

# GUIDELINES FOR DETERMINING POLITICALLY MOTIVATED DETENTION AND IMPRISONMENT

Contributions from an International  
Human Rights Law Perspective



LIBERTAD A PRESOS  
POLÍTICOS

## **“Guidelines for Determining Politically Motivated Detention and Imprisonment” Contributions from an International Human Rights Law Perspective**

International Institute on Race, Equality and Human Rights - Race and Equality

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We admire their dedication in the defense of human rights, their determination and struggle to achieve the changes that our societies require in order to achieve the guarantee and full exercise of rights. Race and Equality contributes this document to advance the comprehensive approach to the arbitrary deprivation of liberty for political reasons, with the objective of serving as an input for the determination of this condition and for the construction of effective strategies to address it.

We thank the organizations and individuals who, with their support and commitment to the project, contributed to the production of this report, particularly our colleague Esteban Madrigal, Legal Program Officer, who was in charge of drafting the proposals contained herein. We would also like to thank Carmen Herrera and Christina Fetterhoff, who accompanied the process for the construction of this contribution. Race and Equality reaffirms its commitment to expose the serious human rights violations that political prisoners and detainees face, and will continue to accompany them in their struggles for freedom and justice.

**Carlos Quesada**  
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# I. Introduction



1.

In recent decades, Latin America has seen a significant increase in the misuse of the criminal justice system to detain, criminalize, and imprison people for political reasons. Leaders, and people who take on leadership roles, can be arbitrarily detained and criminally prosecuted for defending territory or the environment; freedom of expression, association, and assembly; for taking political positions and being politically active; or simply for defending or exercising human rights recognized by the States in their constitutions or in international human rights treaties, or for demanding justice.

2.

As part of its efforts, the Institute on Race, Equality, and Human Rights (Race and Equality) has worked alongside the victims of this serious problem and their families, particularly in countries such as Nicaragua and Cuba, where dissidents and human rights defenders face systematic repression.<sup>1</sup> This has led Race and Equality to file complaints and seek protection on behalf of victims before international human rights protection mechanisms and to support them in their demands for freedom and justice in the face of the serious and multiple violations committed during their time in detention.

3.

Our approach is rooted in the recognition that the effective enjoyment of human rights is a cornerstone of democracy, as established in the Inter-American Democratic Charter.<sup>2</sup> This framework serves as a reference for understanding the existence of politically motivated detention and imprisonment, even in most Latin American contexts, where, despite the formal existence of democratic states, human rights are systematically violated. The use of State power and the coordinated action of institutions, politically motivated to silence their critics through imprisonment, has profound implications in a region where States have recognized human rights as a limit to their power and democracy as a legitimate form of government based, precisely, on ensuring and respecting human rights.

**2-Article 3 of the Inter-American Democratic Charter establishes that:**

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

**Article 4 further states that:**

Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. **The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy**

1 - Race and Equality. Report, Premeditated Convictions: Analysis of the Situation of the Administration of Justice in Cuba. 2019; Race and Equality; Race and Equality. Voices in Resistance: Women Political Prisoners in Cuba – November 2021; Race and Equality. Report, Nicaragua: An Unresolved Human Rights Crisis: Analysis of arbitrary detentions, unfair judicial proceedings, and political persecution. July 2021.

4.

While the bodies of the inter-American human rights system (IAHRS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have acknowledged the existence of persons detained and imprisoned for political reasons in the region and around the world,<sup>3</sup> the international human rights law framework is still unclear as to the criteria for determining who might be considered a political prisoner or detainee, the individual and social impacts, the extent of the responsibility incurred by States, and the standards of protection that must be applied when this status is determined. Moreover, the vagueness of the concept allows States to evade their responsibility in cases of politically motivated persecution, since it allows them to claim that accusations of such persecution are unfounded.

5.

Bearing this in mind, this paper identifies guidelines that make it possible, based on the application of international law, to identify a situation of politically motivated detention or imprisonment. This, from our perspective, enables us to recognize that the detention is based on a perverse intent and the misuse of State power structures that use institutions to achieve political objectives. Because of the underlying political motive, this type of detention or imprisonment places the detained person in a situation of heightened vulnerability and exposes him or her to serious human rights violations while in custody. In these situations, we believe that it is critical to encourage a response from the various international bodies to ensure the effective and timely protection of these individuals' rights.

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3 - IACHR. [7 reports on the situation of political prisoners in Cuba](#). 1963-1983; IACHR. [Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018](#). October 5, 2020; IACHR. [Tweet](#) “La #IACHR valora la liberación de presos políticos para el avance del diálogo en #Nicaragua. Además, la Comisión recuerda al Estado que debe aclarar el estatus de estas excarcelaciones y liberar a todos los presos políticos reclusos en el sistema penitenciario nicaragüense [The #IACHR welcomes the release of political prisoners to advance the dialogue in #Nicaragua. In addition, the Commission reminds the State that it should clarify the status of these releases and free all political prisoners held in the Nicaraguan prison system].” March 15, 2019; IACHR. [2019 Annual Report](#). Ch. IV. 2020 para. 5; OHCHR. [Urgent action needed to prevent COVID-19 “rampaging through places of detention”](#). 25 March 2020.

6.

This paper is intended as a way for Race and Equality to support efforts to develop a comprehensive approach to this serious and multiple violation of human rights by identifying this status, and we hope it will also serve as an input in the urgent task of developing strategies to effectively address this problem. This paper was prepared through a participatory and constructive methodology. It is the outcome of a process of internal reflection enriched by dialogue with individuals and organizations with extensive knowledge and experience in the field, whose contributions have been essential to highlighting the different realities, types, and complexities of these situations, as well as to broadening the analytical perspectives.



7.

The first section briefly refers to the use of detention and imprisonment for political reasons in four Latin American countries as a form of repression and silencing, considering the reality faced by hundreds of people who have experienced this violation of human rights by the authorities and interests of the governments in power. The second section presents an overview of the different criteria and approaches used in international law to refer to this situation, taking into account the developments within the IAHRs, the Working Group on Arbitrary Detention (WGAD or Working Group) and the Council of Europe.

8.

The third section, based on the application of international human rights law, proposes a series of guidelines for determining when a person has been detained or imprisoned for political reasons and is therefore exposed to serious human rights violations while in detention. Finally, the fourth section sets out some recommendations on actions that can be taken to extend protection to such persons.

9.

In this paper, the terms “imprisoned person” or “detained person” should be understood in keeping with the “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.” Thus, “detained person” means “any person deprived of personal liberty except as a result of conviction for an offence”; whereas “imprisoned person” is understood as “any person deprived of personal liberty as a result of conviction for an offence.”<sup>4</sup> Likewise, deprivation of liberty is understood

broadly to include all forms of detention or imprisonment considered by the WGAD, ranging from house arrest to confinement in detention centers.<sup>5</sup>

10.

Finally, we wish to emphasize that this document was prepared with the conviction that the protection mechanisms provided for in human rights treaties and conventions are a fundamental tool for ensuring the protection and freedom of all persons deprived of their liberty for political reasons. Recognizing the status of politically motivated detention and imprisonment is the first step toward their protection. With this document, Race and Equality wishes to reaffirm its commitment to the struggle and its support of the victims to secure their immediate release and to demand justice for the serious human rights violations to which they have been subjected.

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4- UN, [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#). Adopted by General Assembly resolution 43/173 of 9 December 1988. Use of Terms.

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5- Office of the High Commissioner for Human Rights, [Fact Sheet No. 26, The Working Group on Arbitrary Detention](#), May 2000, No. 26. “The objective entrusted to the Group relates to the protection of individuals against arbitrary deprivation of freedom in all its forms, and its mandate extends to deprivation of freedom either before, during or after the trial (a term of imprisonment imposed following conviction), as well as deprivation of freedom in the absence of any kind of trial (administrative detention). The Group also regarded as forms of detention measures of house arrest and rehabilitation through labour, when they are accompanied by serious restrictions on liberty of movement.”



## II. Identifying patterns: politically motivated detention and imprisonment in Latin America



11. In Latin America, many people who have held positions of responsibility as student or trade union leaders, social, Indigenous, or Afro-descendant leaders, campesinos, or who have been prominent artists, journalists, environmental defenders, or activists in opposition political parties or organizations, have faced arbitrary detention simply for exercising or defending fundamental rights; for using mechanisms of political participation; for exercising freedom of expression, assembly and association; or simply for exposing serious human rights violations and demanding justice.

12. Politically motivated detention and imprisonment has been used particularly in countries with one-party or authoritarian regimes in which the three branches of government exercise power in a clearly arbitrary manner. In these contexts, political repression is directed not only at those who openly oppose or criticize the government, but also at those who defend human rights. These detentions typically involve the use of State regulations and institutions and the abuse of authority to arrest, criminalize, and detain or imprison people with the aim of retaining power or implementing certain policies.

13. In 2016, the Inter-American Commission on Human Rights (the IACHR or the Commission) recognized that human rights defenders in the Americas are systematically subjected to unfounded criminal proceedings to cripple or delegitimize the causes they pursue.<sup>6</sup> The IACHR has also observed that human rights defenders have been subjected to arbitrary detentions by State security forces as a mechanism to prevent them from carrying out their work or deprive them of their liberty at crucial times for the defense of their causes,<sup>7</sup> in countries such as Cuba, Brazil, Ecuador, Guatemala, Chile,<sup>8</sup> El Salvador, Nicaragua,<sup>9</sup> Colombia,<sup>10</sup> Venezuela,<sup>11</sup> and others.

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6- Inter-American Commission on Human Rights (IACHR). [Criminalization of Human Rights Defenders](#). OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 1.

7- *Ibíd.*, para. 15.

