

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 3/2021**

Precautionary Measure No. 968-20
Mariano Valle Peters regarding Nicaragua
January 8, 2021
Original: Spanish

I. INTRODUCTION

1. On October 9, 2020, the Inter-American Commission on Human Rights ("the Inter-American Commission," "the Commission," or "the IACHR") received a request for precautionary measures filed by Viren Mascarenhas, Douglass Cassel, Morgan Bridgeman, Luisa Gutierrez, Isabel San Martin, and Lorna Maupilé of "King & Spalding" ("the applicants"), urging the Commission to require that the State of Nicaragua ("Nicaragua" or "the State") adopt the necessary protective measures to guarantee the rights of Mariano Valle Peters ("the proposed beneficiary"). According to the applicants, the proposed beneficiary is the owner of *Nicavisión, S. A.*, parent company of Canal 12, a media outlet that opposes the government and that could be closed due to embargoes on alleged tax debts by the tax authority, which would violate Mr. Valle Peters' freedom of expression, exercised through the media. The request is also related to P-2199-20, which alleges violations of Articles 8, 13, 24 and 25 of the American Convention on Human Rights.
2. In accordance with Article 25.5 of its Rules of Procedure, the Commission requested information from the State and the applicants on December 23, 2020. To date, neither the State's report nor the additional information requested from the applicants has been received.
3. Having analyzed the factual and legal claims made by the applicants, the Commission considers that, from the applicable *prima facie* standard, the existence of a situation of serious and urgent irreparable damage is sufficiently established. Therefore, based on Article 25 of its Rules of Procedure, the Commission, in the current context of the country, requests that Nicaragua guarantee the measures that will allow the beneficiary to continue exercising his right to freedom of expression, by adopting the pertinent actions and abstaining from adopting those that hinder such right. Among such measures, the State is requested to refrain from carrying out the decision to auction or sell the Canal 12 media outlet until an examination has been made of the impact that such a decision would have on the exercise of Mr. Valle Peters' freedom of expression.

II. BACKGROUND

4. The Commission visited Nicaragua in May 2018 and collected numerous testimonies about human rights violations that had occurred since the April protests, and published a report that included recommendations. In order to verify compliance, the Special Follow-up Mechanism for Nicaragua (MESENI) was formed, with a presence in the country until December 19, 2018, when the State temporarily suspended its stay. For its part, the Independent Interdisciplinary Group of Experts (GIEI) issued a report analyzing the events that occurred between April 18 and May 30, 2018, confirming the findings of the IACHR¹.

¹ GIEI, Report on the violence that occurred between April 18 and May 30, 2018. December 2018. Available at: http://gieinicaragua.org/giei-content/uploads/2018/12/GIEI_INFORME_DIGITAL.pdf

5. On the occasion of a presentation to the Permanent Council of the Organization of American States, the Commission shared the data collected by the MESENI, according to which from April 2018 to January 10, 2019, 325 people died and more than 2,000 were injured; 550 were detained and processed; 300 health professionals were dismissed and at least 144 students of the National Autonomous University of Nicaragua were expelled². For the 2018 annual report, the IACHR included Nicaragua in Chapter IV-B, in accordance with the grounds established in its Regulations.
6. During 2019, the Commission continued to condemn the persistence of the acts of persecution, urging the State to comply with its obligations. On April 25, it shared the assessment and results achieved by the MESENI, which continued to monitor the country from Washington, D.C. In June, the State approved a Law of Integral Attention to Victims and a Law of Amnesty which provoked criticism for not complying with international standards in matters of truth, justice, reparation and guarantees of non-repetition³. Throughout these last months, the Commission continued to register serious incidents, such as when in August it expressed its concern about the State's announcement that it would not continue with the "Table of Negotiation for Understanding and Peace", initiated on 27 February 2019 between the government and the Civic Alliance for Justice and Democracy⁴. On September 6, 2019, the IACHR denounced the intensification of harassment against human rights defenders and persons who, despite having been released from prison, continued to be intimidated⁵.
7. On November 19, 2019, the Commission once again called attention to the continuity of the repression, observing that "[...] the closure of democratic spaces that characterizes the human rights crisis that persists in Nicaragua has added a growing focus of state persecution of the families of persons deprived of liberty in the context of the crisis, through surveillance and obstruction of their peaceful actions⁶.
8. In addition, the IACHR again included Nicaragua in Chapter IV of its 2019 Annual Report⁷. The IACHR warned that the serious human rights crisis in Nicaragua has spread during 2019, due to the de facto installation of a state of emergency characterized by the abusive exercise of public force to repress dissident voices against the government, the raid, closure and censorship of media outlets, the imprisonment or exile of journalists and social leaders, the closing of civil society organizations without the guarantees of due process, and the interference and control of the Executive Branch in the other public powers. The Commission observed that the prolonged weakening of democratic institutions in Nicaragua has led to the perpetuation of the human rights crisis in the country, as well as to the generation of a situation of structural impunity with respect to the serious human rights violations committed.

