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From non-compliance to high impact: Lessons for the African human rights system drawn from precautionary measures and protection of persons deprived of liberty by the Inter-American Commission in Nicaragua

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Summary: *This article examines the impact of precautionary measures (also known as provisional or urgent measures) adopted by the Inter-American Commission on Human Rights (IACHR) to protect individuals at imminent risk, focusing on those deprived of their liberty. Detainees, among the most vulnerable groups, are at heightened risk in contexts where the rule of law is under threat. The article argues that, despite limited state compliance in repressive regimes, international human rights bodies like the IACHR play a crucial role in safeguarding at-risk individuals. The symbolic impact of these measures remains significant, especially in cases of extreme vulnerability, as seen with detainees in Nicaragua. While the primary focus is on the Americas, the issues discussed also resonate with the African context. A comparative approach reveals common patterns of vulnerability and highlights the potential for cross-regional collaboration. African human rights bodies, such as the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, and the African Committee of Experts on the Rights and Welfare of the Child, are also competent to adopt provisional measures to protect individuals at imminent risk, particularly detainees facing urgent danger.*

Keywords: *precautionary measures; symbolic impact, persons deprived of their liberty; justice system; rule of law*

1 Introduction

Daniel Ortega is the current President of Nicaragua. After an earlier term as president (1985-1990) and a long time in the opposition, he won the 2006 presidential elections and began his term in office in 2007, and today – after four consecutive elections for five-year terms, the last one starting in 2022 – he remains in power, accompanied by his wife Rosario Murillo, who has acted as his vice-president since 2017.¹

¹ In 2009, two years after coming into power, Nicaragua's Supreme Court issued a ruling declaring article 147 of the Constitution, which bans re-election, 'inapplicable'. This decision cleared the way for Ortega to run in the 2011 elections. In late 2013, Ortega submitted a constitutional reform proposal that was later approved by the parliament. The reform allowed for indefinite re-election, introduced a first-round presidential election by simple majority, and empowered the president to issue decrees with the force of law. In 2021, the parliament approved reforms (criticised by the international community) which allowed Ortega to control the Supreme Electoral Council, to abolish electoral observation and to ban the financing of candidates. In addition, it incorporates the Law on the Defence of the People's Rights to Independence (adopted in 2020), with which opponents who participated in the 2018 protests can be barred as presidential candidates. On 2 June 2021, the Ortega government placed Cristiana Chamorro Barrios, at the time one of the presidential candidates, under house arrest. She was accused of 'abusive management, ideological

Since 2018 the Ortega Administration has become very repressive.² The repression has affected a diversity of people including students and professors, political opponents,³ journalists, priests, and human rights defenders.⁴ In general, anyone who expresses a critical opinion towards the state authorities and who defends human rights is at risk.

Initially, the repression targeted demonstrators who showed their disagreement with the reform of the pension system announced in April 2018. Subsequently, more citizens also became targets of repression for expressing critical views towards the government and its repressive actions.

Reports indicate that between 18 April 2018 and 10 February 2023, at least 2,090 people have been arbitrarily detained.⁵ Between 2018 and 2022, 355 people were killed; more than 2,000 people were injured; more than 3,300 civil society organisations had their legal status revoked (out of 7,227 legally registered),⁶ and 12 universities

falsehood, both in real competition with money laundering, goods and assets'. Six other candidates were arrested in the following days. See IACHR, *Nicaragua: Concentration of Power and the Undermining of the Rule of Law*, 25 October 2021.

- 2 Repression is the threat to subdue or act of subduing someone by institutional or physical force. Political violence is a particular form of repression involving the threat to use or the actual use of physical force to achieve political goals. Acts of repression and/or political violence often violate fundamental rights, and are sometimes referred to as *human rights abuse*. This article uses the terms 'repression', 'political violence', and 'human rights abuse' interchangeably. Repression is a form of coercion, but not all coercion is repressive. States may use coercion, for example, to deter societal violence (rape, murder, etc.). See JHR deMeritt *The strategic use of state repression and political violence*, <https://doi.org/10.1093/acrefore/9780190228637.013.32>.
- 3 More than 30 opposition leaders were arrested during the last election campaign, including seven presidential candidates. See *Reuters*, 'Nicaragua detains another five opposition leaders, as Ortega ups the ante' 6 July 2021. Also, *BBC*, 'Nicaragua: Five more opposition figures detained ahead of election' 14 June 2021; *The Guardian*, 'Nicaragua rounds up president's critics in sweeping pre-election crackdown. Arrests of opposition figures, including revered former guerrillas, represent "last gamble of a dictator's family"' 15 June 2021.
- 4 More about the current context of Nicaragua and human rights defenders in C Burbano Herrera & Y Haack, 'Assessing the symbolic impact of precautionary measures adopted by the IACHR in protecting human rights defenders deprived of their liberty' in F Gomez Isa and others (eds) *Human rights defenders under siege* (2025).
- 5 1,879 out of 2,090 are men, 202 women and 6 trans women. See Inter-American Commission on Human Rights (IACHR or Commission), MESENI website. Furthermore, as of 30 September 2022, according to information from the Mechanism for the Recognition of Political Prisoners in Nicaragua, 209 individuals continue to be deprived of liberty. See, IACHR, *Annual Report 2022*, Chapter IV, Nicaragua, 9.
- 6 In this regard, the information available to the IACHR indicates that this measure affected the main national and foreign entities in the country dedicated to the promotion and defense of human rights in Nicaragua; the promotion of democracy, development; humanitarian work, international cooperation, protection of groups in situations of discrimination and historical exclusion; environmental protection; as well as student and artistic associations, cultural services, medical associations, and religious organizations and foundations. The IACHR has recognised that an important part of defending human rights

were closed.⁷ Furthermore, over 250,000 individuals have been forcibly displaced to other countries since 2018, while the population of Nicaragua is 6,948,392.⁸ In February 2023, the state expelled 222 political prisoners and revoked the nationality of 317 individuals.⁹ In addition, Nicaragua denounced the Charter of the Organization of American States (OAS Charter), which is the constitutive instrument of this regional organisation, on 19 November 2021.¹⁰

In this context, the IACHR has granted so-called 'precautionary measures' (also often known as provisional measures, interim measures or urgent measures) to protect individuals at serious risk, some of whom have received death threats, who have been the victim of smear campaigns, stigmatisation, and being detained because of their critical position towards the authorities. Although the precautionary measures have protected a diverse range of individuals at risk, this article will focus on those deprived of their liberty. This is for two reasons. First, they represent the majority of people protected by the precautionary measures. Second, they are one of the most vulnerable groups in society, with their lives being

is exercised through legal entities and, therefore, it is essential that human rights defenders in these organizations enjoy the protection and independence needed to fully carry out their functions. In particular, the Commission considers that, just as trade union organisations are instruments for the exercise of the right of association of workers, political parties are mechanisms for the exercise of the political rights of citizens, and the media are mechanisms that serve the exercise of the right to freedom of expression of those who use them as a means of disseminating their ideas or information, non-governmental organisations or civil associations for the defense of human rights are a vehicle for the realisation of other rights such as the right to association, freedom of expression, and the right to defend human rights. See IACHR, *Closure of civic space in Nicaragua*, 23 September 2023, 29, 37.

7 Among others, the Universidad Centroamericana de Nicaragua (UCA), founded by Jesuits in 1960. The justification given by the state is often couched in the usual terms: it is a centre of terrorism, it has betrayed the people's trust, it violated the constitutional order. First, its assets and money were confiscated. Then its activities were suspended. See IACHR, *Annual Report 2023*, 676-677. Also IACHR, *Annual Report 2022*, Chapter IV, Nicaragua, 9.

8 n 7, p 10. Also, Inter-American Dialogue, 'La Migración y la Democracia: alternativas entre la exclusión y la expulsión', 8 June 2022. See also The World Bank Data.

9 AP, 'Nicaragua libera a más de 200 opositores y los envía a EE. UU.' 9 February 2023; *Infobae*, 'Más de 200 presos políticos fueron desterrados por el régimen de Daniel Ortega y enviados a Estados Unidos,' 9 February 2023. See also, BBC, 'Nicaragua libera a 222 opositores presos, los deporta a EE. UU. y les quita la nacionalidad', 9 February 2023.

10 According to the OAS Charter (art 143) the denunciation enters into force two years after the notice; this means on 19 November 2023. Article 143 says that, 'after two years from the date on which the General Secretariat receives a notice of denunciation, the [...] Charter shall cease to be in force with respect to the denouncing State, which shall cease to belong to the Organization after it has fulfilled the obligations arising from the [...] Charter.' See Charter of the Organization of American States (Charter of Bogota 30 April 1948 entered into force 13 December 1951. See IACHR, 'Press release: 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' 20 November 2021.

under the total control of the state. In sum, we are interested in addressing the impact of precautionary measures in situations of extreme vulnerability, such as those in which detainees are held in Nicaragua.¹¹

The purpose of this article is to analyse the impact of the precautionary measures adopted by the IACHR for the protection of persons deprived of their liberty in Nicaragua.¹² It will be argued that in contexts where the rule of law is under attack, international human rights bodies (such as the IACHR) play an important role in protecting people at risk through the adoption of precautionary measures. Despite little or no compliance by states with precautionary measures, especially in the context of repressive regimes, the symbolic impact of such measures is nonetheless significant.¹³

While the focus of this article is on the Americas, the issues discussed may also resonate in Africa. Comparative reflection on human rights challenges can illuminate common patterns of vulnerability and inspire innovative approaches to the protection of human rights. This is particularly relevant not only because repressive regimes exist in parts of Africa where persons at are risk, but also because African human rights bodies, namely, the African Commission on Human and Peoples' Rights (African Commission), the African Court on Human and Peoples' Rights (African Court), and the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee), have the competence to adopt provisional measures to offer protection and prevent human rights violations to persons in a serious and urgent situation, amongst others persons deprived of their liberty, when the ongoing or imminent human rights violation would cause 'irreparable harm'.¹⁴ For example, the African supervisory

11 For example, it depends on the will of the state whether they receive food, medical attention, or even clean water.

12 The terms prisoner and detainee are used interchangeably, indicating any person detained in a prison. The term prison is used to refer to any kind of detention facility including remand prisons or jails and penitentiaries.

13 The defining concept of the state is its monopoly on the legitimate use of coercion or physical force, including repression. Therefore, by definition, all governments have coercive capacity. They have agents of repression at their disposal, and those agents have assets available to them. This includes human and technical capital – size, strength, resources, and preparedness – in both the short and long terms. So, why do governments repress? It may be assumed that it is in pursuit of quiescence and the quelling of popular dissent. See DeMeritt (n 2).