8- *Ibíd.*, paras. 44-54.

9- *Ibíd.*, para. 171.

10- *Ibíd.*, para. 59.

11- IACHR. Press Release. [IACHR Alarmed by Arrests in the Context of Protests in Venezuela](#). February 1, 2019. According to the [Foro Penal](#), there are currently 239 political prisoners in Venezuela.



14. This issue has been a cause for concern for other international organizations and United Nations agencies such as the OHCHR<sup>12</sup> and the UN Special Rapporteur on the situation of human rights defenders.<sup>13</sup> Since 2016, Race and Equality has also documented how justice systems are used to criminalize and arbitrarily detain people who oppose government policies or defend rights, particularly in Cuba and Nicaragua.<sup>14</sup>

## A. Nicaragua

15. Since April 2018, Nicaragua has been facing a sociopolitical and human rights crisis that has resulted in serious violations of the rights of Nicaraguans. According to the IACHR, 1,614 people were arbitrarily deprived of their liberty for participating in or supporting social protests between April 2018 and May

2020,<sup>15</sup> the Commission has noted that over 171 remain deprived of their liberty, according to its latest count as of March 2022.<sup>16</sup>

16. Both the IACHR and the General Secretariat of the Organization of American States, as well as the OHCHR, have acknowledged the existence of political prisoners in Nicaragua in this context.<sup>17</sup> Human rights defenders, civil society organizations, and persons identified as opponents have been repressed, persecuted, and criminalized. The justice system has been exploited and laws have been passed to criminalize and curtail the exercise of freedom of expression and the defense of democracy and human rights, especially political rights.

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12 - UN and IACHR, [Derechos Humanos llaman a la creación de un ambiente propicio y seguro para personas defensoras de derechos humanos](#) [Human Rights call for the creation of a safe and enabling environment for human rights defenders] 2019.

13 - UN, General Assembly, A/HRC/25/55/, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 23 December 2013, para. 64. In a joint press release, the United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst, and the IACHR Rapporteur on the rights of human rights defenders expressed their concern about the persistent criminalization of human rights defense activities in several countries in the region, and the failure of States to take effective measures to protect human rights defenders who are at serious risk; IACHR, Press Release 127/14, UN and IACHR Rapporteurs Call on States to Protect Human Rights Defenders, Washington D.C., October 31, 2014.

Race and Equality. Report, Premeditated Convictions: Analysis of the Situation of the Administration of Justice in Cuba. 2019; Race and Equality; Race and Equality. Voices in Resistance: Women Political Prisoners in Cuba – November 2021; Race and Equality. Report, Nicaragua: An Unresolved Human Rights Crisis: Analysis of arbitrary detentions, unfair judicial proceedings, and political persecution. July 2021.

14 - Race and Equality. Informe Condenas premeditadas: Análisis de la situación de la administración de justicia en Cuba. 2019; Race and Equality. Voces en resistencia: mujeres presas políticas en Cuba – noviembre de 2021; Race and Equality. Informe Nicaragua: una crisis de derechos humanos sin resolver. Análisis de las detenciones arbitrarias, procesos judiciales sin garantía y persecución política. julio. 2021

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15 - IACHR, [Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018](#). October 5, 2020, para. 2.

16 - IACHR-MESENI, [Situación de los derechos humanos en Nicaragua](#). [Situation of Human Rights in Nicaragua]. March 2022.

17 - IACHR. [Tweet](#) “La #IACHR valora la liberación de presos políticos para el avance del diálogo en #Nicaragua. Además, la Comisión recuerda al Estado que debe aclarar el estatus de estas excarcelaciones y liberar a todos los presos políticos reclusos en el sistema penitenciario nicaragüense [The #IACHR welcomes the release of political prisoners to advance the dialogue in #Nicaragua. In addition, the Commission reminds the State that it should clarify the status of these releases and free all political prisoners held in the Nicaraguan prison system].” March 15, 2019; IACHR. [2019 Annual Report](#). Ch. IV. 2020 para. 5; OAS. [Report of the High-Level Commission on Nicaragua of the Organization of American States](#). Conclusions of the Commission. November 19, 2019, p. 4; OHCHR. [Tweet](#), May 22, 2020.



## B. Cuba

17. Repression in Cuba is severe and includes arbitrary arrests of dissidents, human rights defenders, artists and independent journalists, who also face serious obstacles in expressing their thoughts and opinions and defending human rights.<sup>18</sup> These arrests are intended to hinder the defense of human rights and to discourage demonstrations and criticism of the government.<sup>19</sup>

18. Since 1962, the IACHR has noted the existence of political prisoners in Cuba and has commented on the situation they and their families face on the island. As documented in Race and Equality's report on premeditated convictions in the country, the measures taken by the government against human rights defenders, independent journalists, political activists, and any other person expressing dissenting opinions, have resulted in politically motivated deprivation of liberty and detention through the manipulation of criminal law.<sup>20</sup> According to the registry kept by Prisoners Defenders, as of March 2022, approximately 1,027 people are detained in Cuba in this status; 894 of them were deprived of their liberty during the crackdown on the July 11, 2021 demonstrations.<sup>21</sup>

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18 - IACHR, [2016 Annual Report, Ch. IV.B: Cuba](#), para. 44.

19 - IACHR, [2016 Annual Report, Ch. IV.B: Cuba](#), para. 44; IACHR, [Situation of Human Rights in Cuba](#), OEA/Ser.L/V/II. Doc. 2 (February 3, 2020), paras. 174-194.

20 - Race and Equality. *Premeditated Convictions: Analysis of the Situation of the Administration of Justice in Cuba*. June 2019, para. 2.

21 - Prisoners Defenders, [Prisioneros políticos en Cuba](#) [Political prisoners in Cuba] March 2022.

19.

In other countries of the region with recognized democratic institutions, imprisonment and detention for political reasons have been used to undermine the defense of human rights and, as a consequence, the exercise of the freedoms of expression, assembly, and association.

## C. Chile

20.

Such is the case of Chile. Both the IACHR and the Inter-American Court of Human Rights (the Inter-American Court) have referred on several occasions to the prosecution of Mapuche Indigenous leaders on terrorism charges, particularly in the case of Norín Catrimán.<sup>22</sup> where the definition of the offense has made it possible for members of the Mapuche community in Chile to be accused of terrorism for acts of protest or social demands linked to the defense of their land rights.<sup>23</sup> The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stated that such laws have been applied discriminatorily to the detriment of the Mapuche community, as the statistics show that Mapuche protests account for the vast majority of prosecutions under the anti-terrorism laws.<sup>24</sup>

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22 - I/A Court H.R., *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279.

23 - IACHR. [Criminalization of Human Rights Defenders](#). OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 139.

24 - UN. [Statement by the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#) [in Spanish]. 30 July 2013.

21.

During the crackdown on the social protests that began in October 2019,<sup>25</sup> according to information gathered by the IACHR, from the beginning of the protests up to January 30, 2020, at least 23,274 people had been arrested and some 1,615 were reportedly being held in pretrial detention.<sup>26</sup> The Public Prosecutor's Office reported that, as of October 16, 2020, 648 people were in pretrial detention and 725 had been convicted for their participation in the protests.<sup>27</sup> In December 2020, a group of lawmakers introduced a bill to grant a pardon to those who had been prosecuted and/or convicted during the social unrest.<sup>28</sup> This prompted a discussion on what it means to describe the deprivation of these people's liberty as "political."<sup>29</sup>

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25 - IACHR. [IACHR Condemns the Excessive Use of Force during Social Protests in Chile, Expresses Its Grave Concern at the High Number of Reported Human Rights Violations, and Rejects All Forms of Violence](#). December 6, 2019.

26 - IACHR. [IACHR Issues Preliminary Observations and Recommendations Following On-Site Visit to Chile](#). January 31, 2020.

27 - Claudio Nash. [Prisión política en el Chile democrático: un nuevo debate incómodo](#) [Political imprisonment in democratic Chile: A new, uneasy debate]. December 17, 2020.

28 - CNN. [¿Son presos políticos las personas detenidas tras el 18-O?](#) [Are the 18-O detainees political prisoners?]. December 18, 2020.

29 - El Mostrador. ["No hay presos políticos en Chile": director de HRW rechazó proyecto de indulto a detenidos del estallido social](#) ["There are no political prisoners in Chile": HRW director rejects bill to pardon detainees from social unrest]. May 28, 2021; Claudio Nash. [Prisión política en el Chile democrático: un nuevo debate incómodo](#) [Political imprisonment in democratic Chile: A new, uneasy debate]. December 17, 2020.

## D. Colombia

22.

Cases have also been reported in Colombia where the criminal justice system has been used to prosecute people engaged in any kind of social leadership. The IACHR has reportedly received information about cases in which prosecutors obtain false statements from witnesses—who receive benefits from the State—in order to launch investigations and criminalize these individuals. Such is the case of Carolina Rubio Esguerra, the head of the Santander branch of the Committee for Solidarity with Political Prisoners Foundation (FCSPF), who was arrested on November 16, 2010, and charged with the crime of rebellion. Following these events, the Special Rapporteur on the situation of human rights defenders, with the Chairperson-Rapporteur of the WGAD, issued an urgent appeal expressing concern about the allegations that her arrest and the accusations against her may be related to her activities to promote and protect the rights of persons detained for political reasons.<sup>30</sup>

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30 - UN, General Assembly, Human Rights Council, A/HRC/16/44/Add.1, [Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya](#), 28 February 2011.

23.

The social protests that began on April 28, 2021, were met with intense repression by State authorities, resulting in serious human rights violations.<sup>31</sup> There were 761 arbitrary detentions reported as of May 3, 2021;<sup>32</sup> and by May 12, the Pares Foundation had reported 1,055 arbitrary arrests of demonstrators.<sup>33</sup>

24.

We have referenced four Latin American countries to identify and exemplify the pattern of politically motivated imprisonment or detention in the different contexts of our region, regardless of whether the State is an authoritarian regime or one with democratic institutions. Based on Race and Equality's experience, we find that these detentions have been marked by common patterns and elements that allow us to determine that the deprivation of liberty was carried out for political reasons. Below are a few considerations on the approach to this type of deprivation of liberty under international law.

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31- IACHR. [The IACHR and RFOE Expressed Concern Over the Seriousness and High Number of Reports of Human Rights Violations During the Social Protests in Colombia](#). May 7, 2021; UN News. [ONU Derechos Humanos llama a la calma en Colombia, y denuncia el uso excesivo de la fuerza contra los manifestantes](#) [UN Human Rights Urges Calm in Colombia, Condemns Excessive Use of Force against Demonstrators]. 4 May 2021; UN Women. [ONU Mujeres en Colombia condenó los ataques contra defensoras de los derechos humanos](#) [UN Women in Colombia Condemns Attacks on Women Human Rights Defenders]. 10 May 2021.

32- Amnesty International. [Colombia: Amnesty International denounces militarized response and police repression of demonstrations](#). May 4, 2021.

33- PARES. [Bitácora del paro nacional](#) [Chronicle of the national strike] 2021.



# III. Addressing politically motivated detention or imprisonment from the international law perspective



25. This section presents an overview of the different criteria and approaches used in international law to refer to politically motivated detention and imprisonment, within the IAHR, the universal protection system, and other international bodies for the protection and promotion of human rights.

### A. Use of the terms “political detainee” or “political prisoner” in international law

26. Although “political prisoner” and “political detainee” have been used interchangeably by various international bodies, the criteria for determining who might be regarded as a person held as a prisoner or detainee for political reasons are still unclear.

27. In the inter-American human rights system, the IACHR has used the term “political prisoner” on several occasions. For example, the country reports on Cuba between 1962 and 1983 make numerous references to “political prisoners;”<sup>34</sup> indeed, its 1963 and 1970 reports are entitled “Report on the Situation of Political Prisoners and their Families in Cuba”.<sup>35</sup> In its 1983 report, the Commission names several groups that fall into the category of “political prisoners,” including “journalists, writers and artists imprisoned for acts considered to violate the freedom of expression; priests, clergymen and members of

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34-IACHR, Report on the Situation of Human Rights in the Republic of Cuba, Right to protection against arbitrary detention, OEA/Ser.L/V/II.4, Doc. 2, March 20, 1962; IACHR, Report on the Situation of Political Prisoners and their Families in Cuba, OEA/Ser.L/V/II.7, doc. 4, May 17, 1963; IACHR, Second Report on the Situation of Political Prisoners and their Families in Cuba, OEA/Ser.L/V/II.23, doc. 6, May 7, 1970.

35-IACHR, Report on the Situation of Political Prisoners and their Families in Cuba, OEA/Ser.L/V/II.7, doc. 4, May 17, 1963; IACHR, Second Report on the Situation of Political Prisoners and their Families in Cuba, OEA/Ser.L/V/II.23, doc. 6, May 7, 1970.

religious congregations.”<sup>36</sup> Between 1974 and 1981, the Commission published several merits reports on “political prisoners” in Cuba.<sup>37</sup>

28. The Commission has also used the same term in more recent years. For example, in a press release dated May 14, 2019, it called on the Venezuelan State “to ensure the prompt release of political prisoners”.<sup>38</sup> It similarly called on the State of Nicaragua to ensure “freedom for political prisoners” in a Feb. 28, 2019, press release”.<sup>39</sup>

29. Within the framework of the universal system, the OHCHR has recognized the existence of political prisoners in countries such as Nicaragua and Uzbekistan.<sup>40</sup> Nevertheless, neither of the two protection systems has precisely defined the guidelines it has followed to determine that a person is deprived of liberty for political reasons.

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36-IACHR, The Situation of Human Rights in Cuba, Seventh Report, OEA/Ser.L/V/II.61, Doc. 29 rev. 1, Oct 4, 1983, para. 22.

37-IACHR, Case 1805, March 2, 1974; IACHR, Case 1834, April 16, 1974; IACHR, Case 1847, July 11, 1974; IACHR, 170 Political Prisoners held in the “Combinado Del Este” Prison, Resolution No. 47/81, Case 4429, June 25, 1981; IACHR, 114 Political Prisoners, Resolution No. 45/81, Case 4402, June 25, 1981.

38-IACHR, IACHR Condemns the Escalation of Attacks against Members of the Venezuelan National Assembly, Press Release No. 115/19, May 14, 2019.

39-IACHR, IACHR Calls for Conditions that Enable the Enjoyment of Human Rights during Nicaraguan Dialogue, Press Release No. 51/19, February 28, 2019.

40-OHCHR. [Tweet](#). 22 May 2020; OHCHR. [Urgent action needed to prevent COVID-19 “rampaging through places of detention”](#). 25 March 2020; UN News, [La ONU pide a Uzbekistán que libere a presos políticos](#) [UN calls on Uzbekistan to release political prisoners], 11 May 2017.

**B. The approach of the IAHRs and the Working Group on Arbitrary Detention to politically motivated detention and imprisonment**

30. We have also identified situations involving politically motivated deprivation of liberty that both systems have addressed, if not by expressly stating that it is a political detention or imprisonment, by alluding to the fact that political motives are behind the detention or imprisonment. These motives are identified by analyzing the contextual elements, the particular activities that the person is engaged in, and the misuse of the justice systems, among other considerations.

31. In the inter-American system, this approach has mainly been taken within the framework of the mechanisms through which the Court and the Commission have issued protection measures, whereas in the universal system, the WGAD has addressed the matter through its opinions in specific cases, as detailed below.

**i. *Precautionary and provisional measures in cases of politically motivated detention or imprisonment***

32. Article 25 of the Rules of Procedure of the IACHR<sup>41</sup> states that the Commission may issue precautionary measures in serious<sup>42</sup> and urgent<sup>43</sup> que presenten un riesgo de daño irreparable<sup>44</sup> a las personas o grupos de personas,<sup>45</sup> or to the subject matter of a pending petition or case before the organs of the inter-American system.<sup>46</sup> The Inter-American Court has stated that under Article 63.2 of the ACHR, the Court may order provisional measures, provided that the conditions are “(i) ‘extremely serious’ and (ii) ‘urgent,’ and (iii) the aim is to ‘prevent irreparable harm’ to the persons concerned.”<sup>47</sup>

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41 - IACHR. [Rules of Procedure](#). Approved by the Commission at its 137th regular period of sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011, and during the 147th Regular Period of Sessions, held from 8 to 22 March 2013, for entry into force on August 1st, 2013.

42 - Rules of Procedure of the IACHR. Article 25.2(a).

43 - Ibid., Article 25(2)(b).

44 - Ibid., Article 25(2)(c).

45 - Ibid., Article 25(3).

46 - Ibid., Article 25(1) y 25(2).

47 - I/A Court H.R., *Matter of Juan Sebastián Chamorro et al. regarding Nicaragua*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 19.



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33. An analysis of these criteria shows that both the IACHR and the Inter-American Court have considered elements related to the context, the person's activities, and the misuse of the justice systems to determine that a person requires protection measures due to a situation of risk, which itself arises from the person's detention or imprisonment for political reasons.

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34. Thus, in relation to the **seriousness** of the situation, the Rules of Procedure of the IACHR establish that this criterion "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".<sup>48</sup> The IACHR has considered several factors in assessing the seriousness requirement when, for example, it involves a human rights defender, including:

- (a) the nature of the threats received (spoken, written, symbolic, etc.);
- (b) a history of acts of aggression against persons in similar situations;
- (c) any direct acts of aggression committed against the potential beneficiary;
- (d) an increase in the threats indicative of a need for preventive action, and
- (e) factors such as [advocacy] of and incitement to violence against a person or group of persons.<sup>49</sup>

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48 - Rules of Procedure of the IACHR. Article 25.2(a).

49 - IACHR. Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 424.

35. To determine seriousness, the IACHR has also considered the context of repression in a State toward certain groups, whether because of their human rights work, the practice of journalism, or the systematic repression of those who express opposition, engage in political activity, or protest against the government.<sup>50</sup>

36. Regarding the urgency of the situation, the Commission's Rules of Procedure state that this "refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action."<sup>51</sup> In assessing this aspect, it has considered factors such as the existence of cyclical threats that demonstrate the need to take action and the continuing nature and proximity in time of the threats,<sup>52</sup> as well as contextual aspects suggesting that the situation of risk is likely to continue and be exacerbated by the proposed beneficiaries' activities.<sup>53</sup>

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50 - IACHR. Resolution No. 27/2020 [Precautionary Measures No. 399-20 - Eduardo Walter Montenegro Chavarría and others \(NOTIMATV journalistic team\), Nicaragua](#), June 17, 2020, para. 22; IACHR. Resolution No. 14/2021 [Precautionary Measures No. 1101-20 - 20 identified members of the San Isidro Movement \(MSI\), Cuba](#), February 11, 2021, para. 24.

51 - Rules of Procedure of the IACHR. Article 25.2(b).

52 - IACHR. Resolution No. 27/2020 [Precautionary Measures No. 399-20 - Eduardo Walter Montenegro Chavarría and others \(NOTIMATV journalistic team\), Nicaragua](#), June 17, 2020, para. 28.

53 - IACHR. Resolution No. 27/2020 [Precautionary Measures No. 399-20 - Eduardo Walter Montenegro Chavarría and others \(NOTIMATV journalistic team\), Nicaragua](#), June 17, 2020, para. 28.

- **Matter of Miguel Ángel Mendoza Urbina and his nuclear family regarding Nicaragua**

37.

In a recent decision on precautionary measures in the case of Miguel Ángel Mendoza Urbina and his nuclear family regarding Nicaragua, the Commission's analysis referred, first, to the context of detention and repression of "persons labeled as 'dissidents' and people who have demonstrated against the government's actions."<sup>54</sup> It stated that:

the situation of the proposed beneficiaries is not an isolated one, but rather is part of a practice of arbitrary detentions, criminalization of opponents and human rights defenders, and the subsequent lack of adequate medical care for **persons deprived of liberty for political reasons.**<sup>55</sup>

38.

Regarding the requirement of seriousness, the Commission also considered several subjective elements by pointing out that the beneficiary is a long-time journalist who has taken an openly critical stance against the Nicaraguan government, and that "this situation has reportedly led to him being identified as an 'opposition' person and being the subject of various events [...] such as harassment, threats, [and] armed attacks."<sup>56</sup> Its analysis also took into account that Mr. Mendoza is being subjected to a criminal proceeding that has been widely questioned.<sup>57</sup>

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54- IACHR, Resolution No. 85/2021. [Precautionary Measures No. 733-21 Miguel Angel Mendoza Urbina and his nuclear family regarding Nicaragua](#), October 15, 2021, para. 32.

55- IACHR, Resolution No. 85/2021. [Precautionary Measures No. 733-21 Miguel Angel Mendoza Urbina and his nuclear family regarding Nicaragua](#), October 15, 2021, para. 32.

56- IACHR, *Ibid.*, para. 35.

57- IACHR, *Ibid.*, para. 36.

- **Ana Margarita Vijil Gurdián et al. regarding Nicaragua**

39.

In the matter of Ana Margarita Vijil Gurdián et al. regarding Nicaragua, the Commission further noted that "arbitrary detentions and deprivation of liberty have been used by the Nicaraguan State with the primary intention of repressing any opposition to the current regime and to convey a message of fear and control to the population."<sup>58</sup> The Commission also condemned the systematic actions taken in recent months to deter the participation of the opposition, highlighting the detention and criminalization of leaders, including presidential pre-candidates, through the implementation of criminal laws that arbitrarily restrict political rights.<sup>59</sup> It noted that all of the proposed beneficiaries were "identified as opponents of the current Government, most of them having political profiles."<sup>60</sup>

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58- IACHR, Resolution No. 71/2021. [Precautionary Measures No. 593-21, 665-21, and 680-21 Ana Margarita Vijil Gurdián et al. regarding Nicaragua](#), August 30, 2021, para. 52.

59- IACHR. *Ibid.*, para. 52.

60- IACHR. *Ibid.*, para. 52.

- **Matter of Roilan Zárraga Ferrer et al. regarding Cuba**

40. In the Matter of Roilan Zárraga Ferrer et al. regarding Cuba, the IACHR considered the circumstances faced by human rights defenders in the country, generally characterized by a climate of hostility, persecution, and harassment and the recurrent use of arbitrary detentions consistently marked by assaults, threats, and abuse inside the prisons.<sup>61</sup> It further considered that the proposed beneficiaries had been detained in connection with their human rights work and their perceived role as members of the political opposition.<sup>62</sup>

- **Matter of Juan Sebastián Chamorro et al. regarding Nicaragua**

41. The Inter-American Court has said that, for the adoption of provisional measures, it is important to bear in mind the context in which the request is made.<sup>63</sup> To determine **seriousness and urgency**, the Court has stated that “we can assess the set of political, historical, cultural, or any other factors or circumstances that affect proposed beneficiaries or place them in a vulnerable situation at a given moment, exposing them to violations of their rights,”<sup>64</sup> and that for such purposes it is sometimes necessary to consider the context of the risk, as well as the specific situation of the proposed beneficiaries.<sup>65</sup>

42.

In its recent decision on provisional measures in the Matter of Juan Sebastián Chamorro et al. regarding Nicaragua—which involves persons detained for political reasons—the Court examined contextual elements to determine the seriousness and urgency of the case. In its analysis, the Court found a “situation of special risk and vulnerability of persons belonging to the opposition or identified as opponents of the country’s current government,”<sup>66</sup> and that there was “a context of harassment, through different mechanisms, such as surveillance, threats, and the *de facto* deprivation of liberty of those who identify as members of the opposition.”<sup>67</sup>

43.

In the same case, the Inter-American Court analyzed subjective elements to understand the detained person’s specific circumstances and determined that:

(...) the proposed beneficiaries are members of political organizations that oppose the Government of Nicaragua, and these arrests are part of a context of harassment of the political opposition in Nicaragua, which has been exacerbated this year because of the upcoming general elections in November.<sup>68</sup>

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66- Ibid., para. 24.

67- Ibid., para. 24.

68- Ibid., para. 34.

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61- IACHR. Resolution No. 16/2020 [Precautionary Measure No. 1077-19 Roilan Zárraga Ferrer et al. regarding Cuba](#) [in Spanish], February 13, 2020, para. 13.

62- IACHR. Ibid., para. 14.

63- I/A Court H.R., *Matter of Juan Sebastián Chamorro et al. regarding Nicaragua*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 24, 2021 [only in Spanish], para. 5.

64- Ibid., para. 20.

65- Ibid., para. 20.



44.

The Court further found that:

this series of arrests of people belonging to the Nicaraguan opposition during the month of June 2021 has been widely acknowledged and condemned by international organizations such as the Office of the United Nations High Commissioner for Human Rights, the UN Special Rapporteur on the situation of human rights defenders, and the Inter-American Commission on Human Rights. It has also been reported by the international press.<sup>69</sup>

45.

In addition, the Court's analysis referred to the use of the justice system by noting that the reported arrests were carried out:

without a warrant and, sometimes, without the detainees' knowledge of the specific offense with which they were charged. In addition, certain proceedings [...] were reportedly held in the absence of their legal representatives. [...] It appears, prima facie, that the detentions took place without strict adherence to domestic law and in contravention of the inter-American standards on the matter.<sup>70</sup>

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69- Ibid., para. 34.

70- Ibid., para. 41.

46.

The Court also considered the political motive for the detention, stating that:

the deprivation of liberty of these persons carries an implicit intimidating message aimed at discouraging and silencing other political opponents by exposing them to the risk of detention. This is particularly important in view of the upcoming general elections this year; if it persists, this situation could undermine the rules of the democratic process and the rule of law.<sup>71</sup>

47.

Notably, three of the beneficiaries of the measures are presidential pre-candidates, and their detention prevented them from participating in the November 2021 electoral process. The Court also concluded that the detention jeopardized the beneficiaries' human rights, and it ordered the State to "immediately release" them from custody,<sup>72</sup> siendo esta la primera decisión en la que la Corte IDH ordena a un Estado que libere a una persona detenida por razones políticas.

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71- Ibid., para. 33.

72- I/A Court H.R., *Matter of Juan Sebastián Chamorro et al. regarding Nicaragua*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 24, 2021 [only in Spanish], para. 1 of the holding.

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48.

Although neither body expressly states that the beneficiaries were detained or imprisoned for political reasons, an analysis of their decisions shows that both the Inter-American Court and the Commission considered various elements that demonstrated not only that the detentions were carried out without due process but also that they were politically motivated. This political motivation is part of a context in which any form of dissent against the government is met with repression, in retaliation against the victims for exercising their political rights and freedom of expression, and for defending human rights. As discussed below, the WGAD has issued opinions to the same effect.

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## ii. *Decisions of the Working Group on Arbitrary Detention regarding politically motivated detention*

49.

The Working Group was specifically mandated by the former Commission on Human Rights and the Human Rights Council to receive and consider cases of arbitrary deprivation of liberty. Since 1991, the WGAD has interpreted and applied international standards on deprivation of liberty adopted at the national, regional, and international levels.<sup>73</sup> In 2012, the WGAD issued Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty and established that it regards deprivation of liberty to be arbitrary under customary international law when:

(a) It is clearly impossible to invoke any legal basis justifying the deprivation of liberty (category I);

(b) The deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights (category II);

(c) The total or partial non-observance of the international norms relating to the right to a fair trial established in the Universal Declaration of Human Rights and in the relevant international instruments is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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73-UN Working Group on Arbitrary Detention, [Report of the Working Group, Deliberation No. 9 on the definition and scope of arbitrary deprivation of liberty under customary international law](#), A/HRC/22/44, 24 December 2012, para. 37.

(d) Asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review of remedy (category IV);

(e) The deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights. (category V).<sup>74</sup>

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74- UN Working Group on Arbitrary Detention, [Report of the Working Group, Deliberation No. 9 on the definition and scope of arbitrary deprivation of liberty under customary international law](#), A/HRC/22/44, 24 December 2012, para. 38.

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Since then, the WGAD has used these categories to analyze and determine arbitrary deprivation of liberty. It has referred to politically motivated detention and imprisonment in some of its opinions, especially in cases where it determined that a person has been arbitrarily deprived of liberty for discriminatory reasons “because it had resulted from the violation of the right to equal protection of the law and freedom from discrimination under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant (category II), and/or it had constituted a violation of international law on prohibited grounds of discrimination (category V).”<sup>75</sup>

51.

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It has consistently found such discrimination when it is apparent that persons have been deprived of their liberty specifically on the basis of their own or perceived distinguishing characteristics or because of their real or suspected membership of a distinct [...] group.”<sup>76</sup> To this end, its analysis has included the contextual elements and the particular activities carried out by the detained person. In the above-cited cases on this form of deprivation of liberty, the WGAD determined that it is also arbitrary under category I, given the absence of a legal basis for detention, and category III, as a consequence of the lack of respect for due process guarantees.

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75- UN Working Group on Arbitrary Detention, [Annual Report: deprivation of liberty on discriminatory grounds](#), A/HRC/36/37, 19 July 2017, para. 47.

76- *Ibid.*, para. 48.



52.

For example, in Opinion No. 12/2021, concerning the detention of a trans woman by the State of Nicaragua, the Working Group found that she had been detained after exercising her freedoms of opinion, expression, and association by attending and supporting a demonstration and publicizing the cause of the political opposition.<sup>77</sup> The WGAD considered that the victim “is an opposition leader in her community and one of the main critical voices against the government’s actions, noted for her active participation in the Blue and White [party’s] calls for opposition.”<sup>78</sup> It emphasized that “peaceful political activism and open support for society on democratic and legal issues are activities protected by international human rights law, in particular by Articles 19 to 21 of the Universal Declaration of Human Rights.”<sup>79</sup> Thus, it determined that the detention was arbitrary under category II.

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77- UN Working Group on Arbitrary Detention, Opinion No. 12/2021 concerning CC (Nicaragua) [in Spanish], 11 October 2021, para. 66.

78- Ibid., para. 64.

79- Ibid., para. 65.

53.

Based on these elements, the Working Group further determined that the victim’s detention was arbitrary under category V, stating that:

it is convinced that [CC...] has been discriminated against in contravention of the principles and conventions of international law to which Nicaragua is a party, particularly in violation of Articles 2, 3, and 7 of the Universal Declaration of Human Rights, the Covenant, and the Convention on the Elimination of All Forms of Discrimination against Women, **for reasons directly related to her political activism and her status as a human rights defender.**<sup>80</sup>

54.

Thus, the WGAD identified the discrimination she experienced, “convinced that her arbitrary detention, in humiliating and dangerous conditions, was due to her political activities and the fact that she was identified as an activist and human rights defender,”<sup>81</sup> circumstances that fall within category V. It also found that the victim was discriminated against and subjected to abuse because of her status as a transgender person “since she was held in a men’s prison, without respect for her identity.” In this case, the WGAD also concluded that the detention was arbitrary under categories I and III.<sup>82</sup>

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80- Ibid., para. 83.

81- Ibid., para. 89.

82- Ibid., paras. 59, 82.

55. In Opinion No. 43/2018 regarding the detention of Mestan Yayman by the State of Turkey, the WGAD found that the detention was arbitrary under categories II and V, factoring into its analysis the particular activities that Mr. Yayman was engaged in and the pattern of arbitrary detentions that had occurred in the country since 2016.

56. Mr. Yayman was reportedly detained in a context marked by the criminalization of people expressing opposition to the government and in particular those expressing support for the dissident group Gülen, considered a terrorist group by the State since 2016.<sup>83</sup> The WGAD noted that Yayman's detention was part of this pattern and that he had been detained solely for participating in religious meetings held by the group during 2013, a year in which the organization was not considered a criminal group, and for using the ByLock messaging app as a means of communication. It further noted that the State was never able to prove that his activity within the group and through the ByLock app was criminal.<sup>84</sup>

57. Thus, in relation to Mr. Yayman's attendance at meetings of the Gülen group in 2013, the Working Group noted that the government's restriction on attendance at peaceful and—at the time—lawful meetings violated the right to freedom of peaceful assembly and association and was contrary to Articles 21 and 22 of the Covenant.<sup>85</sup> In addition, the WGAD considered that using the ByLock app was part of exercising the right to freedom of opinion and freedom of expression, which also includes the right to “seek, receive and

impart information and ideas of all kinds [...], and the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.”<sup>86</sup> It concluded that the detention resulted from the exercise of those rights, thus falling into category II.

58. The Working Group also found that Mr. Yayman's detention was discriminatory, as it was part of the pattern of detention of persons with alleged links to the Gülen group during that period. At that time, the connection between the detained persons and the Gülen group was not one of membership and active support for the group and its criminal activities; rather, they were “sympathisers or supporters of, or members of legally established entities affiliated with the movement, without being aware of its readiness to engage in violence.”<sup>87</sup> In all these cases, the Working Group considered that the detention of such persons was arbitrary, constituting discrimination on the basis of political or other opinion or status and falling under category V.<sup>88</sup> Finally, the WGAD also concluded that the detention was arbitrary under categories I and III.

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86- Ibid., paras. 88-89.

87- Ibid., para. 107.

88- Ibid., para. 107.

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83- UN Working Group on Arbitrary Detention, Opinion No. 42/2018 concerning Mestan Yayman (Turkey), 18 October 2018, para. 106.

84- Ibid., paras. 83-87.

85- Ibid., para. 92.

59. In the case of Mr. José Daniel Ferrer regarding Cuba, the WGAD determined in Opinion No. 50/2020 that his detention was arbitrary under categories II and V. Its analysis found that Mr. Ferrer's political activity and the discrimination he experienced as a result was part of a pattern of arbitrary detentions of political activists on the island.

60. The Working Group considered that Mr. Ferrer García was a visible opposition leader who had been detained more than a hundred times in connection with the expression of his opinion and for his political participation in public affairs and had been subjected to multiple judicial proceedings and encounters with the justice system over many years, including numerous periods of deprivation of liberty.<sup>89</sup> It concluded that the detention was arbitrary under category II, because

it has been used as a tool to limit the peaceful exercise by Mr. Ferrer García of the rights to freedom of opinion, expression, assembly, association and participation and to restrict his activities as a human rights defender and pro-democracy activist. [...] Mr. Ferrer García was deprived of his liberty and sentenced to 4 years' imprisonment [...] to punish him for having exercised his fundamental human rights by criticizing the Government and to deter him from continuing to do so in the future.<sup>90</sup>

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89- UN Working Group on Arbitrary Detention, Opinion No. 50/2020 concerning José Daniel Ferrer (Cuba), 14 October 2020, para. 47.

90- *Ibid.*, para. 50.

61. The WGAD also found that the detention was arbitrary under category V, as it was part of the systematic practice of arbitrarily detaining members of political opposition parties, human rights defenders, or persons who criticize the actions of the authorities and are inconvenient to the government.<sup>91</sup> Accordingly, his detention "constituted a violation of international law, because he was deprived of his liberty as a result of discrimination based on his political opinion and his status as a member of the Unión Patriótica de Cuba, in breach of articles 1 and 7 of the Universal Declaration of Human Rights. His detention is therefore arbitrary under category V".<sup>92</sup>

62. In Opinion No. 47/2018, which examined the detention of Hisham Ahmed Awad Jaafar by the State of Egypt, the WGAD determined that his detention was arbitrary under categories II and V. Its analysis took account of the particular activities that Mr. Jaafar carried out as a human rights defender and because of his political position, in addition to the pattern of arbitrary detentions in the country.

63. The Working Group noted that it knew of the activities in which Mr. Jaafar participated in the exercise of his fundamental freedoms, "such as reporting abuses against political activists, calling for a national dialogue between political forces, including the military and the opposition, and appealing for the respect of civil liberties and democratic freedoms,<sup>93</sup> and the role played by the Mada Foundation, headed by Mr. Jaafar, in supporting journalism, research, and

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91- *Ibid.*, paras. 64-65.

92- *Ibid.*, para. 66.

93- UN Working Group on Arbitrary Detention, Opinion No. 47/2018 concerning Hisham Ahmed Awad Jaafar (Egypt), 17 December 2018, para. 67.



advocacy for various social causes, such as women’s rights, interreligious dialogue, and deradicalization.<sup>94</sup> Given Mr. Jaafar’s critical stances toward the authorities and the fact that this information was not disputed by the State, the WGAD determined that the Egyptian Government “was targeting Mr. Jaafar and his organization, in view of the work that they did, for exercising his right to freedom of thought, expression and association.”<sup>95</sup> Therefore, his deprivation of liberty was arbitrary under category II.

64.

It also concluded that the detention was discriminatory, reiterating that Mr. Jaafar is a journalist, researcher, director of the Mada Foundation for Media Development, and editor-in-chief of the IslamOnline website—projects also dedicated to the defense of human rights.<sup>96</sup> Thus, it found that:

[a]fter establishing that the deprivation of liberty resulted from the active exercise of civil and political rights, **there is a presumption in this case that the deprivation of liberty may constitute a violation of international law on the grounds of discrimination based on political views and activities.**<sup>97</sup>

65.

In the Working Group’s view, Mr. Jaafar’s political opinions and activities were central to the case, and it considered that the authorities had displayed an attitude toward him that could only be characterized as targeted and discriminatory.<sup>98</sup>

66.

The WGAD has analyzed politically motivated detention and imprisonment in some of its opinions under categories II and V. Category II refers particularly to detention as a consequence of the exercise of the freedoms of expression, assembly, and association, while category V is applied in the case of detention motivated by discrimination based on the person’s political opinions and activities. The Group also assesses all of this in light of a context that highlights the existence of patterns of arbitrary detention for political reasons, characterized by the lack of legal grounds for detention and disregard for due process guarantees. This review is similar to the one conducted by the IAHR bodies, as described above.

94- Ibid., para. 67.

95- Ibid., para. 68.

96- Ibid., para. 78.

97- Ibid., para. 79.

98- Ibid., paras. 80-81.

67. Finally, in these decisions, the WGAD requested the immediate release of the persons deprived of their liberty. We will now discuss how the Council of Europe has developed a more explicit approach to determining this arbitrary form of deprivation of liberty.

### **C. Characterization of politically motivated detention and imprisonment by the Council of Europe**

68. The authorities of the Council of Europe have defined a set of guidelines to determine whether persons are detained for political reasons in one of its member States. After Armenia and Azerbaijan became member States of the Council of Europe on January 25, 2001, the Committee of Ministers of the Council of Europe decided to examine the cases of alleged political prisoners in both countries

69. In this context, that same year the Committee of Ministers approved a proposal to instruct three independent experts to inquire into cases referred to it.<sup>99</sup> The independent experts, S. Trechsel, E. Alkema, and A. Arabadjiev, were tasked with drafting an opinion on these cases, indicating whether these persons could be defined as political prisoners on the basis of objective criteria and in light of the case law of the European Court of Human Rights and the standards of the Council of Europe.<sup>100</sup>

70. In their report, the experts concluded that “a political prisoner is a person who is deprived of his or her liberty for political rather than strictly legal and acceptable motives,”<sup>101</sup> emphasizing that central to this definition is the motive of the detaining authorities.<sup>102</sup> However, the experts also pointed out the challenges of putting this definition into operation since it is very difficult to establish the State’s true political motives for detaining an individual.<sup>103</sup> Moreover, given that the term “political prisoner” has such a negative connotation, a State will not admit to holding people in detention for purely political reasons. Therefore, according to the experts, a set of objective criteria must be developed to characterize a “political prisoner.”<sup>104</sup>

71. The experts performed a comprehensive analysis that covered the differences between a political offense and a political prisoner;<sup>105</sup> reasonable restrictions on freedom of expression in a democratic State; the proportionality of the penalty imposed; discrimination based on political grounds; the application of due process; the charging of common crimes; the defense of human rights and the restoration of democracy; the political motive behind a detention for a common crime; and other factors. Based on this analysis, they found that in order to decide whether a person deprived of liberty can be regarded as a “political

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<sup>99</sup>-Europe Council, Cases of alleged political prisoners in Azerbaijan. SG/Inf(2004)21 13 July 2004, párr. 2.

<sup>100</sup>-Europe Council, Cases of alleged political prisoners in Armenia and Azerbaijan SG/Inf (2001)34 Addendum I, 24 October 2001, párr. 1.

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<sup>101</sup> -Ibid., para. 20,

<sup>102</sup> -Ibid., para. 19,

<sup>103</sup> -Ibid., para. 21,

<sup>104</sup> -Ibid., para. 21,

<sup>105</sup> -According to the experts, the offender’s motive is the essential element, the starting point for the definition of a political crime. Motive is also an essential element of the notion of “political prisoner.” However, while the motive of the offender is essential for a political crime, it is the “motive” of the authorities that is in question for a political prisoner.

prisoner,”<sup>106</sup> the following criteria should be taken into account:

- (i) In general terms, a political prisoner is a person who is deprived of his or her liberty for political rather than legally accepted and acceptable reasons.
- (ii) A person imprisoned after conviction for, or on suspicion of having committed, a “pure political offence” is a **political prisoner if the interference with his or her fundamental rights cannot be justified in terms of the European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights.**
- (iii) A person imprisoned in connection with a “pure political offence” which a priori constitutes a justified interference with his or her fundamental liberties is nevertheless a political prisoner **where the length of the imprisonment or its conditions are clearly disproportionate to the offence invoked to justify the said imprisonment.**
- (iv) A person imprisoned in connection with a pure political offence is a political prisoner **if his or her imprisonment is the result of discrimination based primarily on political considerations.**
- (v) Even if the sentence passed against a person does not constitute an unjustified interference with fundamental rights, is proportionate to the offence and is not discriminatory, a person may still be considered to be a political prisoner **if the proceedings in which he or she was tried clearly disregarded the fundamental elements of a fair trial within the meaning of Article 6 of the ECHR, as interpreted by the European Court of Human Rights.**
- (vi) Persons who are serving a sentence for what may be considered as not a pure political offence, or who are detained on remand on suspicion of having committed such an offence, are not political prisoners. Such persons **can nevertheless be political prisoners if the sentence is grossly disproportionate or discriminatory, or if the proceedings against them were clearly unfair.**
- (vii) Persons imprisoned in connection with non-political offences are, as a rule, not political prisoners. Such persons are, however, to be regarded as political prisoners if, **for political motives, they are imprisoned for a length of time which is grossly disproportionate to the offence in question or where the proceedings against them were clearly unfair.**

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<sup>106</sup>-Europe Council. Cases of alleged political prisoners in Armenia and Azerbaijan SG/Inf (2001)34 Addendum I, 24 October 2001, párr. 11-46.



(viii) At the outset, those alleging that a person is being held as a political prisoner must present a prima facie case for their allegation; the state against which such an allegation is made must thereafter prove that the person concerned is detained for reasons which are lawful in the light of the ECHR with due regard to the case-law of the European Court of Human Rights; if that fails, the person concerned will be regarded as a political prisoner.<sup>107</sup>

72. For practical purposes, the group of experts simplified the list of criteria for determining “political prisoner” status as follows:

- (i) the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights;
- (ii) the detention has been imposed for purely political reasons without connection to any offense;
- (iii) for political motives, the length of the detention or its conditions are clearly out of proportion to the offense the person has been found guilty of or is suspected of;
- (iv) for political motives, he or she is detained in a discriminatory manner as compared to other persons;

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107 - Ibid., para. 52.

(v) or, finally, the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.<sup>108</sup>

73.

These criteria were reaffirmed in 2012 by the Parliamentary Assembly of the Council of Europe.<sup>109</sup> The list establishes five categories for determining political detention or imprisonment and covers several situations, including when a person is convicted of an obviously political crime or when he or she is convicted of a common crime as a pretext, for political reasons. The list of criteria is similar to WGAD’s five arbitrary detention categories,<sup>110</sup> but focuses more on the political motives behind the detention. Although there is a focus on political motive, the criteria established by the Council do not fully define how such motive is established and differentiated from non-politically biased deprivation of liberty.

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108-Parliamentary Assembly of the Council of Europe, [Resolution 1900, 2012](#). 3 October 2012; Council of Europe. Cases of alleged political prisoners in Armenia and Azerbaijan SG/Inf (2001)34 Addendum I, 24 October 2001, para. 53.

109-Parliamentary Assembly of the Council of Europe, [Resolution 1900, 2012](#). 3 October 2012.

110-United Nations Human Rights Council, Methods of work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/36/38, 13 July 2017, para. 8.

**D. Political motivation as a key element in determining politically motivated detention or imprisonment**

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74.

Taking stock of the different approaches that have been used in international law to refer to politically motivated detention and imprisonment, we can conclude that determining the political motivation behind the State's actions is central to identifying when a person has been subjected to this serious human rights violation.

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75.

Although the Council of Europe provides a set of criteria—centered on political motivation—to determine who has been subjected to this form of detention, it remains unclear how exactly “political motives” can be identified and distinguished from non-political motives.

76.

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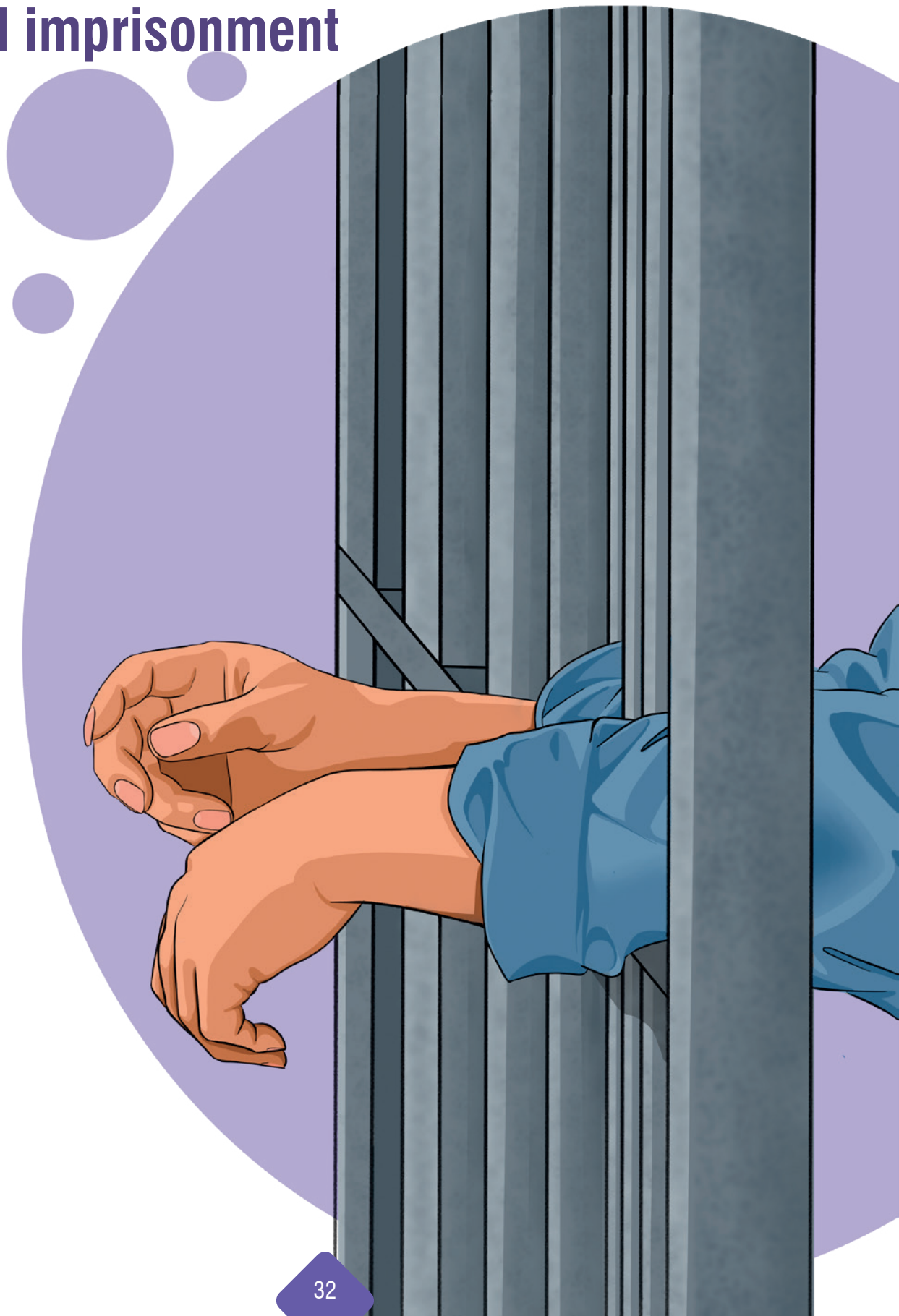
No obstante, de la revisión de las distintas decisiones y jurisprudencia de los diversos mecanismos de protección internacional como la CIDH, la Corte IDH y el Grupo de Trabajo, 76. However, a review of the decisions and case law of the various international protection mechanisms, such as the IACHR, the Inter-American Court, and the Working Group, leads to the conclusion that political motives are identified and demarcated by analyzing contextual and subjective elements—that is, by using an approach to the context that allows us to identify the patterns of detention, criminalization, and misuse of the justice systems, as well as the particular activities that the person carries out.

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77.

In the following section we identify guidelines that, under international human rights law, we believe should be used to determine that a person has been detained or imprisoned for political reasons.

## IV. Guidelines for determining politically motivated detention and imprisonment



78. Regarding politically motivated actions by the State, it is important to identify explicit criteria for determining that such actions are politically biased and that, in this respect, the detentions differ from other types of restrictions on personal liberty. Bearing this in mind, Race and Equality contends that cases of political detention can only be identified consistently across political contexts and realities, and in compliance with international standards, if defined criteria are established and applied equally to all persons.<sup>111</sup>

79. Therefore, we maintain that these minimum guidelines should be met in order to determine that a person has been detained for political motives:

- First, it must be corroborated that the detention is arbitrary according to the categories established by the WGAD.
- Second, it must be determined that there is a political motive behind the actions of the authorities within the framework of such detention.

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111 - Christoph Valentin Steinert, [Who Is a Political Prisoner?](#), *Journal of Global Security Studies*, Volume 6, Issue 3, September 2021, p. 8.

80. We discuss both guidelines in detail below.

**A. GUIDELINE 1: The detention is arbitrary under four of the five categories established by the WGAD**

81. The WGAD uses five categories to determine that a person has been arbitrarily detained. Having examined its decisions, we concluded that four of them are essential to identify that a detention, besides being arbitrary, could be politically motivated. They can be summarized as follows:

- › **Category I:** when there is no legal basis for the detention or deprivation of liberty of the person;
- › **Category II:** when the detention or deprivation of liberty results from the exercise of fundamental rights or freedoms, particularly the freedoms of thought, conscience, and religion; opinion and expression; peaceful assembly and association; and political participation;
- › **Category III:** when the detention or deprivation of liberty results from the failure to observe due process;
- › **Category V:** when the detention or deprivation of liberty is discriminatory on the grounds of birth; national, ethnic, or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability, or other status.



82.

It should be noted, however, that arbitrary detention cannot be equated with the narrower concept of political imprisonment or detention because “the key distinguishing element of political imprisonment is endorsement by the government in power. Hence, arbitrary detention is a necessary but insufficient condition for political imprisonment”.<sup>112</sup> Therefore, as a second step, the motivation behind the detention must be examined, as discussed below.

## **B. GUIDELINE 2: The detention is politically motivated**

83.

The Council of Europe provides important elements for considering detentions to be politically biased, but does not elaborate on how “political motives” can be identified and differentiated from non-political motives. Determining the motives of the authorities when a person is detained can be complex, as we cannot always know their true motivations; however, we can examine the circumstances in which such detentions are carried out to identify whether a person is being deprived of liberty for a political purpose such as to facilitate the consolidation and retention of power or to implement a policy.

84.

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Based on the information analyzed here, we have identified a series of elements for establishing a political motive behind detentions. First, a review of the decisions of the IACHR, the Court, and the WGAD, leads us to conclude that political motive can be inferred from an examination of the real or perceived activities of the detained person, as a subjective element underpinning the State repression. Second, contextual elements are another determining factor in identifying the political motive behind imprisonment and detention. These elements make it possible to identify the patterns of detention by the State under this modality, the use and misuse of the justice systems for such purposes, and the particular context when a State is patently authoritarian, or when it maintains a certain democratic institutional framework but also engages in a pattern of undeniable repression targeting a particular group.

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85.

Thus, we identified that political motivation, which characterizes detention and imprisonment for political reasons, contains (1) subjective elements; and (2) contextual elements. We discuss both of them below.

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112 -Ibid., pp. 8-9.

### *i. Subjective elements*

86. Subjective elements refer to the real or perceived particular conditions of persons deprived of their liberty for political reasons, or their real or presumed membership in a particular group. These conditions can be understood in terms of the particular activities they carry out or based on their perceived identity.

87. We have identified that people can be detained for political reasons when their activities are linked to the defense of human rights, participation in national political life through the exercise of civil and political rights, or because of their identity and/or membership in a particular group (religious, ethnic, sexual, or gender identity, among others). In this regard, the following people may be considered political prisoners:

- (a) Students
- (b) Afro-descendant, Indigenous, or campesino leaders
- (c) Journalists and media workers
- (d) Persons linked to political opposition parties or movements
- (e) Persons seeking justice for serious human rights violations
- (f) Trade unionists
- (g) Social and professional association leaders
- (h) Environmentalists and ecologists
- (i) Artists
- (j) Women in contexts of gender-based criminalization
- (k) LGBTI+ persons in contexts of criminalization
- (l) Persons belonging to a criminalized religious or ethnic group

- (m) Human rights defenders
- (n) Persons perceived as any of the above,<sup>113</sup> among others.

### *ii. Contextual elements*

88. First, we consider that political prisoners or detainees can exist in fully authoritarian States where democratic institutions do not exist, which makes clear the political motive behind their actions. People may also be detained or imprisoned for political reasons in contexts where there is a recognized democratic institutional framework, which calls for a more exhaustive analysis of the situation to identify the political intent of the State. Some of these contexts are representative of cross-cutting issues identified in Latin America.

As part of the context, we have further identified that most countries where this mechanism of repression is used also have a pattern of using and coordinating State structures and institutions to deprive people of their liberty. This points to the use of criminal proceedings—as well as the imposition of unfair and disproportionate penalties, among other factors—as the main tool for criminalization and the undermining of due process. These points are discussed in detail below.

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113-UN Working Group on Arbitrary Detention, [Annual Report: deprivation of liberty on discriminatory grounds](#), A/HRC/36/37, 19 July 2017, para. 48; UNHCR, [Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees](#), 2001, para. 25. Convention Grounds. “25. It is now generally agreed that imputed or perceived grounds, or mere political neutrality, can form the basis of a refugee claim. For example, a person may not in fact hold any political opinion, or adhere to any particular religion, but may be perceived by the persecutor as holding such an opinion or being a member of a certain religion. In such cases, the imputation or perception which is enough to make the person liable to a risk of persecution is likewise, for that reason, enough to fulfil the Convention ground requirement, because it is the perspective of the persecutor which is determinative in this respect.”

- a. Contexts in authoritarian States (Cuba, Nicaragua, Venezuela)

90.

In this context, international bodies have recognized the State's arbitrary exercise of power in all three branches of government, as a consequence—among other issues—of the lack of independence and the absence of the principle of separation of powers. There is also wide acknowledgment of irregularities in criminal proceedings against human rights defenders and dissidents, which reveal the absence of the fundamental guarantees of judicial independence and impartiality. In addition, it is clear that State authorities reject, condemn, and delegitimize any form of opposition or expression contrary to government policies.

- b. Contexts in democratic States (Guatemala, Honduras, Mexico, Chile, Colombia, Brazil, and others)

91.

Although there are formal democratic institutions that allow for checks and balances, there are also entrenched power structures in the State that use the institutional framework to satisfy their interests. These are unlawful structures with political, economic, and social power that seek to perpetuate the status quo, guarantee impunity, and hold democratic institutions hostage; they favor privileged groups and loot public resources in the face of poverty, inequality, and exclusion. At other times, State institutions are used to implement policies of the government in power that openly contradict the State's international human rights obligations, for example, to grant impunity to criminal organizations, to protect the army or the armed forces, or to adopt economic, security, or social policies. This framework reveals patterns marked by particular contexts, such as:

- (i) Criminalization in the framework of extractive projects (of campesinos, Afro-descendants, and Indigenous peoples, as in Honduras, Guatemala, Mexico, and Colombia)
- (ii) Criminalization of human rights defenders and victims of human rights violations for seeking justice and fighting impunity (Guatemala and Mexico)
- (iii) Criminalization based on identity (El Salvador, Brazil)
- (iv) Systematic repression and criminalization in the context of social demonstrations (Chile, Colombia, Mexico, Brazil)
- (v) Use of “scapegoats”<sup>114</sup> to defend government actions or policies or to

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114- According to the *Real Academia de la Lengua Española* [Royal Academy of the Spanish Language], a “scapegoat” is a person on whom blame is placed to exonerate the real culprits. [Diccionario Panhispánico del Español jurídico](#) [Pan-Hispanic Dictionary of Legal Spanish].

simulate justice in cases of human rights violations that carry a high political cost for the State.<sup>115</sup>

- c. Criminalization and coordination of the State's punitive structures and institutions for the deprivation of liberty

92. Among the contextual elements, we also identified that States use various methods to deprive people of their liberty for political reasons. It is important to consider the tools that the power structures use to this end.

93. Above all, detaining and criminalizing people who engage in political opposition or human rights advocacy work, or because of their identity in the terms we have outlined, also involves misusing the justice system. In such cases, the State subjects people to arbitrary criminal proceedings, most of which are contrary to international standards of due process, by filing “baseless allegations or complaints based on criminal offenses that do not [...] meet inter-American standards vis-à-vis the behaviors they intend to punish.”<sup>116</sup>

94.

Sometimes, these criminalization processes are “accompanied by previous actions, such as statements by senior officials accusing human rights defenders of committing crimes or illegal activities”<sup>117</sup> in order to delegitimize their work. These proceedings also typically result in the imposition of disproportionate penalties or long periods of pretrial detention that do not result in a conviction.<sup>118</sup>

95.

Thus, criminalization processes involve the manipulation of justice institutions to curtail the work of the detained persons, restrict their freedoms of expression and opinion; thought, conscience, and religion; peaceful assembly and association; limit their political participation, and discourage them from continuing to promote their causes.

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<sup>117</sup> -Ibid., para. 15.

<sup>118</sup> -Ibid., paras. 183, 200.

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<sup>115</sup> - I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 334.

<sup>116</sup> - IACHR. [Criminalization of Human Rights Defenders](#). OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 12.



### **C. Arbitrary deprivation of liberty for political purposes**

96. To establish that a person has been detained or deprived of liberty for political reasons, we consider it essential to follow the above guidelines. First, we must determine that the deprivation of liberty was carried out in an arbitrary manner. In other words, the detention is arbitrary under categories I, II, III, and V established by the Working Group.

97. Second, it is vitally important to identify that such detention, besides being arbitrary, is the product of politically biased actions and therefore differs from other types of restrictions on personal liberty. For this, we must examine the subjective elements based on the profile and activities of the detained person. Contextual elements should also be examined to identify the patterns of detention by the State, both in democratic and authoritarian contexts, and the use and misuse of justice systems and punitive power to criminalize the exercise of basic freedoms.

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98. If we can identify political prisoners and detainees from a human rights perspective, we can also recognize that politically motivated detention places the victims of these events at an even greater risk of serious rights violations. In light of this recognition, we make the following recommendations for actions that could be taken to expand protection and strengthen the response to protect such persons.

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## V. Conclusions and recommendations



99.

First, the analysis we present in this paper leads us to conclude that politically motivated detention and imprisonment has increased in recent times in Latin America, to the detriment of fundamental freedoms and rights that ensure the full enjoyment of democracy. We have shown, both in authoritarian contexts—where the arbitrary exercise of State power by the three branches of government is evident—and in contexts with more stable democratic institutions, how detention for political reasons serves as a tool of repression against various forms of dissidence.

100.

Thus, the arbitrary deprivation of liberty for political reasons is used against student leaders and social leaders, campesinos, artists, journalists, trade union leaders, or members of opposition political parties for using mechanisms of political participation; for exercising freedom of expression, assembly and association; or for exposing serious human rights violations and demanding justice.

101.

Second, we conclude that, although international bodies have recognized the existence of this form of detention or imprisonment, this recognition has not been clear. In particular, there is a lack of certainty as to the criteria for determining who may or may not be considered a person deprived of liberty for political reasons, the extent of the responsibility incurred by States, and the standards of protection that should be applied when determining this status. Therefore, we find it essential to identify explicit criteria for determining that State actions are politically biased and that such detentions differ from other types of restrictions on personal liberty. It is important to highlight this difference because, as we have noted, this form of deprivation of liberty places the person at an even greater risk of being subjected to serious human rights violations during detention; that is, it places them in a situation of special vulnerability.

102.

Third, we conclude from our review of the decisions of international protection mechanisms, such as the IACHR, the Inter-American Court, and the Working Group, and the criteria developed by the Council of Europe, that the political motivation behind the State's actions is identified and demarcated by examining the contextual and subjective elements of a detention. They allow us to identify such motivation, given the patterns of detention, criminalization, and misuse of the justice systems, as well as the particular activities—real or perceived—of the detained person, among other considerations that demonstrate political motivation. Therefore, we conclude that identifying cases of politically motivated deprivation of liberty consistently across political contexts and realities,<sup>119</sup> and in accordance with international standards, involves at least two steps:

- › First, it must be determined that the deprivation of liberty is arbitrary according to categories I, II, III, and V established by the WGAD.
- › Second, it is essential for this determination to identify that such detention, in addition to being arbitrary, is the product of politically biased actions. This requires examining the subjective elements, based on the profile and the real or perceived activities of the detained person. Contextual elements should also be examined to identify the patterns of detention by the State, both in democratic and authoritarian contexts, and the use and misuse of justice systems and punitive power to criminalize the exercise of basic freedoms.

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119 - Christoph Valentin Steinert, [Who Is a Political Prisoner?](#), *Journal of Global Security Studies*, Volume 6, Issue 3, September 2021, p. 8.

**103.** In identifying who political prisoners and detainees are from a human rights perspective and what this entails, we also identified a set of recommendations to be implemented by the various international protection mechanisms, States, and civil society organizations, in order to move toward an effective response to this serious human rights violation.

**104.** First, these actions call for developing international standards to broaden protection and guarantee maximum respect for the human rights of such persons. Second, we propose several actions that we believe should be implemented by the various stakeholders.

#### **A. To international protection mechanisms**

##### ***i. Development of standards to broaden protection***

**1.** Establish minimum criteria, such as those set forth in this paper, to determine the status of politically motivated detention or imprisonment. These criteria must consider the arbitrary nature of the detention, as well as the political motivation behind it.

**2.** **Acknowledge that persons deprived of their liberty under such circumstances are at risk of being subjected to serious human rights violations** because of the political intent behind their detention. It must be recognized that a person detained and deprived of liberty in this condition is in a situation of special vulnerability.

**3.** **Develop standards for the immediate release of the person and enhance existing standards**, such as those established by the Inter-American Court and the Working Group in their decisions.

**4.** **Require States to implement immediate actions or create ad hoc procedures**<sup>120</sup> to immediately release persons detained or imprisoned for political reasons and to guarantee them, when necessary, a thorough review of the proceedings against them, ensuring due process of law.

**5.** **Require States to adopt measures of non-repetition to eliminate these practices.**

##### ***ii. Development of actions for an effective and immediate response***

**6.** **Adopt immediate and effective strategies to identify, receive, and process cases of persons detained and imprisoned for political reasons**, to help obtain justice and reparation for the victims and promote the adoption by States of measures of non-repetition to eliminate this practice.

**7.** **Create follow-up mechanisms for the review of cases in which politically motivated detention is alleged**, such as independent commissions or mechanisms, and carry out on-site visits with key actors such as the special rapporteurs for freedom of expression and persons deprived of liberty (both of the IACHR and the United Nations special procedures) as well as the WGAD, among others.

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<sup>120</sup>-For example, Mexico's extraordinary procedure for the recognition of innocence, which is used to review a final conviction when new exculpatory evidence emerges.



8. Provide technical advice to States for the proper identification, processing, and prompt handling of cases of politically motivated deprivation of liberty, as well as for the adoption of measures of non-repetition to eliminate this practice.

9. Prepare and adopt a technical instrument to facilitate the identification, characterization, handling, and resolution of cases of politically motivated detention and imprisonment.

## B. To the States

10. Adopt, as part of their international human rights obligations, a strategy for reviewing, handling, and addressing all cases of politically motivated detention or imprisonment in the country.

11. Adopt oversight and accountability measures regarding the actions of State agents and institutions that may be involved in politically motivated detention and imprisonment.

12. Bring domestic regulations into line with international standards to establish prompt and effective procedures to identify, review, and immediately resolve cases of politically motivated detention or imprisonment.

13. Bring domestic criminal law provisions into line with international standards, particularly with regard to offenses that, under the guise of legality, are used to criminalize, detain, and imprison people for political reasons, such as terrorism, contempt, conspiracy to undermine national integrity, and spreading false information, among others.

14. Bring domestic laws of criminal procedure into line with international standards, particularly those laws used specifically to prosecute offenses such as those mentioned above, **undermining due process** and allowing for the unreasonable prolongation of judicial or administrative detention, the arbitrary extension of prosecution deadlines, the use of fabricated evidence that does not prove the commission of a statutorily defined offense, and the use of ad hoc judges, among other practices contrary to international standards.

15. Adopt effective and comprehensive reparation measures benefiting victims of politically motivated detention or criminalization, in particular, the public acknowledgment of the circumstances that led to the multiple violation of their human rights.

### C. To human rights organizations

16. Promote joint strategies to draw attention to the situation faced by persons detained and imprisoned for political reasons in Latin America.
17. Promote strategies to strengthen the international protection mechanisms that make it possible to develop effective responses to this serious violation, providing input based on their knowledge and experience for the adoption of measures to address the problem.
18. Finally, we call on all stakeholders working to find solutions and address this problem to adopt and incorporate the guidelines offered in this paper as a working tool for determining politically motivated detention and imprisonment, and to enrich and strengthen them as they deem necessary.

# GUIDELINES FOR ——— DETERMINING POLITICALLY MOTIVATED DETENTION AND IMPRISONMENT

Contributions from an International  
Human Rights Law Perspective

