



WHERE ARE THEY?

ENFORCED DISAPPEARANCE AS A STRATEGY OF REPRESSION IN NICARAGUA

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1. INTRODUCTION

Since the beginning of the human rights crisis, in April 2018, there has been a constant stream of reports of harassment of people identified as opponents of the current Nicaraguan government, human rights defenders, journalists, as well as victims of human rights violations and their families.

Since 28 May 2021, the government of Daniel Ortega has pursued a new phase of its repressive strategy. Characteristic elements of this period include the arrest of a new group of people identified as opponents of the government. Between that date and 2 August, more than 30 people were detained, adding to the more than 100 people who were already in prison for merely exercising their human rights.

Among those recently detained are presidential hopefuls, political activists, public figures in the country's political life, former employees of civil society organizations, student leaders, *campesino* (peasant farmer) representatives and journalists, among others.

In December 2020, the National Assembly approved the Law for the Defence of the Rights of the People to Independence, Sovereignty and Self-determination for Peace. This was rejected by the Inter-American Commission on Human Rights (IACHR), who also indicated that its provisions limit the exercise of political rights protected by international human rights standards.¹ Most of the recent arrests involved people being investigated for inciting “foreign interference” in internal affairs, using this law.

Amnesty International examined copies of available official documentation related to the cases of 10 of the detainees. In addition, interviews were conducted with people from their immediate circles and legal advisers with knowledge about the cases; documentation issued by international organizations and media reports were also consulted². It should be noted, however, that the cases that the organization was able to analyse are not isolated situations. They represent the reality of a larger number of people who have been detained recently and whose cases share important similarities with those included in this report.

Following rigorous analysis of the available information, Amnesty International has concluded that the detention of the 10 people named in this report, and the concealment of their whereabouts constitute enforced disappearance from the perspective of Nicaragua's international human rights obligations. The cases documented relate to the situation of: Daysi Tamara Dávila, Miguel Mendoza, José Pallais, Suyen Barahona, Víctor Hugo Tinoco, Félix Maradiaga, Ana Margarita Vijil, Violeta Granera, Jorge Hugo Torres and Dora María Téllez. In all cases, as of 2 August (when research for this report was finalized) the authorities had refused to reveal their whereabouts and have held them incommunicado.

¹ IACHR, “IACHR Rejects Passing of Law Restricting Political Rights in Nicaragua”, 6 January 2021.

² Most of the names of the people interviewed have been omitted to avoid putting their safety and physical integrity at risk.

2. ENFORCED DISAPPEARANCES

“If I am dying and at death’s door, please let me see my father, let him say goodbye to me.”

Daughter of Victor Hugo Tinoco, who is battling cancer.

Enforced disappearance is a crime under international law, and also one of the most serious human rights violations because of its multiple violatory nature. It violates a series of rights contained in international instruments such as the American Convention on Human Rights (American Convention) and the International Covenant on Civil and Political Rights (ICCPR),³ including the rights to life, liberty and physical integrity.⁴

According to jurisprudence and various international human rights instruments, concurrent and constitutive elements of enforced disappearance are: a) lawful or unlawful deprivation of liberty; b) the direct intervention of state agents or their acquiescence or tolerance of the acts; and c) the refusal to acknowledge that the detention took place or to reveal the situation or the whereabouts of the person deprived of their liberty.⁵

According to the jurisprudence of the Inter-American Court of Human Rights (Inter-American Court), one of the characteristics of enforced disappearance, contrary to extrajudicial execution, is the state’s refusal to acknowledge that the victim is in its custody or to provide information regarding the situation of the person in order, occasionally, to create uncertainty about their whereabouts and whether they are alive or dead, to instil fear or to deny rights.⁶

The Inter-American Court has stated that enforced disappearance places the victim in a state of complete defencelessness, giving rise to other related violations, particularly serious when framed within a systematic pattern or practice applied or consented to by state authorities.⁷

³ Nicaragua is a state party to both international instruments. In addition, in various judgments, the Inter-American Court has indicated that the practice of enforced disappearance implies an abandonment of the essential principles on which the Inter-American Human Rights System is based, and that its prohibition is part of the mandatory norms of international law and cannot be derogated by contrary agreement (*ius cogens*). Thus, it is irrelevant that Nicaragua is not a party to specialized treaties prohibiting enforced disappearance.

⁴ Inter-American Court, *Case of Munárriz Escobar et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 20 August 2018, para. 86.

⁵ Inter-American Court, *Case Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 25 May 2010, para. 85.

⁶ Inter-American Court, *Case of Munárriz Escobar et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 20 August 2018, para. 80; and *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 14 November 2014, para. 366.

⁷ Inter-American Court, *Case of Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs*, Judgment of 22 September 2009, para. 59; *Case of Radilla Pacheco v. Mexico*, Judgment of 23 November 2009, para.139.

There is also special concern regarding women detainees who are victims of enforced disappearance. The United Nations Working Group on Enforced or Involuntary Disappearances (Working Group on Enforced Disappearances) has stated: “Holding women in detention in unofficial or secret places of detention is strictly prohibited. In those circumstances, women could be exposed to sexual and other abuses.” The Working Group also stated that, according to its experience and the testimonies received: “women who are forcibly disappeared are subject to gender-based violence such as physical and sexual violence, including rape, which may meet the definition of torture, or threats of such harms.”⁸

In the case of Nicaragua, enforced disappearance is one more of a series of measures implemented by a repressive apparatus created by state authorities to silence criticism or opposition of any kind.

The following sections detail how in the cases of 10 detainees (Daysi Tamara Dávila, Miguel Mendoza, José Pallais, Suyen Barahona, Víctor Hugo Tinoco, Félix Maradiaga, Ana Margarita Vijil, Violeta Granera, Jorge Hugo Torres and Dora María Téllez), the elements that constitute enforced disappearance can be identified.

2.1 DETENTION AND INTERVENTION OF STATE AGENTS

“We live in a prison called Nicaragua.”

Member of Dora María Téllez’ family circle

Firstly, from the information obtained it can be clearly observed that detention by members of the National Police was the step prior to what ultimately happened: enforced disappearance of the person deprived of their liberty. The circumstances surrounding the detentions clearly indicate that it was not an *in flagrante delicto* situation, since in most cases the victims were in their homes when the police officers violently forced their way in and took them away without presenting an arrest warrant. It is important to stress that in most cases the perpetrators were wearing National Police uniforms but did not show any identification.

In cases of enforced disappearance, there is always a violation of the right to personal liberty, without prejudice to whether or not this deprivation of liberty was legal or not, which is irrelevant.⁹ Therefore, when analysing an alleged enforced disappearance, it must be taken into account that the deprivation of liberty of the individual shall be understood as the beginning of the configuration of a complex violation that is prolonged in time until the situation and the whereabouts of the alleged victim are known.¹⁰

⁸ Human Rights Council, General comment on women affected by enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October – 9 November 2012), A/HRC/WGEID/98/2, 14 February 2013, paras 8 and 20.

⁹ Inter-American Court, *Case of Munárriz Escobar et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 20 August 2018, para. 86; and *Case of Terrones Silva et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 26 September 2018, para. 172.

¹⁰ Inter-American Court, *Case Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 25 May 2010, para. 89.

