicable inter-American standards; and
- d) report on the actions taken to investigate the alleged events that led to the adoption of this resolution, so as to prevent them from reoccurring.

47. The Commission requests as well that the State of Nicaragua report, within 15 days as from the day after this resolution, on the adoption of the precautionary measures required and to update that information periodically.

<sup>45</sup> I/A Court H.R. Matter of seventeen persons deprived of liberty regarding Nicaragua. Provisional Measures. Adoption of Urgent Provisional Measures. Order of the President of the Inter-American Court of Human Rights of May 21, 2019 [only in Spanish]. Operative Paragraph 3.

<sup>46</sup> I/A Court H.R. Matter of seventeen persons deprived of liberty regarding Nicaragua. Provisional Measures. Order of the Inter-American Court of Human Rights of October 14, 2019 [only in Spanish].

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48. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected in the applicable instruments.

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

50. Approved on August 24, 2021, by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay; Esmeralda Arosemena de Troitiño; Edgar Stuardo Ralón Orellana; and, Joel Hernández García, members of the IACHR.

Tania Reneaum Panszi  
Executive Secretary