
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 60/2023**

Precautionary Measure No. 812-23

Nancy Elizabeth Henriquez James regarding Nicaragua

October 11, 2023

Original: Spanish

I. INTRODUCTION

1. On October 3, 2023, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures urging the Commission to require that the State of Nicaragua (“the State” or “Nicaragua”) adopt the necessary measures to protect the rights of Nancy Elizabeth Henriquez James (“the proposed beneficiary”). According to the request, the proposed beneficiary is a Miskitu indigenous leader, regional member of the House of Representatives for the Autonomous Region of the Northern Caribbean Coast of Nicaragua and president of the organization and political party YATAMA (Yapti Tasba Masraka Nanih Aslatakanka, “Children of Mother Earth United”). Her whereabouts are reportedly unknown since October 1, 2023.

2. Pursuant to Article 25.5 of its Rules of Procedure, the IACHR requested information from the State on October 4, 2023. However, to date, no information has been received from the State.

3. Upon analyzing the submissions of fact and law furnished by the applicant, the Commission considers that the information presented shows *prima facie* that the proposed beneficiary is in a serious and urgent situation, given that her rights to life and personal integrity are at risk of irreparable harm. Therefore, it requests that Nicaragua: a) adopt the necessary measures to determine the situation and whereabouts of Ms. Nancy Elizabeth Henriquez James, in order to protect her rights to life and personal integrity; b) report on the detention conditions in which she is currently held. In particular, report on the place of her detention, and allow access to her lawyers and family, as well as the necessary health care; and c) report on the actions taken to investigate the alleged events that led to the adoption of this resolution, so as to prevent such events from reoccurring.

II. BACKGROUND

4. Between May 17 and 21, 2018, the Commission visited Nicaragua. During this visit, it collected numerous testimonies on human rights violations committed in the framework of 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.¹ 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, 2018.² For its part, the Interdisciplinary Group of Independent Experts (GIEI, for its acronym in Spanish) for Nicaragua issued a report that analyzed the events that took place

¹ 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.

² 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.

between April 18 and May 30, 2018, confirming the IACHR findings.³ In its 2018 Annual Report, the IACHR included Nicaragua in Chapter IV.B in accordance with the grounds set forth in its Rules of Procedure.⁴

5. During 2019, the Commission continued to condemn the ongoing acts of persecution, and urged the State to comply with its obligations in matters related to human rights⁵. Subsequently, the Commission once again included Nicaragua in Chapter IV.B of its 2019 Annual Report⁶, 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 branch over other public powers. The Commission also 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.⁷

7. During 2020, the IACHR verified the intensification of acts of surveillance, harassment, and selective repression against persons considered to be opponents of the Government.⁸ In May 2020, the IACHR condemned the non-compliance with its recommendations and urged the State to implement them.⁹ 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.¹⁰ Subsequently, the Commission once again included Nicaragua in Chapter IV.B of its 2020 Annual Report¹¹.

8. In 2021, the Commission condemned the increasing acts of harassment in Nicaragua. These acts were against persons identified as government opponents, human rights defenders, and the independent press. They¹² also condemned the widespread impunity and the prolonged breakdown of the rule of law that persists in Nicaragua.¹³ On June 9, 2021, the IACHR and the Regional Office of the United Nations High Commissioner for Human Rights for Central America and Dominican Republic (OHCHR) condemned the criminal prosecution of Nicaraguan opposition leaders and urged the State to release all the persons detained

³ 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.

⁴ IACHR. Annual Report 2018. Chapter IV.B Nicaragua.

⁵ 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.

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

⁷ IACHR. [2019 Annual Report. Chapter IV.B Nicaragua](#). OAS/Ser.L/V/II. Doc. 5. February 24, 2020, para. 19.

⁸ 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.

⁹ 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.

¹⁰ 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.

¹¹ IACHR. Annual Report 2020. Chapter IV.B Nicaragua, February 2021, paras. 5 to 29.