Although the way the detention is carried out is irrelevant for the purpose of determining whether an enforced disappearance has occurred¹¹ (since any form of deprivation of liberty satisfies that first element),¹² it is pertinent to note that, in all the cases documented in this report, the information provided indicates that people were detained without a warrant. Although in the cases analysed, the National Police¹³ and the Public Prosecutor's Office¹⁴ have issued public statements about the detentions, the people interviewed asserted that they had never had sight of an arrest warrant. From the information obtained on the case of José Pallais, for example, when a relative asked the National Police officials who detained him to show them an arrest warrant, the officials said that the judge would validate the arrest subsequently.

Members of Víctor Hugo Tinoco's family circle explained that he was in a city shopping centre car park when he was detained in by 10 people wearing National Police uniforms and balaclavas in a private vehicle, and that they violently detained Víctor Hugo without showing an arrest warrant. In this case, according to the information received, Víctor Hugo Tinoco and his family were held in three vehicles with tinted windows which were also involved in the arrest "operation". In the case of Félix Maradiaga, although prior to his arrest he was at the Public Prosecutor's Office giving a statement, he was later violently detained without a court order being presented. Similarly, regarding the case of Violeta Granera, the people interviewed reported that they did not have access to a court order either.

2.1.1 LEGAL BASIS FOR THE INITIAL DETENTIONS

The United Nations Working Group on Arbitrary Detention has stated in the case *Nguyen Viet Dung v. Viet Nam*, a human rights activist, that when determining the legality of detention a comparative analysis should be undertaken to determine whether the national legislation authorizing the detention is consistent with the provisions of international human rights law.¹⁵

In all cases, the National Police have stated that the detentions were carried out in relation to an "investigation" under Law 1055, the Law for the Defence of the Rights of the People to Independence, Sovereignty and Self-determination for Peace,¹⁶ (approved in December 2020). Article 1 of this law prohibits Nicaraguans from running for elected office if they have, in the opinion of the authorities, "led or financed a coup d'état", "promoted terrorist acts", "incited foreign interference in internal affairs", "organized and implemented acts of terrorism and destabilization with financing from foreign powers" or "welcomed and applauded sanctions against the State of Nicaragua and its citizens", among others. As the Inter-American Commission has stated:

¹¹ The 1992 Declaration on the Protection of All Persons from Enforced Disappearance states that: "enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government". Likewise, Article 2 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance defines enforced disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State". Article II of the Inter-American Convention on Forced Disappearance of Persons defines it as: "the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state". Inter-American Court, *Case of Munárriz Escobar et al. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of 20 August 2018, para. 70, and Inter-American Court, *Case of Isaza Uribe et al. v. Colombia*. Merits, Reparations and Costs. Judgment of 20 November 2018, para. 86.

¹² Inter-American Court, *Case of Blanco Romero et al. v. Venezuela*, Merits, Reparations and Costs, Judgment of 28 November 2005, para. 105; and *Case of Munárriz Escobar et al. v. Peru*, para. 70. Therefore "enforced disappearance may be initiated by an illegal detention or by an initially legal arrest or detention. That is to say, the protection of a victim from enforced disappearance must be effective upon the act of deprivation of liberty, whatever form such deprivation of liberty takes, and not be limited to cases of illegitimate deprivations of liberty" (Report of the Working Group on Enforced or Involuntary Disappearances, General Comment on the definition of enforced disappearances, AVHRC/7/2, 10 January 2008, para. 7).

¹³ See, for example, <https://www.confidencial.com.ni/nacion/policia-arresta-a-la-activista-y-miembro-de-la-unab-tamara-davila/>

¹⁴ See, for example, <https://ministeriopublico.gob.ni/comunicado-13-2021/>

¹⁵ United Nations Working Group on Arbitrary Detention, *Nguyen Viet Dung v. Viet Nam*, Opinion No. 45/2015, adopted on 3 December 2015, paras 14-15.

¹⁶ Law No. 1055, Ley de defensa de los derechos del pueblo a la independencia, la soberanía y autodeterminación para la paz, available at [http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/C4084E2665A5610F06258642007E9C3F/\\$File/Ley%20N%201055,%20Ley%20Defensa%20de%20los%20Derechos%20del%20Pueblo.pdf?Open](http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/C4084E2665A5610F06258642007E9C3F/$File/Ley%20N%201055,%20Ley%20Defensa%20de%20los%20Derechos%20del%20Pueblo.pdf?Open)

The Act to Defend the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace followed other laws approved this year by the National Assembly, which, in addition to containing provisions that run counter to the American Convention on Human Rights, clearly seek to repress dissident voices in Nicaragua. Examples of such legislation include the Foreign Agents Act and the Special Cybercrime Act. Together, these norms appear to form part of a broader strategy intensifying repression against any individual who opposes the official narrative.¹⁷

With respect to the principle of legality in the criminal sphere, the Inter-American Court has indicated that the “elaboration of penal categories presumes a clear definition of the criminalized conduct, which establishes its elements, and allows it to be distinguished from behaviors that are either not punishable or punishable but not with imprisonment”.¹⁸ Article 7.2 of the American Convention establishes that: “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.” This article recognizes the primary guarantee of the right to physical liberty: the legal exception, according to which only through law can the right to personal freedom be impacted.¹⁹ The Inter-American Court has stated that: “The legal exception must necessarily be accompanied by the principle of legal definition of the offense (*tipicidad*), which obliges the States to establish, as specifically as possible and ‘beforehand’, the ‘reasons’ and ‘conditions’ for the deprivation of physical liberty.” In addition, it requires that the application be strictly subject to procedures objectively defined in the law.²⁰ “Hence, Article 7(2) of the Convention refers automatically to domestic law. Accordingly, any requirement established in domestic law that is not complied with when depriving a person of his liberty will cause this deprivation to be unlawful and contrary to the American Convention.”²¹

It is important to note that Law 1055 does not establish a crime and much less, deprivation of liberty. According to the, previously mentioned, Article 1, the consequence is the prohibition to stand for elected office. Therefore, detention without legal basis indicates that it is arbitrary. Thus, the Working Group on Arbitrary Detention has stated that domestic law must authorize each and every restriction on liberty.²² In this case, National Police press releases cited only an “investigation” under Law 1055, which does not present any domestic criminal legal basis for the detention. Likewise, it should be noted that, according to the information obtained, Law 1055 could be being applied to investigate events prior to its promulgation, which would violate the principle of non-retroactivity in criminal law. The Inter-American Court has ruled that: “Under the rule of law, the principles of legality and non-retroactivity govern the actions of all the State’s bodies in their respective fields, particularly when the exercise of its punitive power is at issue.”²³

2.1.2 EXTENSION OF DETENTION WITHOUT CHARGE TO 90 DAYS

In nine of the cases in this report, the Public Prosecutor’s office has indicated that “a written request for a Special Hearing for the Protection of Constitutional Guarantees was submitted to extend the period of additional investigation and judicial detention”, applying Law 1060, which amended Nicaragua’s Code of Criminal Procedure and establishes that:

¹⁷ IACHR, IACHR Rejects Passing of Law Restricting Political Rights in Nicaragua, 6 January 2021, available at: https://www.oas.org/en/iachr/jsForm?File=/en/iachr/media_center/preleases/2021/003.asp

¹⁸ Inter-American Court, *Case of Ricardo Canese v. Paraguay*, Merits, Reparations and Costs, Judgment of 31 August 2004, para. 174; *Case of Cantoral Benavides v. Peru*, Merits, Judgment of 18 August 2000, para. 157; and *Case of Castillo Petruzzi et al. v. Peru*, Merits, Reparations and Costs, Judgment of 30 May 1999, para. 121.