² IACHR, IACHR denounces the weakening of the rule of law in the face of serious human rights violations and crimes against humanity in Nicaragua, January 10, 2019.

³ IACHR, IACHR and OHCHR express their concern about the approval of the Law on Comprehensive Care of Victims in Nicaragua, June 3, 2019. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2019/137.asp>

See also: IACHR, IACHR expresses concern about the approval of the Amnesty Law in Nicaragua, June 12, 2019 Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2019/145.asp>

⁴ IACHR, IACHR expresses its concern over the announcement by the State of Nicaragua not to continue with the dialogue and calls on the State to comply with its obligations to guarantee and respect human rights, August 6, 2019. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2019/194.asp>

⁵ IACHR, IACHR denounces the persistence of the repression and expresses its concern for the increased harassment against human rights defenders and those released from prison in Nicaragua, September 6, 2019. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2019/220.asp>

⁶ IACHR, IACHR Condemns Persecution of Victims of Repression in Nicaragua and Calls on State to Avoid Revictimization and Promote Truth, Justice, Reparation and Non-Repitition Measures, November 19, 2019 Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2019/297.asp>

⁷ IACHR, IACHR presents its 2019 Annual Report, April 6, 2020. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2020/068.asp>

9. Recently, the IACHR identified the consolidation of a fifth stage of state repression in Nicaragua, characterized by the intensification of acts of surveillance, harassment, and selective repression against persons considered to be opponents of the government⁸. Likewise, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have expressed their concern about new legal threats to freedom of expression and indirect measures against media and journalists in Nicaragua, about the escalation of repression in Nicaragua marked by the submission to the National Assembly of two bills that seriously threaten the exercise of freedom of expression, the imposition of fiscal sanctions against media outlets, and the judicial harassment of journalists⁹. Likewise, with regard to political control and undue interference in the media, the IACHR and its Office of the Special Rapporteur for Freedom of Expression observed that the equipment and facilities of Confidential, Niú, Esta Semana and Esta Noche and 100% Noticias continue to be confiscated since December 2018, despite the fact that they were confiscated in March 2018. In the framework of the National Dialogue, the government committed itself to "review the decisions adopted by the State in relation to the affected assets in the context of the events that occurred as of April 18, 2018, in order to achieve the return of these assets when appropriate, in accordance with the Constitution and the law.

10. As of July 31, 2020, the repressive action of the State has resulted in 328 people being killed, 405 health professionals being dismissed, 150 students being expelled, 90 journalists and independent media workers being exiled, 86 people being deprived of their liberty and 103,600 Nicaraguans having fled the country¹⁰.

III. SUMMARY OF FACTS AND ARGUMENTS PROVIDED

1. Information provided by applicants

11. Mr. Mariano Valle Peters, 79, identifies himself as the owner of Nicavisión S.A., a company that in turn owns Canal 12, which he argued is "the only television station in Nicaragua that is not owned by the family of President Daniel Ortega or by persons allied with him. In this sense, Canal 12 is reportedly the only nationwide television station that constantly relays the news with a critical view of the government. The applicants pointed out that Mr. Valle Peters, as owner and general manager of Nicavisión, is responsible for the general editorial line of Canal 12.

12. The applicants indicated that on September 30, 2020, in order to collect alleged taxes owed by Nicavisión S. A. in 2012 and 2013, a Nicaraguan court upheld a government action to freeze and confiscate the Canal 12 bank account, as well as to seize and sell its television antenna and other channel properties, including Mr. Valle's home and personal vehicles.