¹² IACHR. Press Release No. 152/21. IACHR Condemns the Serious Escalation of Repression in Nicaragua. June 18, 2021.

¹³ 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.

in the context of the crisis.¹⁴ On September 10, 2021, the Commission and the OHCHR condemned the criminalization of individuals identified as political opponents in Nicaragua.¹⁵

10. On October 25, 2021, the IACHR published the report “Concentration of Power and the Undermining of the Rule of Law in Nicaragua.” In this regard, the Commission identified acts of harassment, threats, raids, arbitrary detentions, and mistreatment against any person considered to be an opponent of the current Government, perpetrated by police and vigilante groups.¹⁶ On November 20, 2021, the IACHR made a statement in which it looked unfavorably upon the State of Nicaragua’s decision to denounce the Charter of the Organization of American States on November 19, 2021 during the ongoing context of serious crisis in the country in recent years. On the occasion, the Commission reaffirmed its jurisdiction over Nicaragua and stated that it would continue to exercise its monitoring mandates through the Special Monitoring Mechanism for Nicaragua (MESENI), as well as continue to analyze and process cases, petitions, and precautionary measures¹⁷. The IACHR once again included Nicaragua in Chapter IV.B of its 2021 Annual Report, when it referred to the severe deterioration of democratic institutions in Nicaragua in the context of the 2021 general elections.¹⁸

11. In 2022, the IACHR urged the State of Nicaragua to release the individuals who are reportedly still in arbitrary detention and under unsanitary detention conditions. They reportedly suffer ill-treatment and are subject to the arbitrary application of maximum-security regimes, in addition to the lack of adequate, timely, and specialized medical care. In February 2022, the IACHR condemned the manipulation of criminal law and criminalization of persons identified as opponents due to the lack of judicial independence and separation of powers. These acts have seriously affected the judicial guarantees for political prisoners in Nicaragua.¹⁹ On August 19, 2022, the IACHR condemned the escalation of repression against members of the Catholic Church due to their critical role in denouncing human rights violations.²⁰ In September 2022, the IACHR and its SRESCER urged the immediate release of the political prisoners who are held in deplorable conditions in Nicaragua²¹. The rapporteurs of the UN and IACHR urged the State to restore and make effective the full enjoyment of civil and political rights in the face of the closure and governmental co-optation of civic spaces and democratic participation in Nicaragua.²² On November 4, 2022, the IACHR alerted of the lack of conditions to hold free and fair elections in the country, taking into account the resurgence of repression and percussion against political opponents through the implementation of measures aimed at preventing their participation in these elections.²³

¹⁴ 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.

¹⁵ IACHR. Press Release No. 238/21. IACHR, OHCHR Condemn Criminalization, Harsh Conditions of Detention, and Failure to Enforce Due Process for Individuals Who are Perceived to Be Government Critics in Nicaragua. September 10, 2021.

¹⁶ IACHR. Press Release 284/2021. IACHR Publishes Report on the Concentration of Power and the Weakening of the Rule of Law in Nicaragua. October 28, 2021.

¹⁷ IACHR. Press Release 312/2021. The IACHR Stresses Its Competent Jurisdiction Concerning Nicaragua and laments Nicaragua’s Decision to Denounce the Charter of the OAS in a Context of Serious Human Rights Violations.

¹⁸ IACHR. 2021 Annual Report. Chapter IV.B Nicaragua, May 2022, paras. 4 to 21.

¹⁹ IACHR. Press Release RD026/22. REDESCA condemns the cancellation of the membership of 26 universities and associations for academic and social purposes by the National Assembly of Nicaragua. February 10, 2022.

²⁰ IACHR. Press Release No. 184/22. IACHR Condemns Acts of Repression and the Detention of Members of the Catholic Church in Nicaragua. August 19, 2022.