¹⁹ Inter-American Court, *Case of Romero Feris v. Argentina*, Merits, Reparations and Costs, Judgment of 15 October 2019, para. 77.

²⁰ Inter-American Court, *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 21 November 2007, para. 57; and *Case of Romero Feris v. Argentina*, Merits, Reparations and Costs, Judgment of 15 October 2019, para. 77.

²¹ Inter-American Court, *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 21 November 2007, para. 57.

²² United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, Working Group on Arbitrary Detention, Human Rights Council, A/HRC/30/37 (Annex), 6 July 2015, para. 49.

²³ Inter-American Court, *Case of De La Cruz Flores v. Peru*, Merits, Reparations and Costs, Judgment of 18 November 2004, para. 80.

Article 253a Special Hearing for the Protection of Constitutional Guarantees.

When the person is detained subject to a judicial order within 48 hours after their arrest, at the request of the Public Prosecutor's Office, a Special Hearing for the Protection of Constitutional Guarantees shall be held immediately, in order to request that an extension of the period of investigation and judicial detention be issued, provided that it is considered that the outcome of the investigation requires more time to obtain additional information or sufficient evidence to support and file charges against one or more individuals.

The request shall be made orally or in writing and be duly founded and warranted. The accused, his defence and the Public Prosecutor's Office must be present at this hearing.

The judicial authority shall make a determination regarding the request by issuing an order of admissibility and shall expressly indicate the reasonable term for the additional investigation, which may not be less than fifteen or more than **ninety days**, the judicial authority shall **take into consideration the seriousness of the case, the complexity of the investigation, the plurality of those affected, accused or the conduct**, when the investigation concerns crimes related to organized crime, or crimes of social importance or national significance and any other information or evidence that helps substantiate the legitimacy of the request".²⁴ (emphasis added)

This article requires the judicial authority to issue an order of admissibility regarding the request, a document in which elements such as the gravity of the case and the complexity of the investigation are examined. However, the only information available in nine of the cases is contained in Public Prosecutor's Office press releases, which do not indicate the reasons for the request to extend the period of investigation and judicial detention.

According to the Code of Criminal Procedure, the purpose of the preliminary hearing (which must be held within 48 hours of arrest) is to inform the detainee of the charges against them. The Code establishes that the judge will order the person's release if this requirement is not met.²⁵ Law 1060 extends the deadline by which a detainee has a right to be informed of the reasons for and circumstances of their arrest to up to 90 days.

The Inter-American Court has indicated that according to Article 7.4 of the American Convention, information on the purpose and reasons for the detention must be given when it takes place and as that right is set out in the Convention, it entails two obligations: a) oral or written information on the reasons for the arrest and b) notification, in writing, of the charges.²⁶ In the cases analysed in this report, authorities of the state have clearly violated these obligations.

Before the approval of Law 1060, the IACHR expressed its concern about the extension of the period of preventive detention without charge. In addition, it has reiterated its condemnation of the misuse of preventive detention against people identified as opponents in Nicaragua.²⁷ The Office of the United Nations High

²⁴ "Artículo 253 bis. Audiencia especial de tutela de garantías constitucionales. Cuando la persona detenida sea puesta a la orden del juez dentro del plazo de 48 horas posteriores a su detención, a petición del Ministerio Público se celebrará inmediatamente Audiencia Especial de Tutela de garantías constitucionales, con el fin de solicitar la ampliación del plazo para investigar y se dicte detención judicial, siempre que se considere que los resultados de la investigación requieren mayor tiempo para complementar información o elementos de prueba suficientes para sustentar y formular acusación contra una o varias personas. La petición puede hacerse de manera oral o escrita y debidamente fundada y motivada. El imputado, su defensor y el Ministerio Público deberán estar presentes en esta audiencia. La autoridad judicial determinará mediante auto la procedencia de la solicitud y señalará de forma expresa el plazo razonable para la investigación complementaria, el cual no podrá ser menor de quince ni mayor de noventa días, la autoridad judicial tomará en consideración la gravedad del hecho, la complejidad de la investigación, la pluralidad de afectados, imputados o conductas, cuando la investigación se trate de delitos vinculados al crimen organizado, o se trate de delitos de relevancia social y trascendencia nacional y cualquier otra información o elemento de prueba que ayude a fundamentar la procedencia de la solicitud". Amendment and Addition to Law No. 406, Code of Criminal Procedure of the Republic of Nicaragua, Law No. 1060, approved on 2 February 2021, published in La Gaceta [Official Gazette] No. 25 of 5 February 2021, available at [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/49C912ED7DDE58CE062586760053C890?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/49C912ED7DDE58CE062586760053C890?OpenDocument) (Spanish only).

²⁵ Articles 255 and 256 of the Code of Criminal Procedure.

²⁶ "la información de los 'motivos y razones' de la detención debe darse 'cuando ésta se produce' y dado que el derecho contenido en aquella norma implica dos obligaciones: a) la información en forma oral o escrita sobre las razones de la detención, y b) la notificación, por escrito, de los cargos". Inter-American Court, *Case of Cabrera García and Montiel Flores v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 26 November 2010, para. 106; and *Case of Fleury et al. v. Haiti*, Merits and Reparations, Judgment of 23 November 2011, para. 60. See also, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by General Assembly resolution 43/173 of 9 December 1988, Principle 10.

²⁷ For additional information see <https://twitter.com/CIDH/status/1357696548633731080?s=20>

Commissioner for Human Rights (OHCHR) has also pointed out that the reform of the Code of Criminal Procedure, by delaying judicial oversight of detention by up to 90 days, is contrary to the Constitution and International standards, because it allows detention in order to investigate, rather than investigation in order to detain. It also added that the reform violates the presumption of innocence and the right to know without delay and in detail the charges against you, as well as putting at risk the integrity and security of the so-called “judicial detainees” (“*detenidos judiciales*”), who are left without effective judicial oversight.²⁸ Nevertheless, the law has not been repealed and was applied for the first time against the group of people identified as opponents and detained in recent months.

In the case of Ana Margarita Vijil, the situation is even more worrying. According to the information obtained, at the time this report was finalized the Public Prosecutor’s Office had yet to make generally known the request for a Special Hearing for the Protection of Constitutional Guarantees and the date of its proposed hearing: therefore, at the date research for this report was completed Ana Margarita may not have had access to a judge before which she could, possibly, question the legality of the deprivation of her liberty, among other elements.

In some of the cases documented, when a writ of *habeas corpus* is filed, the courts include in their arguments for declaration of “no grounds” the judicial extension that previously extended the detention period. For example, they limit themselves to saying that the judicial authority resolved to extend the period for investigation to 90 days, without giving any explanation, not even from the court responsible for reviewing the legality of the detention, of the reasons for keeping the person in judicial detention for 90 days. And given the lack of public information or access to the records of the alleged hearings in which the period of detention is extended, it is impossible to know the nature of the reasoning of the authorities for that extension.

2.2 UNKNOWN WHEREABOUTS AND CONDITIONS OF DETENTION

According to the information obtained, despite multiple requests addressed to the authorities from family members and legal teams, they had not been officially informed, as of the date research concluded for this report, of the whereabouts and conditions of detention of Daysi Tamara Dávila, Miguel Mendoza, José Pallais, Suyen Barahona, Víctor Hugo Tinoco, Félix Maradiaga, Ana Margarita Vijil, Violeta Granera, Jorge Hugo Torres and Dora María Téllez.

2.2.1 LACK OF OFFICIAL INFORMATION

Although in the cases documented the Nicaraguan authorities have publicly confirmed²⁹ that they have the detainees in their custody, this acknowledgement is clearly insufficient. By virtue of its status as guarantor, the state has an obligation not only not to deny someone is in detention, but also to provide information on the detainee.³⁰

At the time this document was finalized, the authorities had not officially revealed the exact location of the detainees, as required by international law. According to the interviews carried out, in most cases the only information received on the possible location has been provided as a result of the insistence of relatives, verbally and by police officials stationed at the gates of the Evaristo Vásquez Police Judicial Assistance Department Complex (Dirección de Auxilio Judicial Complejo Policial Evaristo Vásquez, DAJ), known as the “Nuevo Chipote”.

²⁸ For additional information see <https://twitter.com/OACNUDH/status/1356955406187307008?s=20>

²⁹ For example, in most cases the Public Prosecutor’s Office has issued statements on its website, see: <https://ministeriopublico.gob.ni/comunicado-14-2021/>

³⁰ Inter-American Court, *Case of Munárriz Escobar et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 20 August 2018, para. 80.

However, mere statements by police officers stationed at the entrance of a detention centre are not sufficient, official and credible proof of the detainees' whereabouts and conditions.

In most cases, the families have deduced that they could be in the DAJ because that is where people are usually taken immediately after their arrest and because water for their relatives is regularly accepted there. However, beyond the receipt of water and other liquids by police officers stationed at the entrance, they have not received any verifiable and reliable information that their relatives are effectively being held at that location or that they receive what their family members are bringing them.

For example, in some cases the families expressed fear and confusion because at the DAJ they ask for the same products, such as personal hygiene items, at relatively short intervals, which makes them doubt whether what they bring is really given to their relatives.

“That a jailer from Chipote [Judicial Assistance Directorate] accepts water from me is not a guarantee of anything, because I have not seen her.”

Member of Ana Margarita Vijil's family circle

Public statements by the National Police³¹ and the Public Prosecutor's Office³² about the arrests and the alleged judicial hearings do not include mention of the place of detention, which should be a matter of observation for the courts if they were acting independently. The lack of official communication addressed to the detainees' families and their legal representatives specifying the exact place of detention, constitutes deliberate concealment of their whereabouts and current conditions.

The Nicaraguan state is in a position of guarantor regarding the rights of people deprived of their liberty as the police authorities exercise control and power over them. Therefore, the authorities have an obligation to prevent the detention from turning into enforced disappearance.³³

“No jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law”.

Joint study of various United Nations special procedures, A/HRC/13/42.

Secret detention is by definition incommunicado detention and the failure of the authorities to disclose the place of detention or information about the fate of the detainee. In addition, prolonged incommunicado detention may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment and may itself constitute

³¹ See <https://www.confidencial.com.ni/nacion/policia-arresta-a-la-activista-y-miembro-de-la-unab-tamara-davila/>

³² See <https://ministeriopublico.gob.ni/comunicado-13-2021/>

³³ Committee on Enforced Disappearances, Views approved by the Committee under article 31 of the Convention for communication No. 1/2013. CED/C/10/D/1/2013, 12 April 2016, para. 10.5.

such treatment.³⁴

When a possible enforced disappearance at the hands of state agents or with their tolerance or encouragement is suspected, the Nicaraguan authorities have an obligation to investigate and provide an immediate, satisfactory and credible explanation of what has happened to the individual. And, if the investigation reveals suspicions of criminal activity, all those suspected of individual criminal responsibility must be brought before ordinary courts. In contrast, Nicaraguan authorities continue to fail to officially disclose the exact location of the detainees.

“We haven’t had any kind of notification of their whereabouts, we believe that they are disappeared because we do not know their whereabouts.”

Member of Daysi Tamara Dávila’s family circle

2.2.2 PETITIONS FILED TO ASCERTAIN WHEREABOUTS AND CONDITIONS OF DETENTION

In accordance with Law 983 (Constitutional Justice Law), a writ of *habeas corpus* (*recurso de exhibición personal*) is a mechanism for the protection of people whose liberty, physical integrity or security have been violated or are in danger of being violated. In cases of unlawful detention, the presiding judge must appoint an implementing judge to summon the relevant authority and ensure compliance with the provisions of article 19 of the law. Thus, the implementing judge may demand that the authority or official with direct custody of a detainee present the detainee, even if they are under the authority of another official or authority, without prejudice to continuing with other procedures relating to the petition.

In nine of the cases documented in this report, the legal representatives filed writs of *habeas corpus*. In some cases, the court indicated that a Special Hearing for the Protection of Constitutional Guarantees had been held and that therefore the writ was not admissible. For example, in the case of Víctor Hugo Tinoco, the writ was resolved by declaring it inadmissible. The decision indicated that it had been verified that Víctor Hugo Tinoco was brought before the competent authority, the Judge of the Ninth Criminal District Court of Managua, at a Special Hearing for the Protection of Constitutional Guarantees, at 1:20 on the afternoon of 15 June 2021, when the judicial authority endorsed the extension of the period for investigation and ordered his detention.

In other cases, the *habeas corpus* writ was filed before 48 hours had elapsed since detention, so the court responded that the person was detained within the legal period of 48 hours that the police have to carry out the relevant investigation.

For example, in the case of Jorge Hugo Torres, on 13 June 2021, a *habeas corpus* writ was filed before the Criminal Chamber of the Court of Appeals relating to his arbitrary and unlawful detention. The Appeals Court

³⁴Joint study prepared by Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention, represented by its Vice-Chair, Shaheen Sardar Ali; and the Working Group on Enforced or Involuntary Disappearances, represented by its Chair, Jeremy Sarkin, A/HRC/13/42, 19 February 2010.

responded to the writ by declaring it inadmissible because Hugo Torres was still being held within the legal 48-hour period permitted for the police to carry out the relevant investigation.

In the case of Miguel Ángel Mendoza Urbina, the Court declared that the *habeas corpus* writ was inadmissible, arguing that it was filed within the lawful 48-hour period permitted for detention by the competent authority and that a Special Hearing for the Protection of Constitutional Guarantees had been held in which the judicial authority approved the extension of the investigation period.

“Their obligation [of the judicial authority] was to appoint an implementing judge of recognized probity in order to execute the writ, this implementing judge being the authority responsible for issuing an opinion on the legality or otherwise of the detention.”

Nicaraguan lawyer

The Inter-American Court has stated that, as one of the goals of enforced disappearance is to prevent the exercise of legal remedies and the appropriate procedural guarantees, if the victim cannot access the remedies available, it is crucial for relatives or other associated persons to be able to access judicial proceedings or remedies that are fast and effective as a means of establishing the detainee’s whereabouts or their state of health, or to identify the authority that ordered the deprivation of liberty or carried it out.³⁵

In all the cases, the writs for *habeas corpus* presented have not been effective in achieving the purpose for which they were enshrined, which is to verify the legal situation of the person and their whereabouts.