14 Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), art 27(2); African Commission on Human and Peoples' Rights, Rule 100; African Children's Committee's Revised Rules of Procedure, more specifically in the ambit of its Protection Mandate, state under Rule 67 ('Matters of urgency'). See also C Burbano Herrera & F Viljoen 'Danger and fear in prison: Protecting the most persons vulnerable by regional human rights bodies through interim measures' (2017) 33(2) *Netherlands Quarterly of Human Rights* 163-193; C Burbano Herrera

bodies have, amongst others, issued provisional measures, ordering states to refrain from detention that could cause irreparable damage to a detainee;¹⁵ to provide detainees, their lawyers, and their families with adequate information and facts relating to the legal and factual basis for the detention of the applicants' relatives;¹⁶ provide a detainee access to his family members¹⁷ and to communicate with them, without any impediment;¹⁸ ensuring that the health of detainees was not in danger;¹⁹ providing access to medical care to a detainee without adequate medication or treatment;²⁰ and refraining from taking any action that may affect the detainee's physical and mental integrity as well as health.²¹ Taking the American context into account creates a valuable space for dialogue and exchange between scholars and practitioners across regions, fostering mutual learning and contributing to the development of more effective strategies for the protection of human rights across the Global South.

This contribution is divided into five sections. The initial two sections provide a concise overview of the Inter-American Human Rights System and explain the scope of two key concepts, namely, precautionary measures and persons deprived of their liberty.

The third section argues that the use of precautionary measures in Nicaragua is characterised by two factors. First, such measures are granted in a context where the rule of law and human rights are under attack with a clear breach of the principle of separation of powers. The executive controls all remaining powers.²² Second, the

'Examining high rates of mortality in Kenya: Could provisional measures be an effective tool to guarantee safe pregnancy?' (2017) 61(2) *Journal of African Law* 197-225.

15 ACTHPR, Application 2/2013, *African Commission on Human and Peoples' Rights v Libya*, Order Provisional Measures, 15 March 2013, para 20(1).

16 ACTHPR, Application 4/2023, *Moahd Kheriji Ghannouch and others v Tunisia*, Ruling Provisional Measures, 28 August 2023, para 61(ii).

17 ACTHPR, Application 12/2017, *Léon Mugesera v Rwanda*, Order Provisional Measures, 28 September 2017, para 30(b); ACTHPR, Application 2/2013, *African Commission on Human and Peoples' Rights v Libya*, Order Provisional Measures, 15 March 2013, para 20(3).

18 ACTHPR, Application 12/2017, *Léon Mugesera v Rwanda*, Order Provisional Measures, 28 September 2017, para 30(b).

19 ACHPR, No 140/94-141/94-145/95, *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v Nigeria*, Decision, 5 November 1999, para 17.

20 ACTHPR, Application 4/2020, *Houngue Éric Noudehouenou v Benin*, Ruling Provisional Measures, 15 August 2022, para 41; ACTHPR, Application 12/2017, *Léon Mugesera v Rwanda*, Order Provisional Measures, 28 September 2017, para 30(c); ACTHPR, Application 4/2013, *Lohé Isaa Konaté v Burkina Faso*, Order Provisional Measures, 4 October 2013, para 23(ii); ACHPR, No 258/2002, *Miss A v Cameroon*, Decision, 21 May - 4 June 2004, para 7.

21 ACTHPR, Application 12/2017, *Léon Mugesera v Republic of Rwanda*, Order Provisional Measures, 28 September 2017, para 30(c); ACHPR, No 83/92, *Jean Yakovi Degli (on behalf of Caporal N Bikagni) v Togo*, Decision, 11 November 1992, para 4.

22 IACHR, *Bulletin Meseni*, 2024.

Penal Code is employed by the authorities to punish and to silence those who are critical of the state. This specific context serves to illustrate the significance of analysing precautionary measures in protecting at risk persons who are fully subject to the authority of state authorities. It also illustrates the compliance challenges faced by precautionary measures in such circumstances and the importance of understanding the impact of human rights decisions.

In the *fourth section*, a case study is conducted. Comprehensive data about precautionary measures granted to protect at-risk detainees is provided. The analysis of the measures issued in Nicaragua reveals that persons deprived of their liberty are predominantly exposed to three categories of risks. Most of them experience a combination of all three at the same time, namely violations of the right to a fair trial, deplorable prison conditions and the right to health.

In the *fifth section*, the terms 'compliance' and 'impact' are defined in the context of this article. The impact of the IACHR's actions is evaluated at different levels, including the micro, meso, and macro levels. It will be argued that, in the complex Nicaraguan context, the IACHR has played an important role in the protection of persons deprived of their liberty through the adoption of precautionary measures. This is because, despite the often minimal or non-existent compliance with such measures granted, their symbolic impact is high.

The *sixth section* of the article contains some conclusions.

2 Brief overview of the Inter-American human rights system and the place of precautionary measures within the system

Prior to the analysis of the precautionary measures adopted to safeguard individuals deprived of their liberty in Nicaragua, it is essential to explain two key points: firstly, how the Inter-American human rights system functions; and secondly, the legal basis of precautionary measures within the Inter-American human rights system.

2.1 The Inter-American human rights system

The Inter-American human rights system (IAHRS) was created under the auspices of the Organisation of American States (OAS) in 1948 with the adoption of the Charter of the Organization of American

States (OAS Charter or Charter of Bogota)²³ and the adoption of the American Declaration of the Rights and Duties of Man (Declaration).²⁴ According to the OAS Charter, the 1969 American Convention on Human Rights (ACHR or American Convention) and the Statute of the Inter-American Commission, the Inter-American Commission of Human Rights is an OAS organ created to promote the observance and defence of human rights.²⁵ It is composed of seven independent members, 'Commissioners', who serve in a personal capacity. Created by the OAS in 1959, the Commission has its headquarters in Washington, DC. The Commission is, together with the Inter-American Court of Human Rights (IACtHR), one of the organs of the Inter-American human rights system dedicated to the protection of human rights.²⁶

The Commission interprets not only the ACHR but also the Declaration. Though the Declaration is not a treaty, it indirectly imposes obligations upon all 35 states on the basis of their OAS membership. The Commission was created in 1959 by a political decision of the Ministers of Foreign Affairs of the American states.²⁷ Because the Commission's mandate was to promote and protect human rights in the hemisphere, it began to document violations and promote human rights provisioned in the Declaration. The Commission was the only regional human rights instrument at the time. In 1965, the Commission was granted competence by the OAS political bodies to examine individual petitions alleging human rights violations. Thus, the Commission started to apply the Declaration by examining the complaints it was receiving.

The ACHR, which entered into force in 1978, is the first regional inter-American human rights treaty, but it has not been ratified by all OAS States (e.g. the US, Canada, some Caribbean island states) and it has even been denounced (such as by Trinidad and Tobago in 1999). The ACHR created the Court, which started to work in 1979 but only

23 Charter of the Organization of American States (Charter of Bogota), 30 April 1948 (entered into force 13 December 1951).

24 American Declaration on the Rights and Duties of Man (Bogota Declaration), 2 May 1948; art 112, OAS Charter.

25 American Convention on Human Rights (Pact of San Jose), 22 November 1969 (entered into force 18 July 1978).

26 More on the role of the Inter-American human rights system in documenting serious human rights violations: C Burbano Herrera & Y Haack 'The historical and present-day role of non-governmental organisations before the inter-American human rights system in documenting serious human rights violations and protecting human rights and the rule of law through ensuring accountability' (2021) 17(2) *Utrecht Law Review* 8-25, <https://doi.org/10.36633/ulr.672>.

27 Resolution of the Fifth Meeting of Consultation of Ministers of Foreign Affairs in Santiago, Chile, in 1959. It was formally established in 1960 when the Permanent Council of the OAS approved its Statute. Its Rules of Procedure, first adopted in 1980, were amended several times thereafter, most recently in 2013.

began to exercise its judicial competences in earnest in 1988. The Inter-American Human Rights System has three protection levels: (i) states that have not ratified the ACHR have obligations under the Declaration and are supervised by the Commission; (ii) states that have ratified the ACHR have obligations under it and are supervised by the Commission; (iii) states that have ratified the ACHR and have accepted the IACtHR's jurisdictional competence have obligations under the ACHR and are supervised by the Commission and the Court.

2.2 The precautionary measures mechanism within the Inter-American human rights system

The precautionary measures mechanism is part of the Commission's function to monitor compliance with the human rights obligations established in article 41(b) of the American Convention and article 18(b) of the Statute of the IACHR, based on article 106 of the OAS Charter, the latter asserting that the primary function of the IACHR is to promote the observance and protection of human rights in the Americas.²⁸

Furthermore, the mechanism of 'precautionary measures' is described in article 25 of the Commission's Rules of Procedure, which stipulates that the Commission may grant precautionary measures 'in serious and urgent situations when it is necessary to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case'.²⁹ In addition, in accordance with article 63(2) of the American Convention, in instances of extreme gravity and urgency, the Commission may request the IACtHR to grant 'provisional measures' to prevent irreparable harm to individuals, even in the absence of a pending case before the Court.³⁰

While it should be noted that the American Convention does not include the precautionary measures, both the Commission's Rules of Procedure and the Inter-American Convention on Forced Disappearance of Persons have incorporated them. This latter Inter-American Convention recognises the competence of the IACHR to

28 Art 106 reads: '[t]here shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.'

29 Commission Rules of Procedure, art 25.

30 American Convention on Human Rights, art 63(2).

request precautionary measures in its article XIII.³¹ Furthermore, the binding force of precautionary measures has been acknowledged by the OAS³² and several OAS member states.³³

3 Precautionary measures and persons deprived of their liberty

3.1 Precautionary measures

In international human rights law, precautionary measures can be defined as an instrument aimed to prevent irreparable harm to persons in situations of extreme gravity and urgency. They can be ordered by the IACHR, which acts either *proprio motu* or following a petition of the individual at risk or on behalf of the at-risk individual, and can result in the state providing protection to the precautionary measures' beneficiary. The prerequisite conditions for granting precautionary measures are that the person or group affected is/are in a serious and urgent situation of suffering irreparable harm.

31 The Inter-American Convention on Forced Disappearance of Persons was adopted in Belem Do Pará, Brazil, by the OAS on 6 September 1994 and entered into force on 28 March 1996. It has been ratified by 14 States.