²¹ IACHR. Press Release No. 197/2022. IACHR and REDESCA: Immediate release of political prisoners in deplorable conditions in Nicaragua is urgently needed. September 5, 2022.

²² IACHR. Press Release R218/22. Faced with serious complaints about the closure of civic spaces in Nicaragua, UN and IACHR rapporteurs urge the authorities to comply with their international obligations to respect and guarantee fundamental freedoms. September 28, 2022

²³ IACHR. Press Release No. 248/22. IACHR Warns of the Lack of Appropriate Conditions for Holding Free, Fair Municipal Elections in Nicaragua. November 4, 2022.

12. On February 9, 2023, the IACHR learned about the release of 222 people, who are deprived of their liberty in Nicaragua due to political reasons, and who were deported to the United States of America on the same day of their release in compliance with a judgment of Criminal Chamber One of the Managua Court of Appeals. This chamber ordered the immediate deportation of these individuals and the revocation of their Nicaraguan nationality. On the same day, the National Assembly approved reforms to Article 21 of the Nicaraguan Political Constitution. This Article established the acquisition, loss, and recovery of nationality and approved Law 1145 that regulates the loss of Nicaraguan nationality. The IACHR urged the State to release all persons arbitrarily detained in the context of the crisis in Nicaragua, without this implying the loss of nationality and deportation.²⁴ In February 2023, the IACHR and the OHCHR stressed that more than 3,000 national and international NGOs that have been canceled since 2018. Their assets have been confiscated and countless individuals have been left without access to their services or assistance. Therefore, they urged the State to put an end to the incessant repression and persecution of those who seek the return of democracy in Nicaragua or exercise their public freedoms²⁵.

13. In June 2023, the Commission expressed its concern at the new arbitrary detentions of defenders, journalists, and members of the Catholic Church. The information mentioned that the judicial proceedings lacked judicial guarantees and informed of a generalized context of lack of official information on the whereabouts of the detained persons and their legal situation.²⁶ More recently, in August 2023, the IACHR and the Office of the United Nations High Commissioner for Human Rights for Central America and the English-speaking Caribbean (OHCHR) condemned the continued violations of his human rights, such as the lack of access to medical care and essential medicines, the isolated detention since he has been in the La Modelo prison system, and the limitation of family visits²⁷. In August 2023, the IACHR and its Special Rapporteurs condemned arbitrary interference with academic freedom, declaring the cancellation of the legal status and arbitrary confiscation of the facilities of the Central American University (UCA), as well as the forced eviction of members of the Society of Jesus from their residence.²⁸

14. On September 15, 2023, the IACHR urged the State of Nicaragua to cease the violations of religious freedom, the persecution of the Catholic Church, and to release all persons who are arbitrarily deprived of their liberty²⁹.

III. SUMMARY OF FACTS AND ARGUMENTS

A. Information provided in the request

15. According to the request, the proposed beneficiary is Nancy Elizabeth Henríquez James, Miskitu indigenous, regional member for the House of Representatives for the Autonomous Region of the Northern Caribbean Coast of Nicaragua and president of the YATAMA organization (Yapti Tasba Masraka Nanih Aslatakanka, “Children of Mother Earth United”). The proposed beneficiary was arrested on October 1, 2023 and to this day her whereabouts remain unknown. It is alleged that they were unable to obtain an order from a competent judge and her location is therefore still unknown.

²⁴ IACHR, [Press Release No. 021/23](#). IACHR Welcomes Release of Political Prisoners in Nicaragua but Rejects Arbitrary Deprivation of Nationality. February 13, 2023.

²⁵ IACHR, [Press Release No. 24/2023](#). The IACHR and OHCHR condemn the escalation of human rights violations in Nicaragua. February 17, 2023.

²⁶ IACHR, [Press Release No. 123/23](#). IACHR Rejects Continued Repression and Human Rights Violations in Nicaragua. June 16, 2023

²⁷ IACHR, [Press Release No. 184/23](#). Nicaragua: IACHR and OHCHR urge the State to release Monsignor Rolando Álvarez and guarantee his human rights. August 18, 2023.