The information received by Amnesty International shows that the families and legal representatives of the 10 detainees submitted more than 40 requests, petitions and appeals to different authorities, to request access to the files, a medical examination of the detainees, meetings with their lawyers, family visits and immediate release, among other things. Unfortunately, these have been ineffective and, in most cases, failed to elicit a response from the authorities.

³⁵ Inter-American Court, *Case of Torres Millacura et al. v. Argentina*, Merits, Reparations and Costs, Judgment of 26 August 2011, para. 100.

DAYSI TAMARA DÁVILA



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Daysi Tamara Dávila, a feminist psychologist and human rights defender, is a member of the Board of Directors of the political movement Unión Democrática Renovadora (UNAMOS) and a member of the Political Council of Unidad Nacional Azul y Blanco. Daysi Tamara was detained by the National Police on 12 June 2021. That night, the authorities, without presenting any court order, violently entered her house, where her five-year-old daughter was also present, and proceeded to arrest her and search her home.

Her detention was the culmination of a long campaign of harassment and surveillance that began in 2018 which led the Inter-American Commission to grant her precautionary measures in December 2019.

Prior to her detention in June 2021, Daysi Tamara had been detained twice before for her political activism. Following her latest arrest, the President of the Inter-American Court granted her urgent protection measures in July 2021 and ordered her immediate release.

Members of her family circle told Amnesty International that, despite their insistence, since her arrest they have not received any official notification indicating her current whereabouts, her conditions of detention or her state of health. They have not even been able to speak to her by phone and have not received any written communication from her.

The day after her arrest, her family filed writ for *habeas corpus*, which was declared inadmissible by the judicial authorities. Since then, various legal briefs and requests have been submitted to the judicial and police authorities, requesting the exercise of the right to family visits and to communication with a legal representative. To date, the family reports that no official response to these requests has been received and, instead, they have been subjected to harassment and intimidation when submitting some of these requests.

On 23 July, a motion was presented to the judicial authorities requesting compliance with the ruling of the President of the Inter-American Court calling for her immediate release. However, in its concise response, the court omits to refer expressly to the measures ordered by the President of the Inter-American Court, which are binding upon Nicaragua, and to what was requested in the brief and, instead, indicates that Daysi Tamara remains deprived of liberty pursuant to a judicial arrest warrant and within the period prescribed by law. Repeated efforts by the family and legal petitions have been insufficient to obtain a response from Nicaraguan authorities regarding her whereabouts and current situation.

2.2.3 IMPOSSIBILITY OF VERIFYING THE CONDITIONS OF DETENTION

Since their arrest, the families of the detainees, despite their insistence, have not been able to visit them to verify their conditions of detention or to confirm that they are alive.

A member of Dora María Téllez' family circle told Amnesty International that on every occasion they have been refused permission to verify that she is in the DAJ and that it is impossible to know if she is in good health. The statements of the other families interviewed described this same situation.

“Since they took her away, we have had no news of her, other than speculation. As if their word were a certificate of existence “.

Member of Dora María Téllez' family circle

“Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and (b) By receiving visits.”

Rule 58.1, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)

In most cases, the people interviewed stated that in the period immediately after the arrests, there was a sign listing visiting days and times at the DAJ. However, when the families insisted on visiting the detainees, the sign was removed, which they interpreted as a lack of willingness to allow them to see their relatives.

Faced with the repeated refusal of the authorities to facilitate family visits, the families have used various mechanisms to pursue their requests. For example, some of them have made verbal requests at the entrance of the detention centre where they deliver water and other liquids. The police officers there have given various responses, including that they need “orders from superiors” or “higher orders”.

On 6 July 2021, relatives of some of the detainees presented a written request addressed to the head of the Judicial Assistance Directorate, requesting that they be allowed to communicate with and visit their relatives. The day before, they had tried to deliver this communication, but they only succeeded in being turned away by Directorate of Special Police and Anti-riot Operations (Dirección de Operaciones Especiales Policiales y Antimotines³⁶) officials. At the time this document was finalized, they had not received a response to their request.

In some cases, DAJ police officers have told family members that they require a court order to access visits. However, according to their statements, when such a court order is requested, the judicial authorities say they

³⁶ For more information, see <https://www.dw.com/es/polic%C3%ADa-de-nicaragua-niega-asistencia-jur%C3%ADdica-a-presos-pol%C3%ADticos/a-58169409>

cannot issue it because the detainees are still in police custody, or they simply do not respond to requests made in writing. The result is an endless cycle of refusals by state authorities.

In one specific case, the court (in response to requests for visits by relatives and lawyers) indicated that that the person under investigation, José Pallais Arana was in the custody of the police and that therefore that institution was responsible for dealing with everything in their request.

In addition, on 12 July, a group of three families submitted a brief to the Inspector General of Police stating that the DAJ was acting contrary to national and international law by holding the detainees incommunicado and not allowing them family visits. At that point, their relatives had been forcibly disappeared for at least 30 days. However, people from their immediate circles report that the Inspector General refused to receive the letter. In addition, according to the statements gathered, the families who went to the Inspectorate were harassed by police officers and riot police.

International human rights standards state that: “A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”³⁷ Despite this, the families still have no means of communicating with the detainees, and the authorities continue to decline or ignore any request to ensure any type of contact.

“In El Chipote [DAJ] they say that saying anything is forbidden... If they would just gave a sign that he’s there.”

Member of Miguel Mendoza’s family circle

According to domestic legislation, the accused have the right to communicate with a family member or lawyer of their choice or legal advice association, to report their arrest, within the first three hours. In the case of rural areas where communication is difficult, this period may be extended up to 12 hours.³⁸ Therefore, the Nicaraguan authorities are also in breach of their own national legislation.

“[T]he secrecy and insecurity caused by the denial of contact to the outside world and the fact that family members have no knowledge of their whereabouts and fate violate the presumption of innocence”

Joint study of various United Nations special procedures, A/HRC/13/42.

In the case of Félix Maradiaga and Violeta Granera, who have been granted precautionary measures by the Inter-American Commission and Provisional Measures by the Inter-American Court since 24 June 2021,³⁹ in ordering

³⁷ Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, Principle 19.

³⁸ “comunicarse con un familiar o abogado de su elección o asociación de asesoría jurídica, para informar sobre su detención, dentro de las primeras tres horas. Cuando se trate de zonas rurales con dificultades de comunicación, este plazo se podrá extender hasta doce horas”, Code of Criminal Procedure of Nicaragua, Article 95.3.

³⁹ Inter-American Court, Matter of Juan Sebastián Chamorro et al. regarding Nicaragua, Provisional Measures, Order of the Inter-American Court of Human Rights of 24 June 2021.

provisional measures, the Court indicated its concern that, to date, the state had not provided any information regarding their whereabouts and conditions of detention, and this despite the numerous requests made by family members and legal representatives and, in particular, by the Commission.⁴⁰

In effect, the Court finds that, to date, more than 15 days have elapsed since all the proposed beneficiaries were deprived of their liberty, without their family members or legal representatives having been informed of their whereabouts.