13. As part of his defense in these trials, the proposed beneficiary would have presented a report by a certified public accountant, which "showed that his taxes for 2012 and 2013 were duly paid, that the government's calculations were clearly wrong and that no more taxes, interest or penalties were due". In addition, it was alleged that the amounts claimed by the Government were much lower than the value of the properties seized and ordered to be sold. Nicavisión would have asked the Court to unfreeze the Canal 12 accounts and that Mr. Valle's home and personal vehicles not be held while an appeal was resolved, but the request was denied. The pending appeal would then have no suspensive

⁸ IACHR. Press Release No. 80/20. Two years after the beginning of the human rights crisis in Nicaragua, the IACHR reiterates its permanent commitment to the victims and confirms the consolidation of a fifth stage of repression. April 18, 2020; IACHR. Press Release No. 249/20. The IACHR calls for the immediate cessation of acts of persecution against persons identified as opponents of the government and for the reestablishment of democratic guarantees in Nicaragua. October 10, 2020.

⁹ IACHR. Press Release No. R246/20. The IACHR and its Office of the Special Rapporteur for Freedom of Expression express concern about new legal threats to freedom of expression and indirect measures against media and journalists in Nicaragua. October 7, 2020.

¹⁰ IACHR. MESENI Newsletter. Situation of human rights in Nicaragua. July 2020.

effect, so there is no possibility of unfreezing the Canal 12 bank account or suspending the auction and sale of Canal 12 and Mr. Valle's properties. Furthermore, it was indicated that the Government recently filed new tax claims, raising the claimed debt from about \$600,000 USD to \$800,000 USD.

14. The request states that it could be a matter of days before the properties of the television station and its owner are sold, so they consider that the request is urgent in order to allow Canal 12 to remain under the property of the proposed beneficiary, so "that it does not have to be closed imminently or forced to be sold to a new owner who no longer dares to criticize the government. The request states that, in a context such as Nicaragua's, independent media are necessary. In addition, the request includes the history of Canal 12, a procedural account of the taxes filed and an account of the harassment of media workers.

15. On October 23, 2020, the Inter-American Commission on Human Rights received petition P-2199-20, related to the present case.

16. Subsequently, on December 1, 2020, new information was presented, indicating that on November 23, evidence of Canal 12 was rejected by the Municipal Court, in relation to the second tax lawsuit filed by the DGI. It was added that the defense attorney for Canal 12 estimated that the auction of the foreclosed properties would take place very soon. Additionally, an article published by *Reuters* was provided. The case is ¹¹related to the Ortega family's television channels, which allegedly have not paid taxes in recent years without being subject to any sanctions or proceedings against them.

17. The applicants seek to have the precautionary measure granted in its precautionary dimension, considering that tax assessment and court orders constitute indirect violations of freedom of expression. The above, since the assessments and tax orders against Canal 12 would have been committed in violation of due process, would not pursue a legitimate purpose, and would be disproportionate.

2. Information provided by the State.

18. The Commission requested information from the State on December 23, 2020, but has not received a response to date.

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

19. The mechanism of precautionary measures is part of the Commission's role in monitoring compliance with the human rights obligations set out in Article 106 of the Charter of the Organization of American States. These general supervisory functions are set out in Article 41(b) of the American Convention on Human Rights, also contained in Article 18(b) of the IACHR Statute, while the mechanism for precautionary measures is described in Article 25 of the Commission's Rules of Procedure. In accordance with that article, the Commission grants precautionary measures in situations that are serious and urgent, where such measures are necessary to prevent irreparable harm.

20. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter the "Inter-American Court" or "I/A Court H.R.") have consistently held that precautionary and provisional measures have a dual nature: precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered

¹¹ Available in English at: Reuters, Drazen Jorgic and Ismael López, "Ortega media enrich his family, entrench his hold on Nicaragua", November 23, 2020, <https://www.reuters.com/investigates/special-report/nicaragua-politics-ortega/>

by the IACHR. Their precautionary nature aims at preserving those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and thus avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures enable the State concerned to fulfill the final decision and, if necessary, to comply with the ordered reparations. As such, for the purposes of making a decision, and in accordance with Article 25(2) of its Rules of Procedure, the Commission considers that:

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

21. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. Rather, the assessment of the information provided as to whether the requirements of seriousness and urgency are met must be determined under a *prima facie* standard of review.¹² The Commission also recalls that, by its own mandate, it is not called upon in these proceedings to determine any violations of rights enshrined in the American Convention. The following analysis refers exclusively to the requirements of Article 25 of the Rules of Procedure, which can be carried out without addressing the merits of a petition or case.