32 The General Assembly has encouraged States Parties to 'follow up on the recommendations of the IACHR, including, *inter alia*, precautionary measures'. See OAS, Draft Resolution, Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights, Approved by the Committee at its meeting of 17 May 2007, 2.

33 Colombia since 2003, has expressly recognised the Commission's competence to adopt precautionary measures, and it has also held that such measures are mandatory. According to the Colombian Constitutional Court's jurisprudence, precautionary measures are 'a judicial act adopted by an international body for the protection of human rights', and consequently, non-compliance with the Commission's precautionary measures 'would amount to a disregard for the international obligations to respect and ensure enshrinement in Articles 1 and 2 of the American Convention'. See Colombian Constitutional Court, Judgment T-558 of 2003, T-786 of 2003; T-327 of 2004, T-385 of 2005; T-524 of 2005; T435 of 2009 and T-367 of 2010. In a case related to Trinidad and Tobago, the Judicial Committee of the Privy Council (i.e. the highest court of appeal (or court of last resort) for several independent Commonwealth countries), more or less in the same terms as the Colombian Constitutional Court, recognised the competence of the Commission to request precautionary measures, and it also deduced domestic legal effects. In this case, the Inter-American Commission had requested the State to suspend the orders of execution of some prisoners while their complaints were pending before the Inter-American system on human rights. The Privy Council judgment expressly indicated that '[for] the Government to carry out the sentences of death before the [Inter-American] petitions have been heard would deny the appellants their constitutional right to due process'. See B Tittermore 'The mandatory death penalty in the Commonwealth Caribbean and the Inter-American human rights system: An evolution in the development and implementation of international human rights protections' (2004) 13(2) *William & Mary Bill of Rights Journal* 445-520. Also IACHR, *Haniff Hilaire (Trinidad and Tobago)*, Precautionary Measures, Order of 16 October 1997; Thomas & Hilaire, [1999] 3 W.L.R. 249, 2 A.C.1., 12, 19.

For instance, precautionary measures are adopted to safeguard individuals who are deprived of their liberty and in need of medical care, yet the state fails to provide them with the necessary medication or treatment to continue their existence. Precautionary measures protect any person and groups, including victims and presumed victims of petitions and cases brought before the Inter-American Human Rights System. This includes human rights defenders, women, children, journalists, judges, indigenous communities, and witnesses who have testified before human rights bodies.

A study showed that precautionary measures in the Americas are mainly adopted to protect at-risk detainees, including those detained prior to deportation.³⁴ In other words, precautionary measures are mostly adopted to protect individuals who are under the complete control of state authorities and whose right to life, integrity, and/or health are in danger of violation or deterioration. On such occasions, precautionary measures have been adopted with the aim of preventing detainees from falling below the standard of living that might lead to their death, with the aim that states recognise them as being worthy of equal consideration, respect and dignity.³⁵

Within the Inter-American human rights system, the Commission evaluates a request for precautionary measures by examining whether there is: a serious situation; an urgent situation; and a risk of irreparable harm:³⁶

A serious situation refers to a grave impact that an action or omission can have on a protected right, on the eventual effect of a pending decision in a case, or on the petition before the organs of the inter-American system. *An urgent situation* refers to a risk or threat that is imminent and can materialise, thus requiring immediate preventive or protective action. And *a risk of irreparable harm* refers to a harm to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

34 See C Burbano Herrera & Y Haeck (eds) *Human rights behind bars: Tracing vulnerability in prison populations from a multidisciplinary perspective* (2022); C Burbano Herrera & Y Haeck 'The innovative potential of provisional measures resolutions for detainee rights in Latin America through dialogue between the Inter-American Court and other Courts' in E Rieter & K Zwaan (eds) *Urgency and human rights: The protective potential and legitimacy of interim measures* (2021) 223-244.

35 Burbano Herrera & Viljoen (n 14).

36 See IACHR's Rules of Procedure, art 25(2). In analysing these requirements, the Commission has expressed that the facts supporting a request for precautionary measures need not be proven beyond reasonable doubt. The information provided should be assessed from a *prima facie* standard of review to determine whether a serious and urgent situation exists. See, for example, IACHR, *Martha del Socorro Ubilla, Marlon Antonio Castellon Ubilla, Marwin Antonio Castellon Ubilla v Nicaragua*, Resolution No 8/22, PM 564-21, 13 February 2022, para 37.

Serious and urgent situations are clearly present when there is an imminent risk to the right to life, the right to personal integrity, the right to health, or the right to a fair trial of persons deprived of their liberty, involving for example, the risk of torture, or serious danger arising from harsh conditions of detention. The function of the precautionary measures is exclusively to protect persons at risk, to prevent human rights violations and/or to preserve the subject matter of the proceedings in relation to pending litigation (if any). In no case do the precautionary measures prejudge the merits of the case; they do not constitute a declaration of international responsibility on the part of the State. Consequently, the compliance with and impact of precautionary measures can be distinguished from the compliance with and impact of a judgment on merits.

It is important to note that in the Inter-American Human Rights System, precautionary measures do not always depend on a particular petition or case being brought before the human rights body. In this regional human rights system, the beneficiary of the precautionary measures is not required to be a party to a case (art 63(2) American Convention; art 27 IACtHR Rules of Procedure). Furthermore, the beneficiary of these measures is not obliged to submit a petition once the precautionary measures have been granted.

3.2 Persons deprived of their liberty

‘[D]eprivation of liberty means any form of detention or placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.’³⁷ This implies that individuals may be deprived of their liberty in a variety of institutions, including detention centres, prisons, and immigration centres. Evidently deprivation of liberty is a broad term. In this article we

37 See UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990, para 2. For the purposes of this contribution, we understand: (a) ‘Arrest’ means the act of apprehending a person for the alleged commission of an offence or by the action of an authority; (b) ‘Detained person’ means any person deprived of personal liberty except as a result of conviction for an offence; (c) ‘Imprisoned person’ means any person deprived of personal liberty as a result of conviction for an offence; (d) ‘Detention’ means the condition of detained persons as defined above; (e) ‘Imprisonment’ means the condition of imprisoned persons as defined above; (f) The words ‘a judicial or other authority’ means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence. See United Nations, General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly Resolution 43/173, 9 December 1988.

focus specifically on people deprived of their liberty in detention centres and prisons.³⁸

In certain instances, the deprivation of liberty may be justified, for instance, when enforcing criminal laws. Nevertheless, the deprivation of liberty must be neither arbitrary nor without sufficient legal basis. Furthermore, the rights of individuals deprived of liberty must be respected in accordance with international human rights standards.³⁹ Failure to comply with minimum international standards can never be justified.⁴⁰ For instance, in the area of health and well-being, the IACtHR underlines the obligation of the State to guarantee these rights in such a way that no detainee suffers more than is inherent in the detention itself.⁴¹

Persons deprived of their liberty are considered as one of diverse groups in situations of vulnerability.⁴² The states are in a 'special position' as a guarantor of the rights of persons under their custody. This is the result of the special situation of submission of them with respect to the state that is entitled to regulate the rights and obligations of a population who cannot satisfy, by their own means, the basic needs essential for the development of a dignified life.⁴³ Individuals deprived of liberty are a vulnerable group, as they have been removed from their usual environment and are no longer permitted to manage their own lives. Furthermore, the vulnerability of a person deprived of liberty can be amplified by factors such as sex, age, and sexual orientation. These groups generally 'encounter serious and specific social and legal obstacles that impede them both from achieving and possessing a set of rights and from enjoying

38 The term 'deprivation of liberty' will be used in cases related to arrest, detention or imprisonment. According to the 1998 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (GA Res 43/173, 9 December 1998), 'arrest' is defined as 'the act of apprehending a person for alleged commission of an offence or by the action of an authority', whereas 'detention and imprisonment' relate to the 'condition' of a person deprived of personal liberty, depending whether or not the deprivation of liberty follows a conviction for an offence.

39 IACtHR, *Case of Mota Abarullo et al v Venezuela*, Judgment 18 November 2020, para 8; and IACtHR, *Bulacio v Argentina*, Judgment 18 September 2003, IACHR, Report No 122/18. Case 11.656. Merits (Publication) *Marta Lucia Alvares Giraldo v Colombia*, 2018, para 165; and IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, 2011, para 49, 71 and 189.

40 IACtHR, *Montero-Aranguren et al (Detention Center of Catia) v Venezuela*, paras 85, 87.

41 IACtHR, *The 'Juvenile Reeducation Institute' v Paraguay*, para 159.

42 EC Cuenca 'La protección de categorías de personas especialmente vulnerables en el derecho español' 2011(9) *Teoría y derecho: revista de pensamiento jurídico* 103-124.

43 See F Piovesan & S Serrano Guzman 'The implications of the principle of equality and non-discrimination on the rights of persons deprived of liberty in the Inter-American system' in Burbano Herrera & Haack (n 34) 36; IACtHR, *Mendoza et al v Argentina*, Judgment 14 May 2013, para 152.

them in the same breadth and depth like citizens who do not form part of that group'.⁴⁴

From a practical point of view, studies show a systematic violation of rights of persons deprived of liberty in various countries of the region.⁴⁵ This situation reflects a broader image of persistent democratic deficits in the respective domestic orders – considering that a truly democratic regime is defined by its formal and substantial dimensions that propose the protection of human rights as an infrangible limitation on the principle of majority rule.⁴⁶ As a reaction, the Inter-American human rights system has focused its efforts on the promotion and consolidation of human rights standards, with the aim of ensuring that all persons deprived of their liberty enjoy the conditions necessary to preserve their human dignity.⁴⁷

4 Nicaragua, a country where the rule of law is under attack and human rights are at risk

The rule of law is a universal principle that serves as a precondition for the defence of human rights and for ensuring equal treatment before the law.⁴⁸ It has become a 'global ideal and aspiration'.⁴⁹ In the

44 FM Mariño Menéndez, 'Introducción: aproximación a la noción de persona y grupo vulnerable en el Derecho europeo', in FM Mariño Menéndez & CR Fernández Liesa (eds) *La protección de las personas y grupos vulnerables en el Derecho europeo*, Tirant lo Blanch, 2001, 21.

45 C Burbano Herrera 'Detained migrants in condition of extreme danger: How does the European Human rights system protect them?' in B Elger and others (eds) *Emerging issues in prison health* (2017); C Burbano Herrera *Provisional measures in the case law of the Inter-American Court of Human Rights* (2010); C Burbano Herrera & Y Haeck 'The use of transformative provisional measures by the InterAmerican Court of Human Rights: Towards a material impact', in A von Bogdandy and others (eds) *Almost magical transformations on the ground: How the Inter-American Human Rights System and Ius Constitutionale Commune impact Latin-America*, Oxford University Press, 2021.

46 M Morales Antoniazzi 'The rights of persons deprived of liberty in Latin America: From the perspective of an ius constitutionale commune' in C Burbano Herrera & Y Haeck (eds) *Human rights behind bars* (2022) 115.

47 IACHR, *Report on Women Deprived of Liberty in the Americas*, 2023; IACHR, *Personas privadas de libertad en Ecuador*, 2022; IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Resolution 1/08, 13 March 2008.

48 R Janse *Rule of law. A guide for politicians* (2012) 6.

49 While no agreement exists on a single definition of the rule of law, a 2004 report of the UN Secretary-General explicitly holds that it concerns 'a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards' and that the rule of law 'requires (...) accountability to the law.' See Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para 6. Furthermore, in the 2012 Declaration of the High-level Meeting of the General Assembly on the Rule of Law, UN states once again stressed the interrelationship between the rule of law and human rights. See, UN Declaration of the High-level Meeting of the General Assembly on the

Americas, the key elements of the rule of law and its interconnection with democracy, human rights, and political rights are enshrined in the 'Inter-American Democratic Charter', which states in its article 3:⁵⁰

'[E]ssential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.'

In this regard, the IACHR has reiterated that in a democratic society, the rule of law and human rights are inextricably linked.

Although statements and documents at the inter-American regional level reaffirm the importance of the rule of law and its close connection with democracy and human rights, it is a matter of concern that in some Latin American countries there has been a persistent tendency towards the emergence of dictators and/or authoritarian presidents. These regimes have been characterised by the complicity of the judiciary and parliament in attacks on the rule of law and human rights.⁵¹

This is particularly evident in Nicaragua. In its report entitled '*Concentration of Power and the Undermining of the Rule of Law*', the IACHR warned that Nicaragua was undergoing a gradual process of concentration of power and deterioration of democratic institutions, with electoral processes, for example, failing to meet the minimum standards for free and fair elections.⁵²

Rule of Law at the National and International Levels Resolution adopted by the General Assembly, Sixty-seventh session, adopted by the Assembly in resolution 67/1, para 1. See also, P Domingo & R Sieder *The rule of law in Latin America: The international promotion of judicial reform* (2001); R Sieder, K Ansolabehere & T Alfonso *Routledge handbook of law and society in Latin America* (2019); JC Chasteen *Born in blood and fire. A concise history of Latin America* (2016).

50 The Inter-American Democratic Charter was adopted by the member states of the OAS at a special session of the General Assembly held on 11 September 2001, in Lima, Peru.

51 Amongst many, C Medina Quiroga *The battle of human rights: Gross, systematic violations and the Inter-American System* (1988); H Hey *Gross Human Rights Violations: A Search for Causes*, Martinus Nijhoff, 1995; C Burbano Herrera & Y Haeck 'The historical and present-day role of non-governmental organisations before the Inter-American Human Rights system in documenting serious human rights violations and protecting human rights and the rule of law through ensuring accountability' (2021) 17 *Utrecht Law Review* 8.

52 IACHR, *Nicaragua: Concentration of power and the undermining of the Rule of Law*, 2021. See also, IACHR, 'Press Release. 122/21 - The IACHR Expresses Concern over Electoral Reform Passed in Nicaragua and Calls on State to Guarantee Free and Fair Elections', 14 May 2021. "Restoring Democratic Institutions and Respect for Human Rights in Nicaragua through Free and Fair Elections", adopted by

The Commission has stated that while killings perpetrated by state authorities represent the most serious form of violation of human rights and the rule of law, they are by no means the only one in Nicaragua. Other violations include deprivation of liberty, attacks, disappearances, physical, psychological and sexual violence, stigmatisation, smear campaigns, criminalisation, individual and collective threats.⁵³ These actions affect not only directly the victims, but also their relatives. From a legal perspective, these actions can be seen as violations of their right to life (art 4 ACHR), physical and mental integrity (art 5 ACHR), sexual and health rights (art 26 ACHR, art 10 Protocol of San Salvador),⁵⁴ personal liberty (art 7 ACHR), freedom of assembly (art 15 ACHR) and freedom of expression (art 13 ACHR) to name just a few.

With regard to detained individuals, a number of international human rights bodies have expressed concern about their arbitrary detention. It has been stated that the continued lack of independence of the judicial system has facilitated the use of criminal law to criminalise and persecute dissenting voices through hundreds of proceedings on unfounded and disproportionate charges, as well as serious violations of the right to a fair trial.⁵⁵

The IACHR has expressed that the judicial proceedings lacked judicial guarantees. Furthermore, it has highlighted the lack of official information regarding the whereabouts of the detained persons and their legal situation. In particular, in June 2021, the IACHR and the Regional Office of the UN 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 in the context of the crisis.⁵⁶

In August 2021, the European Union (EU) imposed targeted sanctions on eight Nicaraguans accused of 'serious human rights violations' and undermining democracy, including Vice-President

the OAS General Assembly, AG/CG/doc.Q (L-O/20), Washington, D.C., United States of America, 21 October 2020. See, IACHR, *Annual Report 2023*, 676-677.

53 IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, Report, 21 June 2018, 9.

54 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ('Protocol of San Salvador'), adopted on 17 November 1988, entered into force on 16 November 1999. The Protocol was ratified by Nicaragua on 15 December 2009.

55 Mechanism for the Recognition of Political Prisoners, *List – Preliminary report political prisoners in Nicaragua*, 31 August 2023.

56 IACHR and the Regional Office for Central America and the Dominican Republic of the UN High Commissioner for Human Rights and the IACHR categorically condemn the criminal prosecution of presidential pre-candidates and urge the State of Nicaragua to immediately release them (6 June 2021).

Rosario Murillo.⁵⁷ The sanctions include freezing assets, forbidding EU citizens and companies from making funds available to the people listed, and a travel ban that prevents them from entering the EU. Fourteen Nicaraguans have been sanctioned by the EU since 2020.⁵⁸

In September 2021, the Commission and the OHCHR issued a joint statement condemning the criminalisation of individuals identified as political opponents in Nicaragua.⁵⁹ In August 2023, the IACHR and the Office of the UN High Commissioner for Human Rights for Central America and the English-speaking Caribbean (OHCHR) condemned the continued violations of human rights in detention centres. They referred to the lack of access to medical care and essential medicines, the isolated detention system, and the limitation of family visits.⁶⁰ The Commission noted the persistence of arbitrary detentions and deprivation of liberty for political reasons to repress opposition and criticism of the government. This was designed to convey a sense of intimidation and control to the population.⁶¹

Furthermore, in 2023 the UN Deputy High Commissioner for Human Rights, Nada Al-Nashif, addressed the UN Human Rights Council and provided an oral update on the human rights situation in Nicaragua. She expressed regret that restrictions on civil space continued, with repeated cases of arbitrary detention of those exercising their fundamental freedoms. It was mentioned that '(...) 17 women and 54 men, including political opponents and human rights defenders, remain arbitrarily detained according to civil society sources. Some criminal trials are reportedly held without the physical presence of the accused, who participate only via video call, and without legal assistance. Our Office has documented reports of torture in detention, as well as information about threats against

57 European Council, 'Nicaragua: EU imposes sanctions on eight more individuals', 2 August 2021.

58 Human Rights Watch, 'EU, UK Sanction Top Nicaraguan Officials, Authorities Implicated in Violent 2018 Crackdown', 9 May 2020.

59 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', 9 June 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', 9 July 2021; 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', 10 September 2021.

60 They emphasise this in the context of *La Modelo* Prison, the maximum security wing of Managua. The *La Modelo* Prison has the reputation of being the worst prison in Nicaragua. See Newspaper *El Pais*, 28 June 2021.

61 Mechanism for the Recognition of Political Prisoners, *List – Preliminary report political prisoners in Nicaragua*, 31 August 2023.

prisoners and their relatives cautioning them not to denounce conditions of detention (...).⁶²

The IACHR has called on the Nicaraguan government to respect and protect human rights and to investigate human rights violations. The IACHR has expressed concern that the persistence of repression and the widespread situation of impunity⁶³ for human rights violations committed in Nicaragua has led to a serious political, social, economic, and human rights crisis.⁶⁴ The persistence of human rights violations in a context of a breakdown in the principle of the separation of powers is a matter of concern.⁶⁵ The context in Nicaragua is unquestionably one of a crisis of the rule of law.

5 Precautionary measures versus types of danger faced by persons deprived of their liberty in Nicaragua

As previously mentioned, the IACHR adopts precautionary measures to safeguard individuals in serious and urgent situations to prevent them from suffering irreparable harm. Any person or organisation can submit a request for precautionary measures in favour of an identified or identifiable person or group of persons who find themselves in a situation of risk, such as persons deprived of liberty in appalling conditions.

Several precautionary measures have been granted with regard to Nicaragua. Our research shows that between 2010 and 2024,⁶⁶ the IACHR adopted 132 precautionary measures to protect persons at risk. The high number of precautionary measures granted is directly linked to the repressive regime that began in 2018. Indeed, there exists a notable fluctuation in the number of such measures granted before and after the year 2018, and this can be attributed to the

62 Office of the High Commissioner for Human Rights, Nada Al-Nashif United Nations Deputy High Commissioner for Human Rights in Nicaragua, Report points to continuing violations, 18 December 2023.

63 Impunity has been defined in inter-American case law as the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention, in view of the fact that the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives. IACtHR, *Bámaca-Velásquez v Guatemala*, Judgment, 25 November 2000, para 211.

64 IACHR, *Annual Report 2023*, 676.

65 According to the records of the Mechanism for the Recognition of Political Prisoners, as of 31 August 2023, 79 persons continued to be arbitrarily deprived of their liberty. Mechanism for the Recognition of Political Prisoners, *List, Preliminary report political prisoners in Nicaragua*, 31 August 2023.

66 The present study covers the period from January 2010 to June 2024.

existing political climate. Specifically, between 2010 and 2017, the Commission granted a total of 4 precautionary measures, none of which pertained to individuals who were deprived of their liberty.⁶⁷ In stark contrast, from 2018 to June 2024, the Commission granted a total of 128 precautionary measures,⁶⁸ and of those, 47 were issued regarding individuals deprived of their liberty (36.7 per cent of total number of precautionary measures).