²⁸ IACHR, [Press Release No. 201/23](#). Nicaragua: IACHR and its Special Rapporteurs Condemn Arbitrary Interferences to Academic Freedom, August 29, 2023.

²⁹ IACHR, [Press Release No. 218/23](#). IACHR Urges the State of Nicaragua to Cease Persecution of the Catholic Church. September 15, 2023.

16. By way of background, the applicants states that the YATAMA organization was founded with the aim of vindicating the territorial rights of the indigenous peoples on the Caribbean Coast and promoting communal self-government through a “community democracy”, based on the uses and customs of the indigenous peoples. Thus, YATAMA is reportedly forefront of the struggle for the vindication of the rights of indigenous and Afro-descendant peoples, through various legal, political and even military mechanisms, at the national and international level for the effective recognition of fundamental human rights. They referred to the Matter of *Yatama v. Nicaragua* that concluded with the judgment of the Inter-American Court of Human Rights in 2005. In that judgment, the Court concluded that the State should guarantee the participation of the indigenous peoples of the Atlantic Coast of Nicaragua “from their own institutions and in accordance with their values, uses, customs, and forms of organization”. The judgment urged the State to carry out a reform of the electoral system to guarantee indigenous participation on an equal footing. It was indicated that this Court judgment has not been complied with to date.

17. In response to the crisis and the political repression of the Nicaraguan State, various civil society organizations and political parties launched a project to form a broad spectrum “National Coalition”, with the objective of becoming a political option to the current Nicaraguan government. On January 24, 2020, YATAMA was invited to be part of the project of the National Coalition as a regional political party. On February 24, 2020, YATAMA signed the act of intention to form the National Coalition together with Alianza Cívica por la Justicia y la Democracia (ACJD), Unidad Nacional Azul y Blanco (UNAB), and YATAMA, joined by the organizations Fuerza Democrática Nicaragüense (FDN), Partido Liberal Constitucional (PLC), Partido Restauración Democrático (PRD), and Movimiento Campesino (MC). With a view to drafting the Statutes of the National Coalition, the so-called Multilateral Table was formed. The main objective at YATAMA was to position the agenda of indigenous and Afro-descendant peoples on the opposition's agenda and achieve compliance with the *YATAMA v. Nicaragua* ruling.

18. On April 22, 2021, through the National Assembly, the government promoted a process to reform Electoral Law No. 330 and called for consultations with the political parties represented in the National Assembly. Being at that time the only political party part of the National Coalition with representation in the Assembly, YATAMA presented a consolidated proposal on behalf of the National Coalition before the Special Constitutional Commission for Electoral Matters of the National Assembly (Comisión Especial Constitucional para Asuntos Electorales de la Asamblea Nacional). The document was presented by Mr. Brooklyn Rivera Bryan, in his capacity as president and deputy of YATAMA. However, it was not taken into consideration. On November 6, 2021, national elections were held. Mr. Rivera Bryan was elected regional representative by the YATAMA organization for the period of 2022 – 2026.

19. In April 2023, the proposed beneficiary assumed the role of member of the House of Representatives in replacement of Mr. Brooklyn Rivera Bryan, the main member of the House of Representatives of the organization, who was absent from the National Assembly to participate in the 22nd session of the United Nations Permanent Forum on Indigenous Issues, held that same month in New York. During his intervention in the interactive dialogue, he denounced the situation of indigenous peoples and Afro-descendants in Nicaragua.

20. Regarding her detention, the applicant alleges that on Sunday, October 1, 2023, at around 2:00 p.m., the proposed beneficiary was approached by agents of the National Police who were undercover at the entrance of the residential “Las Delicias” located in the Americas two Managua. At the time of the arrest, the proposed beneficiary was with her three-year-old grandson and niece, who were also detained in the National Police district for nine hours. They were all released. The commissioner of District 3 of the National Police informed Ms. Henriquez James that she would be transferred to the judicial hearing of the member of the House of Representatives Brooklyn Rivera Bryan, whose whereabouts were also unknown.