22. As a preliminary aspect, the Commission would like to establish that this precautionary measures proceeding is not suitable to make merits assessments or to determine the international responsibility of the State. Such an analysis and any possible liabilities will be evaluated in the framework of petition P-2199-20, if the corresponding assumptions are met. Similarly, it is not appropriate at this time to consider the allegations made by the applicants as proven, since the Commission is conducting a *prima facie* review. In this regard, the Commission will not determine whether there has actually been a violation of the right to freedom of expression or whether there have been indirect means of restricting that right. As the Inter-American Court has indicated¹³, to classify them as such necessarily implies, and would come close to, a review of the merits that characterizes alleged facts as a violation of Article 13 of the American Convention, as it expressly

¹² In that regard, for instance, in relation to the provisional measures, the Inter-American Court has considered that this standard requires a minimum of details and information that allow for the *prima facie* assessment of the situation of risk and urgency. I/A Court H.R., *Matter of the children and adolescents deprived of their liberty in the "Complexo do Tatuapé" of the Fundação CASA*. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23. Available at: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

¹³ In a request for the extension of the provisional measure in favor of Globovisión workers in Venezuela, the representation argued that there would be pressure and indirect censorship from the State by not granting concessions and permits to the media. Considering such allegations, among others, the Inter-American Court rejected the extension and emphasized "That it is not possible in this case to appreciate the appearance of good standing without issuing a pronouncement on the merits of the matter raised, which implies reviewing the conformity of the facts alleged by the alleged victims with the American Convention. A pronouncement on the merits is made by means of a judgment within the process of a contentious case submitted to the Court, and not by means of the processing of provisional measures. In fact, the adoption of the requested measures could imply an anticipated judgment by way of an incidental proceeding with the consequent establishment of some of the facts and their respective consequences that are the subject of the main debate in the case submitted to the Court. Therefore, it is not appropriate to order, under the terms of Article 63(2) of the Convention, the expansion of the content of the measures that has been requested. *Case of the "Globovisión" Television Station*. Provisional measures with respect to the Bolivarian Republic of Venezuela. Resolution of the Inter-American Court of Human Rights of January 29, 2008, paragraph 11. Available at: http://www.corteidh.or.cr/docs/medidas/globovision_se_04.pdf

prohibits the restriction of the right to freedom of expression by indirect means or channels.

23. Without prejudice to the above, it is pertinent to recall that both the Commission and the Inter-American Court have recognized that freedom of expression has an individual and social dimension, which not only recognizes the right of each person to express his or her thoughts, ideas, and information through any appropriate means of dissemination, but also that of society to be well informed. Moreover, the Commission has consistently held that the use of criminal mechanisms to sanction expressions on matters of public interest –especially with respect to officials or politicians– is contrary to Article 13 of the American Convention, since it is not justified by an imperative social interest, and would thus be unnecessary and disproportionate. In this sense, the Commission has also emphasized that recourse to criminal law not only directly limits the exercise of the right to freedom of expression, but also generates an indirect restriction through its chilling or inhibiting effects on the free flow of ideas in society as a whole.¹⁴

24. With respect to the requirement of seriousness, the Commission recalls the relevance of the context when evaluating requests for precautionary measures, in accordance with Article 25.6 of the Rules. In this regard, in Nicaragua, the context has been especially taken into account when assessing risk situations related to freedom of expression. In this sense, the Commission stresses that the alleged facts are framed in a context of repression of independent journalistic activity in Nicaragua¹⁵. In this context, the Commission recalls that it has granted precautionary measures with respect to journalists who have been the object of threats, intimidation, and acts of violence attributed by the petitioners to State agents, or to third parties who are allegedly related to the government, allegedly with the aim of making them change their editorial line or stop reporting on the events that have been occurring in the country¹⁶. Similarly, with respect to the situation of two independent media journalists, the Inter-American Court also granted provisional measures while they were deprived of their liberty¹⁷. Recently, the IACHR even decided to extend precautionary measures in favor of certain workers of the media outlets "Confidencial"¹⁸ and "La Costeñísima"¹⁹. More recently, precautionary measures were granted in favor of members of the NOTIMATV journalistic group, in the midst of a situation of harassment and danger resulting from their journalistic activities²⁰.