Our findings indicate that a total of 157 persons deprived of their liberty have received protection through precautionary measures. This data set comprises 96 men (67 per cent), 44 women (28 per cent),⁶⁹ 1 transgender woman (0.7 per cent), 5 anonymous individuals (3.8 per cent), and 20 families of people at risk (15 per cent).⁷⁰ The IACHR played a crucial role in safeguarding the at-risk individuals and protecting their rights to life,⁷¹ personal integrity,⁷² and health.⁷³

67 See, IACHR, *Amelia v Nicaragua*, PM 43-10, 14 October 2015. The request alleged that Amelia, mother of a 10-year-old girl, was not receiving the necessary medical attention to treat the cancer she had because of her pregnancy. See also, IACHR, *Members of the Communities Esperanza, Santa Clara or Miskitu Indigenous People of Wangki Twi-Tasba Raya v Nicaragua*, Resolution No 37/15, PM 505-15. This precautionary measure was extended on 16 January 2016; and 8 August 2016. According to the request, members of these indigenous communities were subjected to cycles of violence, murder, threats and acts of harassment, as a result of the presence of the so-called settlers ('colonos') within their territories of the indigenous communities and acts of violence, in the context of a territorial dispute and land title claims on said territories. See also IACHR, *Carlos Humberto Bonilla Alfaro and others v Nicaragua*, PM 121-16, 24 March 2016. The request for precautionary measures alleged that the beneficiaries were objects of violence because of their involvement in the NGO 'Movimiento Democrático Nicaragüense' related to the defense and promotion of free and transparent elections.

68 From 2018 until 2022 the Commission received 525 requests for precautionary measures. See IACHR, MESENI, *Mecanismo Especial de Seguimiento para Nicaragua*, Informe de Balance, 2022, 2.

69 See for example IACHR, *Amaya Eva Coppens Zamora and others (Deprived of their Liberty at the Penitentiary Center 'La Esperanza') v Nicaragua*, Resolution No 84/18, PM 1133-18, 11 November 2018.

70 IACHR, *Intentar de Nuevo para averiguar el gender/sexo: Resolution No 23/24, PM 384-24 - Walner Omier Blandón Ochoa and ten other persons of the 'Puerta de la Montaña' Ministry v Nicaragua*.

71 For example IACHR, *Martha del Socorro Ubilla, Marlon Antonio Castellon Ubilla, Marwin Antonio Castellon Ubilla v Nicaragua*, Resolution No 8/22, PM 564-21, 13 February 2022.

72 For example, *Kevin Emilio Castillo Prado, Víctor Jobelni Ticay Ruiz, Sergio Catarino Castiblanco Hernández, Jacqueline de Jesús Rodríguez Herrera, JECW, Olesia Auxiliadora Muñoz Pavón, Anielka Lucía García Zapata, and Melba Damaris Hernández v Nicaragua*, Resolution No 89/23, PM 1022-23, 1025-23, 30 December 2023; IACHR, *Freddy Antonio Quezada v Nicaragua*, Resolution No 82/23, PM 1091-23, 27 December 2023; IACHR, *Abdul Montoya Vivas and family v Nicaragua*, Resolution No 81/23, PM 1094-23, 27 December 2023.

73 For example, in the case of *Edgar Francisco Parrales Castillo v Nicaragua*, the IACHR observed with concern the situation of Mr Edgar Parrales, an elderly person deprived of liberty and incommunicado for more than 40 days to date, who was suffering from various concerning diseases without medical examinations. In addition, it was noted that the relatives had not received information about his state of health. See, IACHR, *Edgar Francisco Parrales Castillo v Nicaragua*, Resolution No 1/22, PM 1088-21, 12 January 2022, para 36.

The analysis of the precautionary measures adopted in Nicaragua reveals that individuals who have been deprived of their liberty face three types of danger. Most of them experience a combination of all three at the same time:

Context 1: 'legal actions by the justice system':⁷⁴

Those who challenge the status quo and express dissent towards governmental policies are subjected to investigation and criminalisation by the justice system in collaboration with other national authorities. The criminal proceedings to which they are subjected do not adhere to international human rights standards. Criminal law is used as a tool for control and repression. Those who seek protective measures allege that they have been accused and/or punished for a range of criminal activities, including terrorism, conspiracy,⁷⁵ drug trafficking,⁷⁶ illegal weapon possession,⁷⁷ and common crimes. They also claim that they have been subjected to prosecution for activities that are perceived to be contrary to peace.⁷⁸

For example, with regard to the protective measures taken to safeguard Mr Medardo Mairena Sequeira and Mr Pedro Mena, the two

⁷⁴ The last public hearing organised by the IACHR was related to 10 precautionary measures. These measures aimed to protect 60 persons in total, including 44 persons deprived of their liberty and 7 persons who had been freed. The other 9 beneficiaries were relatives of the beneficiaries. The state was not present during the public hearing. The participants in the public hearing alleged that the beneficiaries of the precautionary measures had been deprived of liberty between 2018 and 2021, and alleged violations to their right to due process, life and integrity, and that the state had not complied with the precautionary measures. The beneficiaries were detained in the Centro Penitenciario Jorge Navarro known as *La Modelo*.

⁷⁵ IACHR, *Cynthia Samantha Jirón Padilla Ubieta, Jeannine Horvilleur Cuadra, Ana Carolina Álvarez Horvilleur, and Harry Bayardo Chávez Cerda v Nicaragua*, Resolution No 68/22, PM 265-22, 859-22, 866-22, 6 December 2022.

⁷⁶ In the case of identified family members of Neyma Elizabeth Hernández Ruiz *et al*, it was mentioned that on the same day the beneficiary was brought before the Managua Court of the Ninth Criminal Hearing District to hold a preliminary hearing, Wilfredo Brenes was found guilty of the crimes of drug trafficking and illegal possession of weapons. The representatives questioned the judicial process against the beneficiary. See IACHR, *Identified family members of Neyma Elizabeth Hernández Ruiz et al v Nicaragua*, Resolution 44/2021, PM No 1105-19, 17 May 2021 (modification and extension) para 10. See also IACHR, *Gustavo Adolfo Mendoza Beteta and family vs Nicaragua*, Resolution No 37/21, PM 96-21, 29 April 2021.

⁷⁷ IACHR, *Rodrigo José Navarrete Vanegas and his family unit v Nicaragua*, Resolution No 74/22, PM 355-22, 19 December 2022, para 39.

⁷⁸ For example, see the situation of Kevin Roberto, a university student, social activist and government opponent, who was at-risk in the context of his deprivation of liberty due to beatings received during his detention. He was punished for robbery. See IACHR, *Kevin Roberto Solís v Nicaragua*, Resolution No 33/21 PM 205-21, 22 April 2021. See also, IACHR, *Medardo Mairena Sequeira and Mario Lener Fonseca Díaz and their relatives v Nicaragua*, Resolution No 80/18, PM 1172-18, 15 October 2018; and IACHR, *Gustavo Adolfo Mendoza Beteta and family v Nicaragua*, Resolution No 37/21, PM 96-21, 29 April 2021.

beneficiaries had been held incommunicado for a period exceeding 60 days, and their relatives had not been officially informed of their whereabouts. After their arrest, they had repeatedly complained of irregularities in the criminal proceedings. Yet, a domestic court found them guilty of terrorism and sentenced each to 216 years of imprisonment.⁷⁹ It is also worth noting that the beneficiaries were deprived of their liberty after Mr Mairena formalised his decision to run for the Nicaraguan presidency.⁸⁰ The Commission requested Nicaragua to ensure that Mr Medardo Mairena could access his legal representative in accordance with relevant standards.⁸¹ Additionally, the IACHR requested that Nicaragua immediately examine the possibility of providing alternatives to deprivation of liberty and report on any actions taken to investigate the alleged events that led to the adoption of these precautionary measures in order to prevent the recurrence of human rights violations in the future.⁸²

In general individuals claim that they have been detained, processed and/or punished without a due process, and/or without access to a lawyer.⁸³ The aforementioned cases serve to illustrate the lack of judicial independence.

Context 2: 'deplorable prison conditions':

In general, the Nicaraguan prison system does not guarantee the most basic of needs to those who are deprived of their liberty. The conditions are often even worse for those who criticise the government and are arbitrarily detained, such as political opponents, human rights defenders and journalists. For instance, they are not granted rights that other inmates enjoy like receiving visitors and having access to reading material. They are denied access to drinking

79 On 11 June 2019 he was released through an amnesty law that granted this benefit to all those detained for participating in the protests. See IACHR, *Medardo Mairena Sequeira and Mario Lener Fonseca Díaz and their relatives vs Nicaragua*, PM 1172-18, Resolution 79/2021, 3 October 2021, para 19.

80 Resolution 79/2021 (n 79) para 67.

81 For example, in the precautionary measures related to Medardo Mairena Sequeira, the Commission requested Nicaragua to ensure that Mr Medardo Mairena could access his legal representatives and receive family visits in accordance with the applicable standards. See IACHR, *Medardo Mairena Sequeira and Mario Lener Fonseca Díaz and their relatives v Nicaragua*, Resolution No 80/18, PM 1172-18, 15 October 2018.

82 As above.

83 For example, in the precautionary measures related to Medardo Mairena Sequeira, the Commission requested Nicaragua to facilitate that Mr Medardo Mairena can access his legal representatives and receive family visits in accordance with the applicable standards. See IACHR, *Medardo Mairena Sequeira and Mario Lener Fonseca Díaz and their relatives v Nicaragua*, Resolution No 80/18, PM 1172-18, 15 October 2018. The precautionary measures were extended see: IACHR, *Medardo Mairena Sequeira and Pedro Joaquín Mena Amador v Nicaragua*, Resolution 79/2021, PM No 1172-18, 3 October 2021.

water,⁸⁴ are provided with insufficient and low-quality food, and they do not get mattresses.⁸⁵

Persons deprived of their liberty endure various forms of inhumane treatment;⁸⁶ some are subjected to overcrowded conditions,⁸⁷ while others experience solitary confinement.⁸⁸ In particular, women inmates have reported a lack of access to hygienic products and trans women have not received hormone treatment.⁸⁹

It has been claimed that the case of JNSR involved a ‘prolonged deprivation of liberty under even more deplorable and unsanitary conditions, persistent acts of mistreatment, isolation, incommunicado detention, constant interrogations, the lack of adequate and sufficient food, as well as the lack of access to timely, adequate, and specialized medical care’.⁹⁰ It was reported that the beneficiary suffered from a number of health problems, including rhinitis, headaches, and joint pain in the knees. In this context, the family members were unaware of the beneficiary’s health status, whether he had access to medical care, or his personal medications.⁹¹

Context 3: ‘the right to health at risk’:

The IACHR has granted precautionary measures to persons deprived of their liberty who are ill and do not have access to medicines or

84 See for example, IACHR, *Amaya Coppens et al v Nicaragua*, Resolution No 62/19, PM 1105-19, 24 December 2019. The Commission granted precautionary measures in favour of Amaya Coppens and 15 persons deprived of their liberty in the Nuevo Chipote prison in Nicaragua. According to the request, the beneficiaries were deprived of liberty after they provided medicines and water to a group of mothers who began a hunger strike to protest the reportedly arbitrary detention of their relatives detained for protesting.

85 IACHR, *Amaya Coppens et al v Nicaragua*, Resolution No 62/19, PM 1105-19, 24 December 2019.

86 See IACHR, Public hearing ‘10 Precautionary Measures of People Deprived of Liberty in Nicaragua’, 24 June 2022. It can be watched here; IACHR, *Cristiana María Chamorro Barrios et al v Nicaragua*, Resolution No 49/21, PM 480-21, 24 June 2021.

87 IACHR, *Gustavo Adolfo Mendoza Beteta and family v Nicaragua*, Resolution No 37/21, PM 96-21, 29 April 2021.

88 See IACHR, *J.N.S.R. v Nicaragua*, Resolution No 34/2023, PM 304-23, 19 June 2023, para 30. See also, IACHR, *Miguel de los Angeles Mora Barberena v Nicaragua*, Resolution No 61/21, Extension, PM 873-18, 11 August 2021; and IACHR, *Pedro Salvador Vásquez v Nicaragua*, Resolution (Extension) 58/2021, PM No 480-21, 3 August 2021, para 13.

89 IACHR, *Amaya Coppens et al v Nicaragua*, Resolution No 62/19, Precautionary Measures 1105-19, 24 December 2019. See also IACHR, Public hearing ‘10 Precautionary Measures of People Deprived of Liberty in Nicaragua’, 24 June 2022. It can be watched here. It was mentioned that domestic judges should not receive petitions because it is not their task.

90 See IACHR, *J.N.S.R v Nicaragua*, Resolution No 34/2023, PM 304-23, 19 June 2023, para 30.

91 As above.

medical treatment.⁹² In these cases, the complainants usually allege that the detainees are seriously ill and that there is a high probability of serious consequences for their right to life, personal integrity and health. This includes the elderly too.⁹³ It has also been alleged that state authorities prevent detainees from receiving medication from their relatives.⁹⁴

It should be noted that a number of the beneficiaries are over the age of 60 years and have specific needs related to their age. This situation was described in the precautionary measure adopted to protect Mr Oscar Vargas Escobar, a 76-year-old man with health problems, the co-founder of the Sandinista National Liberation Front (FSLN), and a political dissident and critic of the Nicaraguan government.⁹⁵ He was particularly vulnerable due to his advanced age and pre-existing health conditions, including chronic heart disease, hypertension, and glaucoma. Mr Vargas allegedly lost 10 pounds in prison and showed signs of pain and difficulty getting up. A hernia was identified between the 4th and 5th lumbar vertebrae. It was alleged that he slept on a very thin mat over cement and without a blanket to shield him from the cold. Even though his relatives had brought him a sleeping blanket, the prison officers informed them that the detainee was not permitted to receive it. In addition, Mr Vargas was allocated to a cell with a sealed door and was not allowed to see anyone.⁹⁶

The existence of precautionary measures is a reliable indication that the situation is serious.⁹⁷ These measures are only adopted by the IACHR when there is a serious and urgent situation that may lead to irreparable damage to the at-risk person's rights.⁹⁸

92 IACHR, *Amaya Coppens et al v Nicaragua*, Resolution No 62/19, Precautionary Measures 1105-19, 24 December 2019. See also IACHR, Public hearing '10 Precautionary Measures of People Deprived of Liberty in Nicaragua', 24 June 2022.

93 See IACHR, *Mauricio José Díaz Dávila and Max Isaac Jerez Meza v Nicaragua*, Resolution No 83/21, PM 761-21, 856-21, 12 October 2021.

94 IACHR, *D.R.Z., D.A.B.A., A.C.L. and I.C.L. v Nicaragua*, Resolution No 20/23, PM 738-22, 13 April 2023.

95 IACHR, *Oscar René Vargas Escobar v Nicaragua*, Resolution No 76/22, PM 991-22, 26 December 2022, para 17.

96 Resolution No 76/22, para 23.

97 According to art 25(2) of IACHR's Rules of Procedure, the IACHR considers in the process of reaching a decision whether the situation is serious and urgent and there is a risk of irreparable harm. IACHR, 2009 Rules of Procedure, approved by the Commission at its 137th regular period of sessions, held from 28 October to 13 November 2009, and modified on 2 September 2011 and during the 147th Regular Period of Sessions, held from 8 to 22 March 2013, entered into force on 1 August 2013.

98 In analysing these requirements, the Commission has claimed that the facts supporting a request for PMs 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. See e.g., IACHR, *Martha del*

6 Precautionary measures concerning persons deprived of their liberty in Nicaragua: from non-compliance to high impact

So far, this contribution has shown that, within the current socio-political landscape in Nicaragua, the IACHR has issued precautionary measures to protect detainees in a high-risk context characterised by a crisis of the rule of law, human rights violations and terrible prison conditions. The purpose of this article, however, is to examine the impact (beyond compliance) of precautionary measures issued by the IACHR on the protection of persons deprived of their liberty in Nicaragua.

6.1 Addressing the key concepts of 'compliance' and 'impact'

To assess the degree of compliance and impact of the precautionary measures, it is necessary to begin by clarifying what is meant by 'compliance' and 'impact' in this article. In previous research, we had stated that the compliance of a precautionary measure is not the same as its impact.⁹⁹ Compliance is related to the action or actions that the state concerned takes to obey the order given by the IACHR. For example, actions related to compliance could include the hiring of additional prison staff, the construction of a new prison, the transfer of sick detainees to a specialized hospital, or writing responses to the resolutions of precautionary measures.

The impact of UMs can be understood as the effects generated by the requests formulated in the adopted measures. These effects may be examined across three distinct dimensions: (a) the impact on the direct beneficiaries (*direct impact*); (b) the impact beyond the beneficiaries (*indirect impact*), which may include relatives of the beneficiaries, residents of their communities, other persons deprived of liberty, prison staff, and actors at the national, regional, and international levels; and (c) the impact in terms of producing shifts in attitudes, ideas, ideologies, or frameworks of interpretation (*symbolic impact*). This last dimension may be further divided into *direct symbolic impact* and *indirect symbolic impact*. The impact of the precautionary measures could be the recovery of ill prisoners who have received adequate medical treatment (*direct*), the decrease of

Socorro Ubilla, Marlon Antonio Castellon Ubilla, Marwin Antonio Castellon Ubilla v Nicaragua, Resolution No 8/22, PM 564-21, 13 February 2022, para 37.

99 This section draws its ideas from C Burbano Herrera & Y Haeck 'The impact of precautionary measures on persons deprived of liberty in the Americas' in P Engström (ed) *The Inter-American human rights system: Impact beyond compliance* (2019) 89-113.

the rate of overcrowding in the prison, or the decrease of the rate of violence between the detainees (*indirect*), or when the precautionary measure alters the public perception of detainees (*symbolic*).

It is not always the case that compliance generates a positive impact. A measure may be implemented (complied with), but it may not achieve the desired effects. For instance, the state hires additional prison officials to control violence inside the prison, but they are not trained according to human rights standards. In fact, the new staff aims to control violence with more violence. To assess the symbolic impact that precautionary measures may have, it is necessary to examine the success of the precautionary measures in terms of broader goals of advancing recognition and protection of rights. It is pertinent to assess the extent to which precautionary measures have served as an effective instrument for ensuring social justice (positive symbolic impact).

It is regrettable that the adoption of precautionary measures can also provoke unfavourable reactions by states, which can have a negative indirect impact on society. For example, this can occur when a state, in response to a request from the precautionary measures, decides to denounce the American Convention on Human Rights or argues that precautionary measures lack binding force. Therefore, in some instances the compliance (implementation) of precautionary measures is not carried out in practice, which could have a negative impact on the issue for other potential beneficiaries (*negative indirect impact*).¹⁰⁰ Consequently, the impact of precautionary measures has a certain connection with compliance. However, the impact is not necessarily caused by compliance. The lack of compliance may also have an impact, which can result in effects (impact) on the beneficiary and/or on society.

To some extent, the positive or negative evaluation of a precautionary measure will depend on the expectations of the evaluator. If the expectations of the specific precautionary measures are low, the evaluation of compliance and impact will probably tend to be positive. If the expectations are very high, the evaluation is likely to be negative. For this reason, and in order to try to be objective in the analysis of compliance and impact, it is necessary to know what the situation of danger was, what the measure requested by the IACHR was, what exactly the state did, and to what extent the situation of the beneficiary changed after the measure was adopted.

¹⁰⁰ As above.

It is also relevant to consider whether other external factors have had an impact on the outcome. For instance, it would be beneficial to analyse the influence of the media or social activism in certain contexts.

6.2 Nicaragua: a very low and inexistent level of compliance

Following the adoption of the precautionary measures by the IACHR, Nicaragua has responded in a number of ways. From a *stricto sensu* perspective, Nicaragua has consistently failed to comply with the precautionary measures. The state has even claimed that the beneficiaries of the precautionary measures are criminals, that their right to a fair trial has been respected, that they are in good health, and that the prisons have been properly staffed. In practice, those who benefit from the precautionary measures in Nicaragua continue to be held in deplorable conditions, with serious violations of their fair trial rights.

The responses provided by Nicaragua can be categorised into four distinct groups, with some occurring simultaneously:

- *No response*: On some occasions Nicaragua did not respond at all.
- *Precautionary measures protect criminals and/or (the IACHR) violate(s) the principle of sovereignty*: on some occasions, Nicaragua has stated that the IACHR violates its sovereignty and that the precautionary measures are used to protect criminals.
- *The USA is behind precautionary measures*: Nicaragua has also stated that ‘the IACHR is subject to the interventionist policy of the United States of America, whose purpose is to use this human rights body to violate the institutionality and sovereignty of the State of Nicaragua’.¹⁰¹
- *The situation of danger does not exist*: Nicaragua has denied the existence of a situation of extreme gravity and urgency. On this point it is necessary to provide further explanation.

It is imperative to acknowledge that the level of compliance is exceedingly low, if not entirely absent, specifically with regard to:

¹⁰¹ IACHR, *Mauricio Jose Davila v Nicaragua*, Resolution No 83/2021, PM-761/21, 12 October, 2021. Also *Miguel Ángel Mendoza Urbina and family v Nicaragua*, Resolution No 733-21, PM No 733-21, 15 October 2021.

Context 1: 'legal actions by the justice system':

Nicaragua has argued that the beneficiaries will be or have been prosecuted in accordance with national law, following constitutional principles and guarantees and respecting human rights.¹⁰² Nicaragua has emphasised that the IACHR, by issuing precautionary measures, is contravening internal processes and allowing persons considered criminals by the Nicaraguan justice system to evade the actions of the national authorities.¹⁰³ Those who benefit from precautionary measures are engaged in criminal activities that undermine the peace, security, and human rights of the Nicaraguan people.¹⁰⁴

Context 2: 'deplorable prison conditions':

In response to the allegations of inadequate prison conditions, the state has asserted that the beneficiaries 'are provided with cells that are ventilated and illuminated, as well as with eating utensils, beds, mattresses, access to television, books and magazines, and toilets with individualised separation for privacy, showers, laundry and drinking water, among others'.¹⁰⁵

102 IACHR, *Medardo Mairena Sequeira and Mario Lener Fonseca Díaz and their families v Nicaragua*, Res No 80/18, PM 1172-18, 15 October 2018, extended on 3 October 2021 through Res No 79/21, para 42-44). Also IACHR, *Pedro Salvador Vásquez v Nicaragua*, Res No 58/2021, PM 480-21 (extension), 3 August 2021, para 18; IACHR, *Gustavo Adolfo Mendoza Beteta and family v Nicaragua*, Res No 37/21, PM 96-21, 29 April 2021, para 16. Finally, the IACHR requested information from the State on 21 May 2021 on the situation of the family members of Medardo Mairena Sequeira and Mario Lener Fonseca Díaz. The State responded on 25 May 2021, as follows: 'In this regard, this Ministry communicates that the State of Nicaragua guarantees and protects the human rights of all people, without distinction for reasons of birth, nationality, political creed, race, sex, language, religion, opinion, origin, economic position, or social condition, in compliance with its domestic legal system and the ratified international instruments on human rights'.

103 IACHR, *Medardo Mairena Sequeira and Mario Lener Fonseca Díaz and their families v Nicaragua*, Res No 80/18, PM 1172-18, 15 October 2018, extended on 3 October 2021 through Res No 79/21, para 46.

104 IACHR, *Medardo Mairena Sequeira and Mario Lener Fonseca Díaz and their families v Nicaragua*, Res No 80/18, PM 1172-18, 15 October 2018, extended on 3 October 2021 through Res No 79/21, para 42-43). Also IACHR, *Pedro Salvador Vásquez v Nicaragua*, Res No 58/2021, PM 480-21, extensión, 3 August 2021, para 19; IACHR, *Gustavo Adolfo Mendoza Beteta and family v Nicaragua*, Res No 37/21, PM 96-21, 29 April 2021.

105 IACHR, *Kevin Roberto Solís v Nicaragua*, Res No 33/21, PM 205-21, 22 April 2021, para 33.

Context 3: ‘right to health at risk’:

In relation to the right to health, it can be observed that Nicaragua has affirmed that the necessary medical attention has been made available to the beneficiaries.¹⁰⁶

In essence, Nicaragua has argued that the risk situation does not exist and that, as a result, the precautionary measures should not have been adopted or should not be maintained. Therefore, compliance with the precautionary measures has been inexistent.¹⁰⁷

7 Analysing the impact of precautionary measures in Nicaragua

It was mentioned that the impact is related to the effects of the precautionary measure on the beneficiaries (*direct impact*) and on society at large (*indirect impact*). The impact of the precautionary measures could be observed in diverse ways, for instance, in a reduction in the rate of overcrowding in the prison; a reduction in the rate of violence between detainees; or the recovery of ill prisoners who have received adequate medical treatment.

In previous studies conducted in 2019 and 2024, we discussed the impact of precautionary measures on individuals deprived of liberty.¹⁰⁸ It was acknowledged that the issues within prisons have a multiplicity of effects, extending beyond those directly affected by the application of precautionary measures. This recognition highlighted the potential for precautionary measures to have an impact on a wider range of individuals than those to whom they are applied directly. Consequently, it is necessary to conduct an impact analysis at various levels. In addition to considering the impact of precautionary measures at the micro-level (beneficiaries), we also examined the meso-level (staff and visitors). This article elaborates

¹⁰⁶ As above.

¹⁰⁷ IACHR, *Medardo Mairena Sequeira and Mario Lener Fonseca Díaz and their families v Nicaragua*, Res No 80/18, PM 1172-18, 15 October 2018, extended on 3 October 2021 through Res No 79/21, para 44. Also IACHR, *Pedro Salvador Vásquez v Nicaragua*, Res No 58/2021, PM 480-21 (extension), 3 August 2021.

¹⁰⁸ C Burbano Herrera & Y Haack ‘The use of transformative provisional measures by the Inter-American Court of Human Rights: Toward a tangible impact’ in A von Bogdandy, F Piovesan, E Ferrer-MacGregor & M Morales Antoniazzi (eds) *The impact of the Inter-American human rights system: Transformations on the ground* (2024) 153-175. C Burbano Herrera & Y Haack ‘The impact of precautionary measures on persons deprived of liberty in the Americas’ in P Engström (ed) *The Inter-American human rights system: impact beyond compliance* (2019) 89-113. See also Y Haack & C Burbano Herrera (eds) *Impact within the Human rights framework* (2026) (forthcoming).

further on these two levels, and also includes an analysis of the macro-level (states, institutions and international human rights bodies).¹⁰⁹

7.1 Levels of analysis

This methodology incorporates the aforementioned perspectives to provide a more comprehensive assessment of the impact of precautionary measures. It proposes three levels of analysis: the micro-level, the meso-level and the macro-level. This implies that the various types of impact may manifest themselves differently at the different levels of analysis.

- *Micro-level:* the micro-level refers to the beneficiaries of the precautionary measures, which in this instance are individuals deprived of their liberty. To identify the impact of precautionary measures on the beneficiaries, it is essential to include their experiences. It would be ideally desirable to include their voices when conducting research with this population, in accordance with ethical considerations.
- *Meso-level:* The meso-level refers to the environment of a person deprived of liberty, including their family, their friends, other people in their neighbourhood, and other people incarcerated with them. In addition, the meso-level refers to prison staff, any other people in the prison that might be affected by implementing precautionary measures, and social movements working with the rights of detainees. As mentioned in the introduction, incarceration can have consequences for the environment of the detainee in various ways.
- *Macro-level:* The macro-level refers to all forms of impact that can be observed at the global, regional, and national (institutional) level. It thereby refers to all effects following the precautionary measures in international and national initiatives, such as changes in international and regional human rights bodies, and national institutions. Moreover, it refers to wider public discourse, and how international and national media portray deprivation of liberty following the precautionary measure.

¹⁰⁹ See C Burbano Herrera, Y Haack, & A Verwohlt Hansen 'A theoretical model for measuring the impact of urgent measures aimed at protecting at-risk detainees in Latin-America' in Y Haack & C Burbano Herrera (eds) *Impact within the human rights framework* (2026).

7.2 Nicaragua: Analysis of impact at micro-level (beneficiaries)

7.2.1 Direct impact: Low (prison conditions/fair trial)

The low level of compliance has had a direct effect on the low level of direct impact. Beneficiaries of precautionary measures in Nicaragua continue to be held in deplorable conditions, with serious violations of their rights to a fair trial, life, personal integrity and health. Beneficiaries who are ill have not received medical attention, and the state authorities have not even allowed their relatives to provide them the care that those in prison need.¹¹⁰

7.2.2 Symbolic direct impact: Positive and high (beneficiaries' voices)

From the perspective of those deprived of their liberty (and their relatives) in Nicaragua, we must acknowledge that the IACHR has listened to their demands, voices and concerns.

The IACHR has reacted quickly to the Nicaraguan situation and has carried out several activities with the aim to protect the human rights of persons deprived of liberty, many of them detained without due process and kept in appalling conditions. The Commission has held public hearings,¹¹¹ organised country visits,¹¹² issued press releases¹¹³

¹¹⁰ Following the adoption of the PM, the IACHR determined that Edgar Parrales, a 79-year-old individual with serious health conditions, faced a grave risk while held in pre-trial detention and incommunicado for over 40 days. The State had failed to provide information regarding the conditions of his detention, the medical care he had received, or to refute the claims presented. Considering his age, health status, and lack of access to legal counsel or family contact, the Commission concluded that his rights to life, personal integrity, and health were at imminent and irreparable risk. See IACHR, *Edgar Francisco Parrales Castillo v Nicaragua*, Resolution No 1/2022, PM No 1088-21, 12 January 2022.

¹¹¹ The public hearings took place on 24 June 2022, entitled '10 Precautionary Measures of People Deprived of Liberty in Nicaragua'; on 10 December 2020 'Situation of Persons Deprived of Liberty for Political Reasons in Nicaragua'; on 1 October 2020 'Repression, Persecution and Imprisonment of student leaders in Nicaragua'; on 14 February 2019 'Human Rights Situation of Women Deprived of Liberty in Nicaragua'; on 2 October 2018 'Situation of Human Rights Defenders in Nicaragua: Allegations Reports of Arbitrary Detention and Lack of Access to Justice'; on 7 May 2018 'Reports of Human Rights Violations and Criminalization of Defenders in the Context of Extractive Industries in Nicaragua'; and on 28 February 2018 'Situation of Human Rights of Persons Deprived of Liberty in Nicaragua'.

¹¹² The IACHR conducted the following working visits to Nicaragua from 17 to 21 May 2018; from 18 to 20 September 2018; from 14 to 18 October 2018; from 25 to 25 October. The purpose of these visits was to observe the human rights situation on the ground in Nicaragua in relation to the violent events that had taken place since 18 April 2018, to document these events, to analyse the conditions of detention of persons deprived of liberty, and to issue specific recommendations to the State. See for example, IACHR, 'Press release, Preliminary observations on the IACHR working visit to Nicaragua', 21 May 2018. Since December 2018, Nicaragua has not given authorisation to the Commission to enter the country.

¹¹³ The IACHR has published 218 press releases between 2018 and October 2023. See for example, IACHR, 'Press Release 210/18, Rapporteur on the Rights of People Deprived of Liberty Visits Nicaragua', 26 September 2018.

and reports,¹¹⁴ received petitions,¹¹⁵ sent diplomatic notes,¹¹⁶ requested provisional measures,¹¹⁷ and decided precautionary measures.¹¹⁸ For instance, during the period of April 2018 and June 2024, the IACHR organised a total of 20 public hearings related to Nicaragua. Eight of these public hearings concerned persons deprived of their liberty.

7.3 Nicaragua: Analysis of impact at meso-level (other prisoners/relatives/prison staff/civil society)

7.3.1 Indirect impact: Low (other prisoners)

Other prisoners: Conditions of detention in which precautionary measures were adopted remain deplorable. The IACHR continues receiving and adopting precautionary measures to request respect for the fair trial, to request medical care for ill detainees, and to collectively protect prisoners who are in detention facilities with structural problems such as overcrowding, violence, and illness. It seems that the adoption of precautionary measures has not had an effect beyond the beneficiaries of precautionary measures.¹¹⁹

114 In the Commission's Annual Report, Nicaragua has been included in Chapter IV in the following years; 2018, 2019, 2020, 2021, and 2022. Moreover, the Commission has published five country reports namely; IACHR, *MESENI Mecanismo de Seguimiento Especial para Nicaragua, Informe de Balance, 2022*; IACHR, *Nicaragua: Concentration of Power and the Undermining of the Rule of Law*, 25 October 2021; IACHR, *Persons Deprived of Liberty in Nicaragua*, 5 October 2020; IACHR, *Forced Migration of Nicaraguans to Costa Rica*, 7 September 2017; IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, 21 June 2018.

115 The petitions related to Nicaragua which have been admitted by the IACHR can be consulted here.

116 In 2018 and 2019, the IACHR sent 78 diplomatic notes requesting information about the situation of human rights. Nicaragua responded only on one occasion in a letter. From 2020 until 2022 the IACHR sent 16 letters requesting information about the situation of certain victims. The State responded on 6 occasions. See IACHR, *MESENI Mecanismo de Seguimiento Especial para Nicaragua, Informe de Balance, Nicaragua: Concentration of Power and the Undermining of the Rule of Law*, 5.

117 See for example, IACtHR, *Juan Sebastián Chamorro et al and 45 persons deprived of their Liberty in eight detention centres in Nicaragua v Nicaragua*, Provisional Measures, 22 November 2022. In this case, the Commission requested the IACtHR to adopt provisional measures in favour of 45 individuals held in 8 detention facilities in Nicaragua.

118 The IACtHR has granted three provisional measures and gave six extensions. The provisional measures granted were the following: The case of seventeen persons deprived of their liberty in Nicaragua; the case of Members of the Nicaraguan Center for Human Rights (CENIDH) and the Permanent Human Rights Commission (CPDH); and the case of Juan Sebastián Chamorro and others with respect to Nicaragua (application of art 65).

119 IACHR, *Aníbal Martín Rivas Reed v Nicaragua*, Resolution No 46/2025, PM No 755-25, 24 June 2025; IACHR, *Armando José Bermúdez Mojica and others v Nicaragua*, Resolution No 1230-25, PM No 1230-25, 16 September 2025; IACHR, *Álvaro Antonio Baltodano Cantarero and other nine people v Nicaragua*, Resolution No 74/25, PM No 1326-25 and PM 1372-25, 27 October 2025.

7.3.2 *Indirect impact: Negative (other actors)*

Journalists, human rights defenders, and political opponents have advocated for human rights and informed the public at large when human rights abuses have occurred and if political prisoners have been adopted. The work of these individuals has brought attention to the critical situation in Nicaragua and those deprived of their liberty.¹²⁰ However, this has also had a negative impact, as they have been detained or they have to go into exile.

7.3.3 *Symbolic impact: Positive and high (plurality of voices among various actors)*

From the perspective of other actors, beyond those deprived of their liberty, it is also evident that the IACHR has also listened to their demands, voices and concerns. As previously stated, the IACHR has engaged in a number of initiatives with the objective of safeguarding the human rights of individuals deprived of liberty and disseminating information about the situation in Nicaragua to the international community. The Commission has conducted public hearings, organised country visits, issued press releases and reports, received petitions, sent diplomatic notes, requested provisional measures, and decided precautionary measures. During its working visits to Nicaragua, the IACHR gathered field data and received significant contributions from civil society.

Between April 2018 and December 2018, the IACHR conducted three working visits to Nicaragua. During these visits, the Commission conducted site visits to various cities, including state institutions, health centres, hospitals, the Institute of Forensic Medicine, and detention centres. The Commission gathered empirical data from the field and received substantial input from civil society.

The Commission has facilitated dialogue between a range of actors, including with the Nicaraguan authorities, through these activities and the adoption and follow-up of precautionary measures. The IACHR's various activities have been highly valued by detainees' relatives and civil society, and in some cases have empowered them to continue to raise their voices at the national and international levels.

¹²⁰ Newspaper Confidencial, *CIDH otorga medidas cautelares al equipo de Confidencial*, 23 December 2018. America Economía, *SIP denuncia precaria situación de la prensa independiente en Nicaragua*, 9 October 2019. See also, Raza & Igualdad, *Ante la CIDH: Estado de Nicaragua incumple con medidas cautelares otorgadas a favor de periodistas independientes*, 14 December 2021.

7.4 Nicaragua: analysis of impact at macro-level (national and international level)

7.4.1 *Indirect impact: Negative*

The precautionary measures and the other activities carried out by the IACHR have implied from certain perspectives a negative impact. More specifically, we have seen that Nicaragua has decided to denounce the OAS Charter in 2019. This means that – to a certain extent – the OAS will not be able to monitor the situation in Nicaragua.

7.4.2 *Symbolic indirect impact: Low*

Prisoners remain a stigmatised group by the authorities and are to some extent neglected by them. The authorities continue to use the penal code to silence and punish the opposition and anyone who disagrees with the state apparatus. The state has no incentive to promote structural changes that could improve conditions for prisoners.

7.4.3 *Indirect impact: Positive/high (other international human rights bodies)*

One of the key factors contributing to the high symbolic impact of the precautionary measures issued by the IACHR is the fact that the situation of detainees has prompted the attention of other international human rights monitoring bodies. These international human rights bodies have expressed concern about the arbitrary detention of individuals, the continued lack of independence of the judiciary, which has facilitated the use of criminal law to criminalise and prosecute dissent through hundreds of proceedings on unfounded and disproportionate charges, as well as serious violations of the right to a fair trial.¹²¹

In particular, the Regional Office of the UN High Commissioner for Human Rights for Central America and the Dominican Republic (OHCHR), the Office of the UN High Commissioner for Human Rights for Central America and the English-speaking Caribbean (OHCHR) and Ms Nada Al-Nashif, the UN Deputy High Commissioner for

¹²¹ Mechanism for the Recognition of Political Prisoners, *List – Preliminary report political prisoners in Nicaragua*, 31 August 2023.

Human Rights, have all issued statements, expressed concern and provided updates on the human rights situation in Nicaragua.¹²²

It is important to note that while the IACHR has adopted precautionary measures, it has also used its other functions to disseminate information about the critical situation of prisoners and the general critical situation in Nicaragua. This has been achieved through the publication of thematic and country reports, press releases and visits by the Rapporteur on persons deprived of their liberty, among others. This indirect impact explains why other international human rights bodies have expressed their concern about the situation of persons deprived of their liberty in Nicaragua and have called on Nicaragua to respect human rights.

8 Some conclusions

Over the years, Nicaragua has experienced a repressive political climate, with the authorities often using the criminal law to silence individuals who voice their opposition. This situation illustrates the lack of respect for international human rights standards and the attack on the rule of law.

The adoption of precautionary measures by the IACHR in relation to persons deprived of liberty in Nicaragua perfectly illustrates the structural problems of the Nicaraguan prison system since 2018. In a few words, people detained without a fair trial, prisoners who are ill and do not have access to medical care, relatives who do not have any information about their relatives arbitrarily detained, lack of food, torture: this is the context in which the precautionary measures are being adopted in Nicaragua.

In the current political climate in Nicaragua, individuals who have been deprived of their liberty have found that the IACHR plays a crucial role. As an international human rights organ, the IACHR

122 United Nations Human Rights Office of the High Commissioner, *Statement by UN Deputy High Commissioner for Human Rights, Kate Gilmore*, Update on Georgia and Nicaragua at the 41st Session to the HRC, 10 July 2019. 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, 9 June 2021; IACHR, Press Release, IACHR and OHCHR Demand an End to Arbitrary Arrests and the Release of All Individuals Detained Since the Start of the Crisis in Nicaragua, 9 July 2021. IACHR, Press Release 238/2021, 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, 10 September 2021. IACHR, Press Release No 24/2023, IACHR and OHCHR Condemn Escalation of Human Rights Violations in Nicaragua, 17 February 2023.

has responded quickly to their demands and needs. It has granted precautionary measures, organised public hearings, published reports and requested provisional measures, among others.

The IACHR provides protection for prisoners at risk through precautionary measures, while also condemning human rights violations. It does this by gathering information, informing and raising awareness within the international community, highlighting the context of human rights violations, and exerting international pressure.

This article has argued that, although the compliance rate with precautionary measures remains low, their direct, indirect, and symbolic impacts – particularly at certain levels – are nonetheless significant. The IACHR, through its precautionary measures, plays an important role in listening to persons deprived of their liberty, their relatives and other actors, and in demanding that Nicaragua respect, protect and guarantee the human rights of persons in detention.

In the long term, the adoption of precautionary measures and other actions taken by the IACHR will likely have a significant impact on the pursuit of justice and reparation in future transitional justice processes relying on the right to memory and truth.

Although this article primarily focuses on the Americas, the issues it addresses are also relevant to Africa. Engaging in comparative reflection on human rights challenges can reveal shared patterns of vulnerability and encourage the development of innovative strategies for human rights protection. This relevance stems not only from the presence of repressive regimes in certain African countries but also from the fact that African human rights bodies, specifically, the African Commission, the African Court, and the African Children's Committee, are empowered to adopt provisional measures to safeguard individuals at risk, such as persons deprived of liberty. These bodies have, in fact, issued such measures to protect their most basic human rights. Considering the American context thus provides a valuable opportunity for dialogue and exchange between scholars and practitioners across regions, promoting mutual learning and contributing to the formulation of more effective approaches to human rights protection throughout the Global South.