Inter-American Court of Human Rights, Matter of Juan Sebastián Chamorro et al. regarding Nicaragua, Provisional Measures, Order of the Inter-American Court of Human Rights of 24 June 2021.

In addition, according to available information, most of the detainees suffer from conditions that require medical treatment, medicines or special diets. For this reason, their legal representatives have filed various appeals to request that the Institute of Legal Medicine be able to examine them and give them the necessary medical care. However, according to the statements gathered, so far the authorities have not responded to these requests.

In some cases, according to the information available, the police officers stationed at the DAJ gate have asked the families for medicines for the detainees. However, in some cases the medicines are not part of their usual medication regime or are requested with a frequency that is not consistent with the quantity of medicines delivered. However, the officials and the authorities have failed to give detailed information on the state of health of the detainees. This reiterates once again that the detainees are in the custody of the authorities, but it remains to be proven whether they are being held at the DAJ facilities or if they are still alive.

The information received by Amnesty International shows that, at the time this report was finalized, the families and legal representatives of the 10 detainees still did not have convincing and official information about the conditions of detention of Daysi Tamara Dávila, Miguel Mendoza, José Pallais, Suyen Barahona, Víctor Hugo Tinoco, Félix Maradiaga, Ana Margarita Vijil, Violeta Granera, Jorge Hugo Torres and Dora María Téllez.

⁴⁰ “con preocupación que, hasta la fecha, el Estado no ha proporcionado información alguna respecto del paradero y condiciones de detención de estas cuatro personas, y ello pese a los numerosos requerimientos realizados por familiares y representantes legales y, en particular, por la Comisión”, Inter-American Court, Matter of Juan Sebastián Chamorro et al. regarding Nicaragua, Provisional Measures, Order of the Inter-American Court of Human Rights of 24 June 2021, para. 35.

JOSÉ PALLAIS



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José Pallais Arana is a well-known Nicaraguan lawyer and national political figure who has served as Deputy Minister of the Interior, Vice Chancellor and Member of Congress in previous governments. He has also always been very critical of repressive policies and human rights violations, including those of the government headed by Daniel Ortega.

On 9 June 2021, National Police officials in the department of León arrived at his house and detained him without presenting a court order and when there was no crime being committed *in flagrante*. At the time of his arrest, the police reported that the judge would validate the arrest later and they did not inform his family where he was being taken. The police authorities who apprehended him took photographs with José Pallais, as a form of stigmatization and ridicule, which later circulated on social media along with derogatory messages. Subsequently, his wife’s office was raided and five personal computers were taken away without a warrant being presented.

The following day, his family visited the Judicial Assistance Directorate (DAJ) facility, which is where detainees are usually taken, but the police officers at reception did not give them any information about him. Despite refusing to confirm his whereabouts, DAJ officials did accept some personal hygiene items for him.

According to the information available, José Pallais suffers from several chronic diseases, including diabetes mellitus II, arterial hypertension, cardiomegaly, sleep apnea, dyslipidemia, chronic obstructive pulmonary disease and gastroesophageal reflux. In other words, he requires permanent medical treatment and periodic medical supervision.

On occasion, DAJ authorities have asked family members to bring medicine, presumably for him. However, according to the family’s records, some of the medicines requested are not part of his normal medication routine and, on other occasions, the frequency of requests is not consistent with the amount of medicine delivered.

Because of his multiple health conditions, his family and his legal representative told Amnesty International that they have appealed several times before various authorities, including the Attorney General’s Office, the DAJ, the judicial authorities and the Office for Ombudsperson for the Protection of Human Rights to request that José Pallais receive specialized medical care. In some cases the authorities have not replied and in others they have indicated that another state body, which the family had already contacted, was the one with the power to make a decision on this. The truth is that his whereabouts and whether he is receiving the medical care he needs remain uncertain and so his life could be in danger.

2.2.4 SECRET HEARINGS AND RIGHT TO DEFENCE

According to international standards, the right to defence is a central component of due process and must be exercised from the moment a person is accused of possibly perpetrating a criminal act.⁴¹ However, those in secret detention are usually deprived of their right to a fair trial.⁴²

As noted in previous sections, in most of the cases examined, the detention was followed by a statement from the Public Prosecutor's Office. The statement, which was not addressed directly to the detainees' families or legal representatives but published on the institution's website, indicates that in accordance with Law 1060, the Public Prosecutor had made a request to the judicial authorities for a Special Hearing for the Protection of Constitutional Guarantees to be held in order to request an extension of the investigation period and judicial detention, a request that was granted and a ruling made providing for 90 days' judicial detention.

“The only form of communication with the government has been those public statements.”

Member of Violeta Granera's family circle

As indicated, Law 1060 provides for the holding of a Special Hearing for the Protection of Constitutional Guarantees, at which the Public Prosecutor's Office can request extending the investigation period. According to the law, the accused, their defence lawyer and the Public Prosecutor's Office must be present at this hearing.⁴³

However, the statements and documents received by Amnesty International strongly indicate that the detainees' legal representatives have at no time had access to their clients to provide them with legal assistance and prepare their cases.

Moreover, according to the statements received, in each case neither the families nor the legal representatives of the detainees were notified about the supposed holding of the hearings and, therefore, they were carried out in total secrecy and in violation of judicial guarantees. Transcripts of the hearings are also not available to legal representatives.

“Everything is assumed, because there is no record that confirms with certainty that this hearing was held... There is absolute secrecy”.

Nicaraguan lawyer

⁴¹ Inter-American Court, *Case of Ruano Torres et al. v. El Salvador*, Merits, Reparations and Costs, Judgment of 5 October 2015, para. 153.

⁴² Joint study prepared by Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention, represented by its Vice-Chair, Shaheen Sardar Ali; and the Working Group on Enforced or Involuntary Disappearances, represented by its Chair, Jeremy Sarkin, A/HRC/13/42, 19 February 2010, Summary and para. 24.

⁴³ For more information, see

<http://legislacion.asamblea.gob.ni/normaweb.nsf/09cf45d6fc893868062572650059911e/49c912ed7dde58ce062586760053c890?OpenDocument>

In some of the cases, sources close to the detainees have reported that on the day the Public Prosecutor's Office gives as the date the special custody hearing was held, the legal representatives or the families were pursuing proceedings in the judicial precinct where they court hearings were said to be taking place. It is therefore clear that the authorities deliberately sought to ensure people were denied any legal assistance of their choice.

In addition, in some of the cases examined, people from the detainees' immediate circles indicated that they had agreed, prior to their arrest, who would be their legal representatives in the event of their detention. For example, in the case of José Pallais, who is a lawyer, he had not only previously agreed with his family who would act as his defence, but it seems unlikely that someone with knowledge of the law would not have demanded a lawyer of his choice.

The Inter-American Court has stated that: "the appointment of a defense counsel for the sole purpose of complying with a procedural formality would be tantamount to not having a technical legal representation; therefore, it is imperative that the defense counsel act diligently in order to protect the procedural guarantees of the accused and thereby prevent his rights from being violated".⁴⁴ In these cases, the authorities failed to notify the families and their legal teams of the proceedings, obstructing the right to effective defence and a lawyer of their choice.

"If the right to defense arises as of the moment in which an investigation into an individual is ordered... the accused must have access to a legal representation from that moment onwards, especially during the procedure in which his statement is rendered. To prevent the accused from being advised by a counsel means to strictly limit the right to defense, which leads to a procedural unbalance and leaves the individual unprotected before the punishing authority."

Inter-American Court of Human Rights, *Case of Barreto Leiva v. Venezuela*, Judgment of 17 November 2009 (Merits, Reparations and Costs), para.62.

In addition to their physical disappearance, the detainees do not appear in the legal records of the judicial authorities either. According to lawyers who know about the cases, it has not been possible to get access to documents of the criminal proceedings that would usually be posted on the website of the judicial authorities. Thus, none of the cases are found in the Electronic Management System for Case Consultation of the Judicial Power (Sistema de Gestión Electrónica NICARAO de Consulta de Casos del Poder Judicial). When lawyers log into the system, they do not appear and lawyers have no way of accessing the case file relating to the detention. For example, records of the hearings that have supposedly been held should be registered in the system, according to the lawyers consulted.

As a consequence, their legal representatives have not only been denied access to physical files, but also digital information, which is key to preparing a legal defence and which would confirm the legal existence of the cases referring to the alleged crimes for which they are being investigated.

According to the available documentation, in all of the cases researched, defence lawyers have filed one or more briefs in which they ask the judicial authorities to grant them access to the legal case files and to interview their clients. Unfortunately, they have yet to receive a response.

⁴⁴ Inter-American Court, *Case of Cabrera García and Montiel Flores v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 26 November 2010, para. 155.

SUYEN BARAHONA



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Suyen Barahona, a feminist and environmentalist, has been President of the political movement Unión Democrática Renovadora (UNAMOS) since 2017. She had previously been arrested in 2018 for her political activism.

On Sunday, 13 June, she was arrested again as part of a violent police operation that, according to statements from her immediate circle, included at least eight police vans, canine patrols and heavily armed officials.

Prior to her arrest, Suyen was subjected to intimidation and harassment by police officials and people in civilian clothing. Weeks earlier, police officers that were stationed in the vicinity of her house, took pictures and questioned passers-by. At times, she was not allowed to leave her home despite there being no warrant to hold her under house arrest.

Her detention and the violent police deployment was witnessed by her four-year-old son. After her detention, police officers spent approximately six hours questioning the people present, searching her home and confiscating her property, without presenting a court order.

On 15 June, the Public Prosecutor's Office posted a statement on its website stating that that same day Suyen had been presented before the judicial authorities, who extended the period of detention without charge to 90 days. However, neither her family nor her legal representative were notified of this hearing, which was held in secret.

Her family has submitted several requests to the judicial and police authorities in which they ask that both they and her legal representatives be allowed to visit her. However, they have had no response to date.

Faced with the insistence of the families of Suyen and other detainees, police officials stationed at the gate of the Directorate of Judicial Aid (the place where they are presumed to be) indicated that family visits had to be authorized by a judicial body. Therefore, Suyen's family appealed to the judge handling the case to request that they issue a court order to the DAJ to allow the visit. However, the judicial authorities have yet to answer, leaving Suyen and her family in an endless cycle of silence and excuses that thwart efforts to verify her location and conditions of detention.

2.3 FAMILIES AS VICTIMS OF ENFORCED DISAPPEARANCE

There can be no doubt that enforced disappearance has a direct impact on the family of the disappeared person. The anxiety of not knowing the person's conditions and whereabouts, of not knowing for certain whether the person is alive, the disruption of family dynamics, among other impacts, all contribute to the harm caused to the physical and emotional integrity of those who are part of their close family circle.

“That anguish of it being such a long time and not knowing anything, of not having proof they are alive. Seeing him for five minutes, would give me some peace of mind. Sometimes we feel they are taunting us, because what would it cost them to let us see him?”

Member of Félix Maradiaga's family circle

According to the Inter-American Court, “in cases involving the forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victim's next of kin is a direct result of this phenomenon, which causes them severe suffering owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information on the victim's whereabouts”.⁴⁵ The Court has also stated that: “the deprivation of access to the truth regarding the whereabouts of a disappeared person constitutes a form of cruel and inhumane treatment to the close relatives”.⁴⁶

In the cases of Suyen Barahona, Daysi Tamara Dávila, Félix Maradiaga and Miguel Mendoza, they have children under the age of 18 who at their young age are experiencing the anxiety of not knowing when they will see their parent again. The children, according to the statements collected, are experiencing serious psychological impacts as a result not only of having witnessed the violent arrest, in the case of the mothers, but also of not being able to see their parent.

“It has been difficult for the boy, he is always asking about his mother, he waits for his mother and she does not come back.”

Member of Suyen Barahona's family circle

⁴⁵ Inter-American Court, *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*, Merits, Reparations and Costs, Judgment of 20 November 2012, para. 286.

⁴⁶ Inter-American Court, *Case of Gelman v. Uruguay, Merits and Reparations*, Judgment of 24 February 2011, para. 133.

In addition, close relatives of the disappeared also told Amnesty International that they were suffering harm to their mental and emotional integrity. For example, they reported suffering from night terrors, disturbed sleep, anxiety, and living in a state of hypervigilance or a permanent state of alert. In some cases they have needed medication to alleviate the impact of their stressful situations.

According to the Working Group on Enforced Disappearances, “relatives of a person who is disappeared, they experience feelings of loss, abandonment, intense fear, uncertainty, anguish, and pain, all of which could vary or intensify depending on...age”.⁴⁷ Likewise, the Inter-American Court has indicated that: “the State has the obligation to guarantee the right to personal integrity of the next of kin also by means of effective investigations.” It has also stated that: “the absence of effective remedies has been considered by the Court as a source of suffering and additional anguish for the victims and their next of kin.”⁴⁸

“Sleep has become a luxury since the detention.”

Member of Hugo Torres’ family circle

The families of the detainees visit the DAJ or “Nuevo Chipote” every day to leave food for their relatives. However, every day, the authorities at the police compound arbitrarily decide what to let in and what to refuse. In addition, during some of the visits to the DAJ or other state agencies, families have been harassed by members of the security forces or people in civilian clothes. A family member told Amnesty International that this attitude shows not only an intimidatory stance towards families, but also a failed attempt to make them lose their dignity.

“All the families suffer, it is a macabre game with families to make us come three times a day [to the DAJ] in the hope of learning something about them.”

Member of José Pallais’ family circle

In addition, in some cases, the detainees were the primary breadwinners for their families and their detention has also therefore had an economic impact on families. In addition, sometimes, they have to interrupt their work to go to the DAJ to try to get an item in there for the detainees and this has affected their income. In some cases, it was even reported that detainees’ bank accounts have been frozen.

⁴⁷ General comment on children and enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October – 9 November 2012), A/HRC/WGEID/98/1, para. 6.

⁴⁸ [Inter-American Court](#), *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 25 May 2010, para. 221; and *Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*, Preliminary Objections, Merits, Reparation and Costs, Judgment of 24 November 2010, para. 242.

JORGE HUGO TORRES



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José Hugo Torres, aged 73, is a retired brigadier general in the Nicaraguan Armed Forces and currently Vice-President of the Unión Democrática Renovadora (UNAMOS). He has also been critical of the repressive policies of the current Nicaraguan authorities and, according to his family circle, he has previously been the target of harassment and intimidation for his political activism.

On 13 June 2021, he was detained at his home; no arrest warrant was presented. From the early hours of the morning, according to information obtained, there had been a drone flying above his home and police patrols, as well as people not in uniform, stationed near his house. When they took him away, one of the people who was at his house asked where they were taking him, but no response was given.

In the afternoon, approximately 16 National Police officials broke down the door and forced their way into his home. The house was searched for seven hours during which time those present were questioned. No search warrant was presented and, for the duration of the search, the people in the house were unable to communicate with the outside world.

On 14 June 2021, a petition regarding arbitrary and unlawful detention was filed before the Criminal Chamber of the Court of Appeals, because of the lack of information on his whereabouts. The Court of Appeals responded to the writ of *habeas corpus* by declaring it inadmissible. Subsequently, on 16 June 2021, a second writ of *habeas corpus* for arbitrary and illegal detention was filed before the Criminal Chamber of the Court of Appeals. The judicial authority declared this second petition inadmissible and indicated that Jorge Hugo was in the custody of the competent authority, without specifying his whereabouts.

Because of his age and the various conditions from which he suffers, his family reported that they have approached various authorities to request that he have access to specialized medical care. They report that, as of the time this report was finalized, they had not received any response.

Members of his family circle report suffering serious psychological and emotional effects as a result of the violent detention and the lack of knowledge of his whereabouts.

2.4 THE OBLIGATIONS OF STATE AUTHORITIES IN CASES OF ENFORCED DISAPPEARANCE

In cases of enforced disappearance “it is crucial that the next-of-kin or other people related to the victim can have access to expeditious and effective judicial procedures and recourse as a means of determining the

whereabouts or health condition of a person who has been deprived of freedom, or of identifying the official who ordered or carried out such deprivation of freedom”.⁴⁹

Likewise, whenever there are reasonable grounds to suspect that a person has been subjected to enforced disappearance, an exhaustive independent criminal investigation should be initiated.⁵⁰ The obligation to investigate human rights violations is one of the positive measures that states must adopt to guarantee the rights recognized in the American Convention on Human Rights. This obligation is independent of the filing of a complaint, since in cases of enforced disappearance, international law and the general obligation to guarantee human rights impose an obligation to investigate the case *ex officio*, without delay and in a meaningful, impartial and effective manner. This is a fundamental and conditioning element for the protection of the rights affected by these situations.⁵¹ In any case, every state authority, public or private official who is aware of acts purported to forcibly disappear persons, shall immediately report them.⁵²

On multiple occasions, the Inter-American Court has ruled on the obligation of states to carry out a meaningful search to clarify the whereabouts of the disappeared people, through adequate judicial or administrative channels, in which all efforts are made, in a systematic and rigorous manner, with appropriate human resources and suitable qualified experts and scientists.⁵³ In addition, the obligation under international law to prosecute and, where criminal responsibility is established, punish the perpetrators of human rights violations, stems from the obligation to ensure human rights enshrined in Article 1.1 of the American Convention.

⁴⁹ Inter-American Court, *Case of Anzaldo Castro v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 22 September 2009, para. 64; *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2009, para. 141; and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations and Costs, Judgment of 1 September 2010, para. 654.

⁵⁰ Inter-American Court, *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2009, para. 143; *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 25 May 2010, para. 92; and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations and Costs, Judgment of 1 September 2010, para. 65.

⁵¹ Inter-American Court, *Case of the Pueblo Bello Massacre v. Colombia*, Merits, Reparations and Costs, Judgment of 31 January 2006, para. 145; *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 25 May 2010, para. 92, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations and Costs, Judgment of 1 September 2010, para. 65.

⁵² Inter-American Court, *Case of Anzaldo Castro v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 22 September 2009, para. 65; *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 25 May 2010, para. 92; and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations and Costs, Judgment of 1 September 2010, para. 65.

⁵³ Inter-American Court, *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*, Merits, Reparations and Costs, Judgment of 20 November 2012, para. 334; *Case of Osorio Rivera and family v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 26 November 2013, para. 251; *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 14 November 2014, para. 480; and *Case of Tenorio Roca et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 22 June 2016, para. 275.

3. CONCLUSIONS AND RECOMMENDATIONS

The evidence accessed permits Amnesty International to conclude that the concealment of the whereabouts of Daysi Tamara Dávila, Miguel Mendoza, José Pallais, Suyen Barahona, Víctor Hugo Tinoco, Félix Maradiaga, Ana Margarita Vijil, Violeta Granera, Jorge Hugo Torres and Dora María Téllez constitutes enforced disappearance carried out by the Nicaraguan authorities. Sadly, these are not isolated cases and they occurred in a context of repeated reports of other situations that bear significant similarities; these cases are, therefore, just a small group from a longer list of victims.

The only certainty that the families have about the whereabouts of the detainees is that they are in state custody; therefore, the authorities have an obligation to provide a clear, satisfactory and convincing explanation of their whereabouts.

The human rights crisis in Nicaragua has continued unabated for the past three years. So far, the authorities have not shown willingness to respect human rights and to implement the recommendations of international organizations. On the contrary, the state authorities continue to turn their backs on international scrutiny and refuse to comply with their human rights obligations.

Since the beginning of the crisis, Amnesty International has issued recommendations that, to date, state authorities have ignored. Consequently, the organization once again urges the authorities to:

- End the harassment and intimidation of critics or people perceived as opponents;
- End arbitrary detentions and immediately release those detained solely for exercising their rights;
- Put an end to the practice of enforced disappearance and make reparation to the victims – including the families of the disappeared – and investigate and, where appropriate, punish those responsible for these disappearances;
- Immediately comply with the precautionary and provisional measures ordered by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.
- Accede promptly to the Rome Statute of the International Criminal Court, and implement that treaty in Nicaragua's domestic legislation;
- Accede to the International Convention for the Protection of All Persons from Enforced Disappearance without reservations and implement its provisions in Nicaraguan legislation, ensuring to accept the competence of the Committee on Enforced Disappearances to receive and consider complaints made by victims or their representatives, and by other States Parties.

In addition, the international community has a key role in supporting the work of activists, journalists and human rights defenders and should strengthen diplomatic efforts and keep the Nicaraguan human rights crisis firmly on its agenda.

Given the refusal of the Nicaraguan authorities to bring to justice persons suspected of having committed crimes under international law, such as enforced disappearance, any State that has under its jurisdiction a person suspected of being possibly responsible for these serious acts must ensure that they face justice.

**AMNESTY INTERNATIONAL
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WHEN INJUSTICE HAPPENS
TO ONE PERSON,
IT MATTERS TO US ALL.**

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WHERE ARE THEY?

ENFORCED DISAPPEARANCE AS A STRATEGY OF REPRESSION IN NICARAGUA

Since 28 May 2021, the government of Daniel Ortega has pursued a new phase of its repressive strategy. Characteristic elements of this period include the arrest of a new group of people identified as opponents of the government.

Following rigorous analysis of the available information, Amnesty International has concluded that the concealment of the whereabouts of 10 detainees constitutes enforced disappearance from the perspective of Nicaragua's international human rights obligations.

In the case of Nicaragua, enforced disappearance is one more of a series of measures implemented by the repressive apparatus created by the state to silence criticism and opposition of any kind.