25. In the present case, the situation differs from precedents in which the Commission has granted

¹⁴ See, for example: IACHR, *José David Ellner Romero regarding Honduras* (MC-75-20), Resolution 15/2019 of March 21, 2019, para. 11, available at <http://www.oas.org/es/cidh/decisiones/pdf/2019/15-19MC75-19-HO.pdf>; *Case of Julio Ernesto Alvarado regarding Honduras* (MC-196-14), Resolution 33/2014 of November 2014, para. 27, available at <http://www.oas.org/es/cidh/decisiones/pdf/2014/MC196-14-ES.pdf>.

¹⁵ IACHR, Nicaragua: Retaliation against journalists must end, say human rights experts, August 26, 2019 Available at: <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1152&IID=2>

¹⁶ See, for example: IACHR, Resolution 90/2018. MC 873-18. Miguel Mora Barberena, Leticia Gaitán Hernández and their family members regarding Nicaragua (Journalists for 100% News), 13 December 2018. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/90-18MC873-18-NI.pdf>; IACHR, Resolution 47/18. MC 693/18 - Anibal Toruño Jirón and other members of Radio "Darío", Nicaragua, July 2, 2018. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/47-18MC693-18-NI.pdf>; IACHR, Resolution 91/18. MC 1606/18 - Carlos Fernando Chamorro Barrios and others, Nicaragua, September 21, 2018. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/91-18MC1060-18-NI.pdf>; IACHR, Resolution 96/2018. MC 698-18. Álvaro Lucio Montalván and his family in Nicaragua, December 29, 2018. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/96-18MC698-18-NI.pdf>

¹⁷ HDI Court. Case of seventeen persons deprived of liberty in respect of Nicaragua. Provisional Measures. Adoption of Urgent Measures. Resolution of the President of the Inter-American Court of Human Rights of May 21, 2019. Available at: http://www.corteidh.or.cr/docs/medidas/diecisiete_personas_se_01.pdf Subsequently, the measures were lifted. IACHR. Matter of seventeen persons deprived of liberty with respect to Nicaragua. Medidas Provisionales (Provisional Measures). Order of the Inter-American Court of Human Rights of October 14, 2019. Available at: http://www.corteidh.or.cr/docs/medidas/diecisiete_personas_se_02.pdf

¹⁸ IACHR, Resolution 10/20. MC 1606/18 - María Waleska Almendares Cruz et al., Nicaragua (Enlargement), 5 February 2020 Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2020/10-20MC1606-18-NI-Ampliacion.pdf>

¹⁹ IACHR, Resolution 11/20. MC 399/19 - Carlos Edy Monterrey, Nicaragua (Enlargement), 5 February 2020. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2020/11-20MC399-19-NI-Ampliacion.pdf>

²⁰ IACHR, Resolution 27/2020. MC-399-20 - Eduardo Walter Montenegro Chavarria and others regarding Nicaragua (Members of the NOTIMATV journalistic team identified), 17 July 2020. Available at <http://www.oas.org/es/cidh/decisiones/pdf/2020/27-20MC-399-20-NI.pdf>.

precautionary measures to protect the right to freedom of expression from the precautionary standpoint. As indicated by the Commission in its resolution adopted in 2019 on the extension of precautionary measures in favor of *Lucia Pineda in Nicaragua*,²¹ according to the precedents, precautionary measures have been granted to prevent persons from being deprived of their liberty as a result of an imminent capture that resulted from a conviction based on criminal charges, thus directly sanctioning their expressions towards public officials in matters of public interest, where their reputation or their rights to honor and reputation were deemed to be affected. In addition, from a *prima facie* standard, according to the case law of both the Inter-American Commission and the Inter-American Court, "the use of criminal law to protect the honor of public servants is disproportionate to the complaints filed with the corresponding authorities in connection with the exercise of their duties. In such cases, the Commission took into account the silencing effect that such decisions could have on "public debate and democratic control of a government's administration." The Commission had a pending petition at the time of granting the measure. Thus, the measure would safeguard the Commission's ability to reach a definitive decision on the merits of the case.