21. According to the applicant, the proposed beneficiary has not been placed before a judge's order and her whereabouts are unknown to date. There is unofficial information that she was transferred to the maximum security prison "El Chipote" in Managua, but has not been located by her family. Ms. Ana Aurora James, sister of Ms. Henriquez James, has looked for the proposed beneficiary in the detention centers. Police authorities reportedly did not provide the reason for her arrest or her location. The family is reportedly concerned about her health as she has chronic health conditions and is hypertensive.

22. After the proposed beneficiary's arrest, the police forces were reportedly protecting her home in the city of Bilwi, Autonomous Region of the North Caribbean Coast. There is also unofficial information which states that there is a list of people who the National Police is searching for.

23. To date, the proposed beneficiary has not been the subject of a legal procedure that strips her of her parliamentary immunity as a regional member of the House of Representatives for the YATAMA organization. However, he has since been removed from the Assembly's list of members of the House of Representatives.

24. The request indicates that the proposed beneficiary is at risk considering the particular context that Nicaragua is experiencing and in view of the fact that, as an indigenous leader and member of the House of Representatives as an opponent of the government, she has not been put before a judge after her arrest, which they consider illegal and arbitrary. Her detention conditions (place of detention, physical condition, and health or the treatment she receives, despite suffering from previous illnesses) are also unknown. Her whereabouts are also still unknown. The applicants consider that Ms. Henriquez James is not an isolated situation, but rather part of the arbitrary detention, criminalization of opponents, and human rights defenders, as well as the subsequent lack of medical attention for persons deprived of liberty for political reasons.

25. Lastly, the applicant mentions the cancellation of the legal status of YAMATA by the Supreme Electoral Council by resolution of October 3, 2023.³⁰ The resolution indicates that the legal representatives of the organization have acted in flagrant violation of Law No. 1055, Law for the Defense of the People's Rights to Independence, Sovereignty and Self-Determination for Peace. In particular, it was indicated that its legal representative, Brooklyn Rivera Bryan and other directors, "have been publicly expressing a discourse that distorts and falsifies the reality of the country". However, the applicant indicated that the legal representative is the proposed beneficiary Henríquez James. The applicant emphasizes that the law referred to is the one that has been applied to the 222 persons referred to as "released political prisoners" currently exiled and denationalized since February 9, 2023.

B. Information provided by the State

26. In this matter, the IACHR requested information from the State on October 4, 2023. However, the State has not submitted information to date.

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

27. The precautionary measures mechanism is part of the Commission's function of supervising compliance with the human rights obligations established in Article 106 of the Charter of the Organization of American States ("OAS"), based on Article 41(b) of the American Convention on Human Rights ("American Convention") and Article 18(b) of the IACHR Statute. Furthermore, the mechanism of precautionary measures

³⁰ The applicant has attached certification of the aforementioned resolution.

is described in Article 25 of the Rules of Procedure, according to which the Commission grants precautionary measures in situations that are serious and urgent as well as necessary to prevent irreparable harm.

28. 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 precautionary³¹. Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.³² 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.³³ Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. These measures aim to safeguard 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 allow the State concerned to comply with the final decision and, if necessary, to implement the remedies required³⁴. In the process of reaching a decision, according to Article 25(2) of its 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 of 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.

29. In 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.³⁵

³¹See 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.

³²See 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. Bámaca Velásquez Case. Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. Case 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].

³³See 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].

³⁴See 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.

³⁵See 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 the children and adolescents deprived of their 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.

Similarly, the Commission recalls that, by its own mandate, it is not called upon to determine any individual liabilities for the facts alleged. Moreover, in this proceeding, it is not appropriate to rule on violations of rights enshrined in the American Convention or other applicable instruments.³⁶ This is better suited to be addressed by the Petition and Case system. The following analysis relates exclusively to the requirements set forth in Article 25 of the Rules of Procedure, which can be resolved without making any determinations on the merits.³⁷

30. As a preliminary aspect, the Commission considers it important to recall that in the *Case of Yatama v. Nicaragua*³⁸, the Court ordered, by judgment of June 23, 2005, a series of measures and reparations to the State of Nicaragua. Among them, legislative reforms in electoral matters were ordered to guarantee the participation of members of indigenous and ethnic communities in electoral processes in an effective manner and taking into account their traditions, uses, and customs. It is worth mentioning the participation of Mr. Brooklyn Rivera Bryan as a witness, as a member and leader of YATAMA, during the development of the *Matter of YATAMA Vs Nicaragua* before the Inter-American Court. The Commission highlights that, in its last judgment to monitor compliance with resolution of November 20, 2015, the Court concluded that, for more than five years, the State has failed to comply with its duty to report on the measures adopted from the Judgment issued on June 23, 2005.³⁹ Therefore, the Commission observes that the orders of the Inter-American Court are still pending. In this context, the YATAMA organization, through its regional deputies in the National Assembly, has been seeking effective compliance by presenting various actions, such as legislative reforms in electoral matters.

31. Given the proposed beneficiary's situation, 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, integrity, health, and other human rights, inasmuch as prison authorities exercise a strong control or command over the persons in their custody⁴⁰. 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.⁴¹

32. In the matter at hand, the Commission observes that the alleged situation of risk that the proposed beneficiary faces takes place within the current context that Nicaragua is experiencing (referred to above), which is particularly hostile towards persons considered, perceived, or identified as opponents of the

³⁶IACHR. Resolution 2/2015. Precautionary Measure No. 455-13. *Matter of Nestora Salgado* regarding Mexico. January 28, 2015, para. 14; IACHR. Resolution 37/2021. Precautionary Measure No. 96-21. *Gustavo Adolfo Mendoza Beteta and family* regarding Nicaragua. April 30, 2021, para. 33.

³⁷In 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].

³⁸I/A Court H.R., *Matter of Yatama v. Nicaragua*, Judgment of Preliminary Exceptions, Merits, Reparations and Costs, June 23, 2005, Series C. No.127.

³⁹I/A Court H.R., *Case of Yatama v. Nicaragua*, Resolution of Supervision of compliance with the Judgment of November 20, 2015, resolutive 1 and 2.

⁴⁰See in this regard: I/A Court H.R. *Matter 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. OAS/Ser.L/V/II. Doc. 64. December 31, 2011. Para. 49.

⁴¹IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas. OAS/Ser.L/V/II. Doc. 64. December 31, 2011. Paras. 49-50.

government and, in general, towards any person critical of the current Nicaraguan government.⁴² This particularly hostile context has intensified over time⁴³. Thus, the Commission considers that the proposed beneficiary's situation is not an isolated event, but rather takes place within the current context of Nicaragua, characterized by the practice of arresting and criminalizing human rights defenders and political opponents.⁴⁴

33. Taking into account the preliminary aspects and the particular context that Nicaragua is experiencing and the alleged unknown whereabouts of the proposed beneficiary, the Commission will proceed to analyze the procedural requirements regarding Ms. Henríquez James in Nicaragua.

34. With regard to the requirement of *seriousness*, the Commission takes into account, based on the information available, that the proposed beneficiary's whereabouts have been undetermined since October 1, 2023, following her arrest by police officers.

35. The Commission notes that the proposed beneficiary currently acts as a regional member of the House of Representatives and president of the organization YATAMA (Yapti Tasba Masraka Nanih Aslatakanka, "Sons of Mother Earth United") whose purpose is to vindicate the territorial rights of indigenous peoples on the Caribbean Coast and has been at the forefront of the struggle for the vindication of the rights of indigenous and Afro-descendant peoples. YATAMA was also part of the National Coalition along with several civil society organizations and political parties, to become a political option.

36. The proposed beneficiary has exercised in activities of a political nature, in her capacity as president and legal representative of the YATAMA organization and as a regional member of the House of Representatives. Recently, Ms. Henríquez James took over as member of the House of Representatives upon replacing Deputy Brooklyn Rivera Bryan after his participation in the United Nations Permanent Forum on Indigenous Issues, where he denounced the situation of indigenous and Afro-descendant peoples in Nicaragua.

37. The Commission observes that, in the afternoon of October 1, 2023, the proposed beneficiary was approached by agents of the National Police at the entrance of the residential "Las Delicias" in Managua. The Commissioner of District 3 of the National Police informed the proposed beneficiary that she would be transferred to Mr. Brooklyn Rivera Bryan's hearing. Unofficial information indicated that she had been transferred to the "El Chipote" prison. However, to date, the proposed beneficiary's whereabouts are unknown, and her relatives have been unable to locate her in any detention center. The police authorities have not reported the grounds for her arrest. In addition, the information provided in this matter indicates that the proposed beneficiary has not been subject to any legal proceeding that has stripped her of her parliamentary immunity while she holds the position of regional member of the House of Representatives in the Nicaraguan Assembly. Notwithstanding, she was reportedly removed from the list of members of the House of

⁴²See in this regard: IACHR. 2022 Annual Report. Chapter IV.B Nicaragua, para. 35-65, 177; [Press Release No. 123/23](#). IACHR Rejects Continued Repression and Human Rights Violations in Nicaragua. June 16, 2023; IACHR, [Press Release No. 184/23](#). Nicaragua: IACHR and OHCHR urge the State to release Monsignor Rolando Álvarez and guarantee his human rights. August 18, 2023; IACHR, [Press Release No. 218/23](#). IACHR Urges the State of Nicaragua to Cease Persecution of the Catholic Church. September 15, 2023; IACHR, [Press Release No. 152/21](#). IACHR Condemns the Serious Escalation of Repression in Nicaragua. June 18, 2021; IACHR, [Press Release No. 2/21](#). IACHR Condemns Growing Harassment in Nicaragua. January 6, 2021.

⁴³ See in this regard: 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; IACHR. 2020 Annual Report. Chapter IV.B Nicaragua, paras. 46 to 52.

⁴⁴See in this regard: IACHR. 2022 Annual Report. Chapter IV.B Nicaragua, para. 39-49, 177; IACHR. IACHR, [Press Release No. 197/2022](#). IACHR and Its SRESCER Call for Immediate Release of Political Prisoners Being Held in Appalling Conditions in Nicaragua. September 5, 2022; IACHR, [Press Release No. 24/2023](#). The IACHR and OHCHR condemn the escalation of human rights violations in Nicaragua. February 17, 2023. [Press Release No. 123/23](#). IACHR Rejects Continued Repression and Human Rights Violations in Nicaragua. June 16, 2023; IACHR, [Press Release No. 184/23](#). Nicaragua: IACHR and OHCHR urge the State to release Monsignor Rolando Álvarez and guarantee his human rights. August 18, 2023; IACHR, [Press Release No. 218/23](#). IACHR Urges the State of Nicaragua to Cease Persecution of the Catholic Church. September 15, 2023.

Representatives. Considering the foregoing, the Commission believes that the facts described are related to Ms. Henriquez James' critical position of the current Nicaraguan government. In particular, the Commission observes that after her arrest, the presence of police officers was alleged to be protecting the proposed beneficiary's home located in the city of Bilwi, Autonomous Region of the North Caribbean Coast. Moreover, the Commission emphasizes that the facts that she allegedly faces are related to her relevance to the YATAMA party, whose legal personality was canceled days after her arrest. This is in addition to a series of cancellations of the legal status of political and social organizations that have expressed criticism or opposition to the actions of the current Nicaraguan government.

38. Having requested information from the State under Article 25 of the Rules of Procedure, the Commission regrets the lack of response to the request for information. Although the foregoing is not sufficient *per se* to justify the granting of a precautionary measure, the lack of response from the State prevents the Commission from knowing the measures that would have been reportedly implemented to address the situation that places the proposed beneficiary at risk dispute the facts alleged by the applicants. Therefore, the Commission does not have information that would allow it to assess whether the situation that places the proposed beneficiary at risk has been mitigated, nor regarding the actions taken to determine the whereabouts or fate of the proposed beneficiary. Moreover, the Commission also notes that the proposed beneficiary could be in the custody of the State, which would have the information on her location and current situation.

39. Considering the information available to date, the Commission understands that the family members do not have any information on the legal situation of the proposed beneficiary which would allow them to know: the reasons for her detention; the existence of an arrest warrant, whether it was subject to judicial review; the location where she would eventually be transferred; the detention conditions in which she is being held; the possibilities of contacting a trusted lawyer; the procedural status of the investigation for which she was detained; the existence of an investigation file against her; any health care she may have received; among others. Given that she is regional member of the House of Representatives before the Nicaraguan Assembly, the Commission has also not been informed about the existence of the corresponding legal procedure to strip the proposed beneficiary of her parliamentary immunity. The proposed beneficiary is subjected to a situation of total incommunicado detention by state agents, which is further aggravated by the impossibility of knowing where she is being held. This prevents their relatives and close people from timely activating internal mechanisms to protect her rights. In this regard, the Commission recalls that the Inter-American Court has indicated, in the *Matter of Juan Sebastián Chamorro et al. v. Nicaragua*, that "detention without communication not only makes it impossible to verify the current situation of the proposed beneficiaries, their conditions of detention, and their health status, but it also implies a curtailment of the procedural guarantees of all detainees."⁴⁵

40. In view of the foregoing considerations and in light of the *prima facie* standard, the Commission considers that the rights to life and personal integrity of Nancy Elizabeth Henriquez James are at serious risk, inasmuch as from October 1, 2023 to date there has been no news of her fate or whereabouts after being detained by State agents.

41. Regarding the requirement of *urgency*, the Commission deems that it has also been met, to the extent that the passage of time without establishing her whereabouts is likely to generate greater impact on the proposed beneficiary's rights to life and personal integrity. In this regard, following the proposed beneficiary's arrest, no information has been obtained on her whereabouts, nor has any information been obtained on her location or any investigative measures to locate her.

⁴⁵ I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 36.

42. Regarding the requirement of *ofirreparable harm*, the Commission considers that it has been met, since the potential impact on the rights to life and personal integrity constitutes the maximum situation of irreparable harm.

V. BENEFICIARIES

43. The Commission declares Nancy Elizabeth Henriquez James to be the beneficiary, who is duly identified in this proceeding.

VI. DECISION

44. 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 its Rules of Procedure. Consequently, it requests that Nicaragua:

- a) adopt the necessary measures to determine the situation and whereabouts of Mrs. Nancy Elizabeth Henriquez James, in order to protect her rights to life and personal integrity;
- b) report on the conditions of detention in which he is currently held. In particular, inform about the place of his detention, allowing access to her lawyers and family, as well as the necessary health care; and
- c) 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.

45. The Commission requests that the State of Nicaragua report, within 15 days as from the day after the notification of this resolution, on the adoption of the precautionary measures granted and to regularly update this information.

46. 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 under the applicable instruments.

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

48. Approved on October 11, 2023, by Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Julissa Mantilla Falcón; Carlos Bernal Pulido; and José Luis Caballero Ochoa, members of the IACHR.

Jorge H. Meza Flores
Assistant Executive Secretary