26. In view of the foregoing, the Commission emphasizes that this matter differs from those precedents in that it does not concern a criminal proceeding and there is no consolidated case law in the IACHR or the I/A Court on the impact that tax-related processes have on the right to freedom of expression. On the contrary, according to the Inter-American Court's case law with regard to processes other than those of a criminal nature, the corresponding assessments should be made per specific case and based on a merits review.²²

27. Nevertheless, and given the exceptional context of Nicaragua, characterized by an ongoing human rights crisis, the Commission stresses that, as has been alleged, Mr. Mariano Valle Peters is owner and person in charge of the general editorial line of the Canal 12 media. Given the current context of permanent human rights crisis in the country, the Commission notes with the upmost seriousness the claim that Canal 12 is the only nationwide television station that constantly relays the news with a critical view of the government.

28. In this sense, although the Commission may analyze in the framework of petition 2199-20 the compatibility of the internal processes aimed at the potential closure or forced sale of Canal 12 with Articles 8, 24, and 25 of the American Convention, as well as the possible impact of such actions on Article 13 of the same instrument, the Commission notes that, in the current circumstances, the proposed beneficiary faces serious difficulties in exercising his right to freedom of expression, because of his role within the television medium and within the current context of Nicaragua. For the Commission, such a situation is likely to have an effect not only on the proposed beneficiary's peers (journalists and social communicators), but also on any other person with an interest in reporting on issues of public relevance in the country in a critical manner.

29. Considering the above, the Commission concludes that, from the applicable *prima facie* standard, the existence of a situation of risk is justified in relation to the right to freedom of expression of the proposed beneficiary, thus invoking the need to protect him from the precautionary dimension while the merits of the case are reviewed in the framework of petition P-2199-20.

30. With respect to the requirement of urgency, the Commission considers that it has been fulfilled, since the facts described suggest that, on the one hand, the appeal filed against the first of the processes would not have suspensive effects and, on the other hand, a new process has been logged against Canal 12 that could exacerbate the effects of the initial process. In this regard, the Commission

²¹ IACHR, Resolution 5/19. MC 873-18. *Lucia Pineda Ubau y su núcleo familiar (Ampliación)*, 11 February 2019, para. 32. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/5-19MC873-18-NI.pdf>

²² HDI Court. *Case of Fontevecchia and D'Amico v. Argentina*. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238.

takes note of the applicants' claim that the auction of the goods that allow Canal 12 to operate could occur at any time. In view of the foregoing, the Commission considers that the damage to the freedom of expression of the proposed beneficiary, through the closing or forced sale of Canal 12, is imminent.

31. With respect to the requirement of irreparable harm, the Commission considers that it is justified by the pernicious effects that the closure or forced sale of Canal 12 could have on the free flow of ideas in society as a whole due to the above-referenced silencing effect, which may cause any citizen, including the proposed beneficiary, to censor themselves when attempting to critically inform on issues of public relevance and harm the consolidation of democracy in the country.

32. The Commission regrets the lack of response from the State, despite the request made on December 23, 2020. Although this is not sufficient *per se* to justify the granting of a precautionary measure, it does prevent the Commission from obtaining the State's observations and therefore from analyzing whether the allegations of the applicants may be disproven. This is particularly relevant in a situation in which the seriousness is aggravated by the context in which it is embedded, as in the situation in which Nicaragua finds itself, all of which ascribes a particular seriousness to the present matter.

IV. BENEFICIARY

34. The Commission declares that the beneficiary of this precautionary measure is Mariano Valle Peters, who is duly identified in this proceeding.

V. DECISION

35. The Commission considers that the present situation meets *prima facie* the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Therefore, the Commission, in the current context of the country, requests that Nicaragua that Nicaragua guarantee the measures that will allow the beneficiary to continue exercising his right to freedom of expression, by adopting the pertinent actions and abstaining from adopting those that hinder such right. Among such measures, the State is requested to refrain from carrying out the decision to auction or sell the Canal 12 media outlet until an examination has been made of the impact that such a decision would have on the exercise of Mr. Valle Peters' freedom of expression.

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

37. The Commission emphasizes that, pursuant to Article 25(8) of the Commission's Rules of Procedure, the granting of precautionary measures and their adoption by the State does not constitute prejudice to the possible violation of the rights protected in the American Convention and other applicable instruments.

38. The Commission requests that the Secretariat of the Inter-American Commission notify this Resolution to the State of Nicaragua and to the applicant.

39. Approved on January 8, 2021 by: Antonia Urrejola Noguera, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Julissa Mantilla Falcón, and Edgar Stuardo Ralón Orellana, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary