

CHAPTER IV.B CUBA

I. INTRODUCTION

1. In exercising its competence to promote and protect human rights in the Americas, the Inter-American Commission on Human Rights (“IACHR” or “the Commission”) continued to monitor the human rights situation in Cuba, in particular, events of late 2017 to 2018, which could be relevant to the full enjoyment of human rights.

2. In 2018, the Commission noted significant developments in the socio-political context of Cuba, such as the change in government and the beginning of a constitutional reform process. With respect to both developments, it has come to the attention of the IACHR that several things pose a serious obstacle to the enjoyment of the participatory rights of persons under the jurisdiction of the Cuban State, such as arbitrary restrictions on the right of assembly, the presence of a single political party, a ban on association for political purposes, and a refusal to incorporate proposals from groups opposing the government, among other actions.¹

3. The IACHR is also aware of persistent restrictions on political rights, the rights of assembly and association, and the right to freedom of expression and dissemination of ideas, in addition to mass violations of the rights to liberty, security and personal integrity, protection from arbitrary arrest, the inviolability of the home and transmission of correspondence, the right to residence and movement, minimum fair trial rights and the right to judicial protection. Such restrictions continue to systematically curtail the human rights of the inhabitants of Cuba, in particular, to the detriment of human rights defenders, social and political leaders, and independent journalists, as well as Afro-descendants, women, LGTBI persons, among other historically vulnerable groups.

4. In assessing the human rights situation in Cuba, the IACHR decided to include the country in chapter IV B of its annual report, on the grounds that the country’s situation meets the criteria provided for in Article 59, subsection 6.a.i of its Rules of Procedure, which reads:

- a. A serious breach of the core requirements of representative democracy mentioned in the Inter-American Charter, which are essential means of achieving human rights, including:
 - i. There is discriminatory access to or abusive exercise of power that undermines or denies the rule of law, such as systematic infringement of the independence of the judiciary or lack of subordination of State institutions to the legally constituted civilian authority;

5. The IACHR also understood that the foregoing situation meets the criteria set forth in Article 59, subsection 6.c of the same Rules of Procedure, which provides that:

- c. The State has committed or is committing massive, serious and widespread violations of human rights guaranteed in the American Declaration, the American Convention, or the other applicable human rights instruments.

6. Pursuant to Article 59.5 of the IACHR’s Rules of Procedure, in drawing up this report, the Commission has utilized information from international organizations, civil society and the Cuban Government

¹ IACHR, Working Meeting on Transitional Justice in Cuba, held on Saturday December 1, 2018 [in IACHR archives].

itself through the website of the Ministry of Foreign Affairs of Cuba and other official media outlets. It has also drawn on Information obtained through other mechanisms of monitoring and protection available to the IACHR, such as the system of petitions and cases and precautionary measures, among other ones. Once the IACHR receives the available information, it examines it in light of Inter-American human rights norms and standards, identifies sound government practices, and issues recommendations to the Cuban State. It also avails itself of this opportunity to describe its activities in relation to Cuba in 2018.

7. The Commission is aware of the various changes that are continuously unfolding in the hemisphere, and the mounting challenges States face when it comes to achieving the ideal in terms of effective enjoyment of human rights. The IACHR is available to all actors, especially authorities of the Cuban government, to provide technical support, as necessary, in order to promote the effective enjoyment of human rights for all persons in Cuba.

8. On January 18, 2019, the Commission forwarded a copy of the preliminary draft of this report to the Cuban State, in keeping with Articles 59.7 and 59.10 of its Rules of Procedure, with a term of one month for it to submit its observations. The State did not submit its observations. On March 14, 2019 the IACHR adopted this report.

II. PRELIMINARY MATTERS

A. Situation of Cuba vis-à-vis the OAS

9. On January 31, 1962, the Government of Cuba was excluded from participating in the Inter-American System under Resolution VI, adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, held in Punta del Este, Uruguay.² On June 3, 2009, during the 39th Regular Session of the General Assembly, held in San Pedro Sula, Honduras, the General Assembly of the Organization of American States (OAS), by means of Resolution No. 2438, annulled that Resolution, and provided: “That the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.”³

10. As of the date of approval of the instant report, the annulment of the resolution of 1962, which excluded the Cuban Government from the Inter-American system, has not led to Cuba’s reincorporation into the OAS, and instead it has remained distant and critical of the organization. For example, in 2018, at the 8th Summit of the Americas, Cuba sent a delegation, and even though it walked out of the opening session prior to the remarks delivered by Secretary General Luis Almagro, it announced that it would continue to “exercise [its] legitimate right to participate at a forum to which it should have been a party for a long time.” At the same event, Foreign Minister Bruno Rodríguez reiterated the position of the Cuban State with respect to what it views as the use of the OAS as an instrument of the geopolitical interests of United States. Furthermore, for the second year in a row, Cuba denied a visa for OAS Secretary General Luis Almagro, who had been invited by civil society organizations to receive the Oswaldo Payá award on the island.

11. Cuba’s exclusion by the OAS has not impeded the Commission from fulfilling its mandate of human rights promotion, monitoring and protection,⁴ inasmuch as it recognizes Cuba as “juridically responsible to the Inter-American Commission in matters concerning human rights” because it is “a party to the international instruments initially established to protect human rights in the American hemisphere” and

² The text of Resolution VI can be found in “Eighth Meeting of Consultation of Ministers of Foreign Affairs serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, Punta del Este, Uruguay, January 22-31, 1962, Meeting Documents,” Organization of American States, OEA/Ser.F/II.8, doc. 68, pgs. 13-15.

³ The text of Resolution AG/RES. 2438 (XXXIX-0/09) can be found in the “Thirty-Ninth Regular Session, San Pedro Sula, Honduras, June 2 to 4, 2009, Acts and Documents, Volume I,” Organization of American States, OAS/Ser.P/XXXIX-0.2, pg. 12.

⁴ In 2018, the IACHR sent two letters requesting information from the State and published two press releases: IACHR, Press Release R152/2018, La CIDH publica de informe de fondo en caso relacionado con la criminalización de la opinión y la deliberación política en Cuba, [‘IACHR publishes merits report in case related to the criminalization of political opinion and deliberation in Cuba’], April 11, 2018 and IACHR, Press Release R82/2018, La Relatoria Especial manifiesta preocupación por condenas penales por desacato en Cuba, [‘Office of the Special Rapporteur Expresses Concern over Criminal Convictions for desacato laws in Cuba’], July 17, 2018.

because Resolution VI of the Eighth Meeting of Consultation “excluded the Government of Cuba and not the Cuban State from participation in the Inter-American system.”⁵

12. With respect to the States that have not ratified the American Convention on Human Rights, the States conferred on the Commission the power “to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man,” as established in Article 20(a) of the IACHR’s Statute.

13. In the framework of its mandate, the Commission has written seven country reports on Cuba, the last one in 1983. Cuba was included in Chapter IV, or the equivalent thereof, of the Annual Report in 1984-1985 to 1994, and uninterruptedly from 1996 to 2018; as of the 2013 amendment to the Rules of Procedure, Cuba’s inclusion in annual reports has been based on the criteria under Article 59, section 6, subsections a.i and c of the Rules of Procedure. The IACHR has not conducted a country visit. Over the past ten years, the IACHR has held an average of two public hearings per year on said country. Additionally, pursuant to Article 18.d of the Statute, information has been requested from the State, and in turn, individual petitions, cases and requests for precautionary measures continue to be received, processed and examined. While the Cuban State has not replied to the IACHR’s communications and decisions, civil society organizations report experiencing a cessation or decrease in intensity, temporarily, of the mistreatment, retaliation, harassment and/or assaults to which they were subjected prior to the Commission acting.⁶

B. Cuba’s Engagement with other Actors

14. In 2018, Cuba voiced its willingness to cooperate with human rights bodies.⁷ Notwithstanding, as of the present date, no visits of human rights situation monitoring bodies have been reported. On the contrary, the IACHR has received information to the effect that State Security agents and National Police allegedly prevented an event of the Citizens’ Committee for Racial Integration (Comité Ciudadanos por la Integración Racial, or CIR from its Spanish language acronym) from taking place.⁸

15. For its part, despite repeated requests for an invitation, the IACHR has not visited the country. It hereby reiterates again its request to the Cuban State to acquiesce to and facilitate the realization of its first country visit to the island to enable it to observe the human rights situation firsthand, as well as the progress and challenges it faces on the subject matter.

⁵ IACHR: *Informe Anual 2002, Capítulo IV. Desarrollo de los derechos humanos en la región. Cuba*, [‘2002 Annual Report, Chapter IV, Development of human rights in the region, Cuba’], OEA/Ser.L/V/II.117 Doc. 1 rev. 1, March 7, paragraphs 3-7; *Séptimo Informe sobre la Situación de los Derechos Humanos en Cuba*, [‘Seventh Report on the Situation of Human Rights in Cuba’], OEA/Ser.L/V/II.61 Doc.29 rev. 1, October 4, 1983, paragraphs 16-46.

⁶ Interviews held at the IACHR headquarters on August 23, 2018 with Omara Ruiz Urquiola, sister of biologist and activist Ariel Ruiz Urquiola, and on June 4, 2018 with Norberto Mesa Carbonell, Cofradía de la Negritud; José Ernesto Morales Estrada, Consejería Jurídica e Instrucción Cívica, Pinar del Rio and beneficiary of Precautionary Measure 954/16; Juana Mora, Arco Iris Libre de Cuba/Alianza Manos and beneficiary of Precautionary Measure 236/16; Eorises González Suárez, Plataforma Femenina Nuevo Pais; Calixto Gammalame, Asociación Jurídica (independent attorney). See as well: IACHR, Hearing on *Situación de defensores y defensoras de derechos humanos en Cuba*, [‘Situation of human rights defenders in Cuba’], 149th Regular Session, October 29, 2013.

⁷ Prensa Latina, *Cuba reitera voluntad de cooperar con órganos de derechos humanos*, [‘Cuba reiterates willingness to cooperate with human rights bodies’], October 29, 2018.

⁸ Communication sent to the IACHR “Memorando. Situación de defensores de DDHH en Cuba” [‘Memorandum. Situation of HR Defenders in Cuba’], December 10, 2018 [in IACHR archives].

- **Engagement with the US.**

16. Since the announcement on December 17, 2014 of the reestablishment of relations between Cuba and the United States of America,⁹ the Commission has been continually monitoring lifting of the economic blockade by the US Congress.¹⁰

17. In the wake of the alleged acoustic attacks targeting American diplomatic staff in Cuba and the family members thereof, the Administration of President Trump opted to tighten restrictions on travel and trade, significantly reduce diplomatic staff, and issue travel alerts, which in turn has a deleterious effect on the country's economic situation. On June 14, 2018, the Cuba-U.S. Bilateral Commission, established in August 2015 to define the focal issues on the agenda for reestablishing relations between the two countries, held its seventh meeting in Washington, D.C. Though to a lesser extent as compared to prior years, both countries continue to conduct high-level official visits, holding technical and political meetings and professional exchanges.

18. On October 31, 2018, the State of Cuba introduced a draft resolution before the UN General Assembly to urge the United States to lift the economic embargo on Cuba. The United Nations member States, with 189 votes in favor and no abstentions, and over the opposition of the US and Israel, decided to back the Cuban text, calling for the end of the "economic, commercial and financial embargo" on the island.¹¹ Nonetheless, beyond the significance of the act, the only body that is able to lift the economic blockade of Cuba is the Congress of the United States.

III. HUMAN RIGHTS SITUATION IN CUBA

A. Representative Democracy: Lack of Essential Attributes

19. In adopting the Inter-American Democratic Charter, the OAS member states recognized that representative democracy is the system in which one attains stability, peace and development in the region, which is fundamental for attaining the full exercise of fundamental rights. Article 3 of the Charter provided 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.¹²

20. The serious failure to abide by the core requirements of institutions of representative democracy is one of the main criteria for including Cuba in this chapter of the Annual Report, as provided for in Article 59(6)(a)(i) of the IACHR's Rules of Procedure. Historically, the IACHR has been critical of the absence of conditions allowing for the genuine political participation of sectors with a different line of thinking in Cuba; in particular, it has criticized the holding of elections lacking in plurality and independence, with insurmountable obstacles impeding free access to diverse sources of information. Adverse voices to the government, in an effort to express their views and participate in the conduct of the country's affairs, end up being suppressed because of the single party system, the ban on association for political purposes and arbitrary restrictions on freedom of expression and the right of assembly, among other fundamental rights.

⁹ The White House, Press Release, [Fact Sheet: Charting A New Course On Cuba](#), December 17, 2014.

¹⁰ IACHR, Press Release 156/2014: [CIDH saluda anuncio de restablecimiento de relaciones entre los Estados Unidos y Cuba](#), [IACHR Welcomes Announcement to Reestablish Relations between the United States and Cuba], December 18, 2014.

¹¹ RCN Radio, [ONU aprueba resolución contra bloqueo a Cuba por EE.UU.](#), [UN approves resolution against US blockade of Cuba], November 01, 2018.

¹² Inter-American Democratic Charter, Art. 3. Adopted at the Twenty-eighth Special Session, September 11, 2001, Lima, Peru.

1. Right to Vote and Participate in Government and Constitutional Reform

21. In the wake of the election in 2017, Raúl Castro Ruz was relieved on April 19, 2018, by Miguel Díaz-Canel, of the Office of the President of the Council of State and of Ministers of the Republic of Cuba. Mr. Díaz-Canel was ratified with 99.83% of the votes of the 605 deputies of the National Assembly of the People's Power (ANPP), after being nominated the day before as the sole candidate. Former President Raúl Castro did hold onto the senior post of the Communist Party and the President elect announced: [Castro] will head the decision [making-process] of major significance for the present and the future of the nation," and consequently, no significant changes are anticipated in the conduct of the country.

22. As was noted earlier, during the course of the electoral process, persistent conditions standing in the way of genuine political participation of different sectors of society were observed; in the view of the OAS General Secretariat, the election of President Díaz-Canel is an "illegitimate transition," calling its system of government a "dictatorship."¹³

23. In turn, the IACHR closely examined the process of constitutional reform, which took place in 2018. By decision of the ANPP, at a special session held on June 2, 2018, it was agreed to embark upon a process of Constitutional Reform and the establishment of a Commission for these purposes was approved as the first step. Said Commission, in charge of writing the draft to amend the Constitution of 1976, which was in effect at the time, was made up of 33 deputies of the National Assembly and was chaired by former President Raúl Castro Ruz. On July 21, 2018, the ANPP debated the draft reform and it was submitted to public comment ('people's consultation') from August 13 to November 15. On December 22, 2018, 583 deputies attending the II Regular Session of the National Assembly of the People's Power approved in a roll call vote the new Constitution of the Republic of Cuba. At this session of the Assembly, the decision was also made to convene a referendum on February 24, 2019 in order to submit ratification of the new Constitution to the people.¹⁴ The draft consists of a preamble, 224 articles (87 more articles than the current Constitution), with 11 articles of the current constitution remaining as they originally appeared, as of the time of the drafting of this report, with 113 articles undergoing amendments, and 13 articles being fully repealed.

24. Changes set forth in the draft Constitution include that the President of Cuba would cease to be the head of the Council of State and of Ministers and instead, there would be a Head of State, represented by the President, and Head of Government, in the position of Prime Minister. The new Constitution would recognize private property and would omit the word 'communism.' The legal concept of *Habeas Corpus* and the principle of the presumption of innocence appear in the draft constitutional text, as do other guarantees and fundamental rights of both a civil and political and economic, social, cultural and environmental nature, including the right to life, to water, to health and free education (from preschool to undergraduate university degree), ban on forced disappearance, ban on torture and cruel, inhuman and degrading treatment or punishment, among other ones. The draft Constitution bases international relations on the defense and protection of human rights, in addition to establishing the State's obligation to ensure "the inalienable, indivisible and interdependent enjoyment and exercise of human rights, in keeping with the principle of progressive realization and without discrimination." It stipulates that the rights and duties recognized in the Constitution shall be interpreted in accordance with international human rights treaties ratified by Cuba. The legal wording of the principle of equality is expanded, by including a ban on discrimination on the basis of gender, sexual orientation, gender identity, ethnic origin, and disability.¹⁵

25. Based on information received by the Commission, the process of dissemination and debate on the Draft Constitution was marred by serious shortcomings. According to claims made by several civil society organizations to the IACHR, despite their efforts to bring about pluralistic dialogue, "political and legal

¹³ OAS General Secretariat, Comunicado de la Secretaría General: Cuba: Una transición ilegítima. [Press Release from the General Secretariat: Cuba: an Illegitimate Transition'], April 19, 2018.

¹⁴ Republic of Cuba – National Assembly of the People's Power, Aprueban diputados cubanos nueva Constitución de la República [Cuban deputies approve new Constitution of the Republic], December 22, 2018.

¹⁵ Proyecto de Constitución de la República de Cuba. Introducción al análisis del Proyecto. [Draft Constitution of the Republic of Cuba. Introduction to the analysis of the draft].

barriers” existed,¹⁶ which curtailed effective citizen participation. The IACHR observes that despite the reforms incorporated in the constitutional text, there is a persistence of structural problems that block the implementation of normative progress in the light of human rights, as an example, the incorporation of habeas corpus, without the guarantee of judicial independence, is merely rhetoric or formal¹⁷. In addition, Said draft “does not include the respect of various fundamental rights, among them the existence of political parties, freedom of press, reunion and association”¹⁸.

2. Independence of the Judicial Branch

26. As provided by the Constitution, the People’s Supreme Court remains subordinate to the National Assembly and the Council of State, which the IACHR has found to be a violation of the guarantee of an independent and impartial judge, in addition to derogating from the principle of separation and independence of the branches of government, another essential attribute of representative democracy.

27. On this point, in April 2017, the United Nations Committee on Enforced Disappearance, in its concluding observations on the report submitted by Cuba, considered the State’s remarks in terms of the judges being bound exclusively by the law, under Article 122 of the Constitution. Nonetheless, it wrote that:

While it takes note of the affirmation by the State of the subordination of the courts to the National Assembly and the Council of State not implying any meddling in the judicial functions or in resolving any particular case, the Committee is concerned that the subordination of the courts to other organs of the State may negatively impact the guarantee of independence of the courts [...].¹⁹

28. The IACHR understands that the effective observance of the rights to justice (Article XVIII) and due process of law (Article XXVI) of the American Declaration, emanating from the classic separation of powers, is based on the independence of the judicial branch, which is an essential requirement for the practical observance of human rights in general. In the view of the Commission, the subordination of the courts to the Council of State, headed by the Head of State, means that the Judicial Branch is directly subordinate to the directives of the Executive Branch. Accordingly, the lack of independence of the Judicial Branch compromises its ability to provide guarantees for the enjoyment of human rights.

B. Activism and Dissidence

29. In 2018, the IACHR noticed in Cuba the persistence of violations of the right to liberty, security and personal integrity, protection from arbitrary arrest, the inviolability of the home, the inviolability and transmission of correspondence, the rights to residence and movement, and to minimum judicial guarantees and judicial protection for human rights defenders, social and political leaders, and independent journalists, in the practice of their professions.

- ***Right to liberty, security and personal integrity, to protection from arbitrary arrest, to the inviolability of the home, and the inviolability and transmission of correspondence***

30. Since its 1992-1993 Annual Report,²⁰ the Commission has been observing with great concern the systematic use of summary arbitrary arrests as a method of harassment by Cuban authorities. From January

¹⁶ IACHR, Working Meeting on transitional justice in Cuba, December 1, 2018 [in IACHR archives].

¹⁷ IACHR, Working meeting on transitional justice in Cuba, December 1, 2018 [in IACHR archives].

¹⁸ Diario Las Américas, Políticos e intelectuales cuestionan la reforma de la Constitución cubana, [‘Politicians and intellectuals question the Cuban Constitution’s reform’] November 12, 2018.

¹⁹ UN, Committee on Enforced Disappearance, Concluding observations on the report submitted by Cuba under Article 29, paragraph 1, of the Convention, CED/C/CUB/CO/1, April 19, 2017.

²⁰ IACHR, Annual Report 1992-1993, Capítulo IV. Situación de los derechos humanos en varios Estados. Cuba: III. Métodos de hostigamiento en contra de activistas de derechos humanos, [‘Chapter IV, Situation of Human Rights in Several States, Cuba: Chapter IV, III. Methods of harassment against human rights activists’] OAS/Ser.L/V/II.83, Doc. 14, March 12, 1993.

to November 2018, the Cuban Observatory of Human Rights (OCDH from the initials of its Spanish name: Observatorio Cubano de Derechos Humanos) documented 2,150 arbitrary arrests²¹ and the Cuban Commission of Human Rights and National Reconciliation (CCDHRN, initials of Comisión Cubana de Derechos Humanos y Reconciliación Nacional) recorded 2,697 of such arrests over the same period.²²

31. The Ladies in White (Damas de Blanco), Unión Patriótica de Cuba (UNPACU), Somos Más, Frente Orlando Zapata Tamayo movements continue to be the organizations most often impacted.²³ The criminal charges most frequently leveled against them are attack (*atentado*), disrespect of public officials (*desacato*), pre-criminal dangerousness to society (*peligrosidad social pre-delictiva*), failure to pay fines, public disturbance (*desorden público*), resistance or rebellion, and unlawful economic activity. Often, on top of these summary arrests, the victims are physically and verbally assaulted.

32. Once again, the Commission has noted the use of repressive tactics, such as raids of residences and confiscation of property, generally tied to fabricated charges or staged criminal cases; unlawful restrictions on departures from the country and on free movement throughout the territory; and stigmatization and smear campaigns.

33. On February 24, 2018, the IACHR approved precautionary measures on behalf of Eduardo Cardet Concepción, the coordinator of Movimiento Cristiano de Liberación, who on November 30, 2016 was arrested, and subsequently convicted and sentenced to three years of deprivation of liberty for the crime of attack [on psychological integrity] (*atentado*), after criticizing recently deceased Fidel Castro in a radio interview.²⁴ The request for precautionary measures alleged that the beneficiary was recently assaulted by three other inmates and, despite the injuries inflicted on him, he received no adequate medical treatment. Additionally, on March 18, 2018, the IACHR approved precautionary measures on behalf of José Ernesto Morales Estrada, representative of Consejería Jurídica e Instrucción Cívica en Cuba. The request for precautionary measures alleged that the beneficiary was at risk because of his activities as a human rights defender.²⁵ In its resolution, the IACHR noted that the State had been attempting to criminalize him since 2012 to put him in jail and, from 2014 to 2017, Morales had been arbitrarily detained approximately 90 times.

34. In response to the lack of effective remedies and due process of law for the protection of their human rights, activists, human rights defenders, independent artists, and their family members, held in custody at detention facilities or on release, have used hunger and/or thirst strikes as a tool to raise their demands with respect to, *inter alia*, the alleged arbitrariness of their arrests; persecution, threats, harassment and criminalization of their activities, which are perceived as criticism of the government; failure to provide minimum judicial guarantees at trial proceedings, which lead to prison sentences; and serious conditions of detention. As of July 2018, the Commission has documented at least 10 hunger and thirst strikes and, consequently, decided to request information from the State, pursuant to the legal authority set forth in Article 18(d) of its Statute. The State did not respond.

35. At the time of the drafting of this report, the IACHR counted 24 cases of hunger strikes (16 men and 8 women) in 2018. Of this number, seven individuals had stopped and then resumed the strike at least twice.²⁶

²¹ OCDH, 2018 detenciones arbitrarias, [‘2018 Arbitrary detentions’], December 13, 2018.

²² CCDHRN, Cuba: Some acts of political repression in November 2018, site visited on December 12, 2018. Unpublished document.

²³ Infobae, Advierten sobre el aumento de la represión y las detenciones arbitrarias en Cuba, [‘Warning issued about increased repression and arbitrary arrests in Cuba’], September 02, 2018; FIDH, Cuba: actos de represión política registrados en lo que va del año: Enero - Abril 2018, [‘Cuba: Acts of political repression documented thus far this year: January- April 2018’], May 03, 2018.

²⁴ IACHR, Resolution 16/2018, Precautionary Measure N° 39/18, Matter Eduardo Cardet Concepción with respect to Cuba, February 24, 2018.

²⁵ IACHR, Resolution 22/2018, Precautionary Measure N° 954-16, Matter José Ernesto Morales Estrada with respect to Cuba, March 18, 2018.

²⁶ IACHR, Matrix/table of hunger strike monitoring in Cuba, December 20, 2018 [in IACHR archives]. By downloading the statistics, you can see that 13 persons were free at the time the strike was carried out, and 11 of them were in custody.

• ***Right of Residence and Movement***

36. As regards the right of movement and residence, the Commission has indicated the restrictions that impede full exercise of this right, both within the country and abroad.²⁷

37. Since 1983, when its seventh report on the human rights situation in Cuba was released, the Commission has spoken out about the lack of constitutional protection of the right of free movement in Cuba, which poses an obstacle to the effective enjoyment thereof.²⁸ The IACHR underscores the importance of ensuring for all persons in Cuba, free of improper interference, the right of residence and movement, as provided for in Article VIII of the American Declaration, which establishes that “Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.”²⁹ The IACHR again issues an urgent appeal to the Cuban State to allow its inhabitants to be able to freely exercise their freedom of movement throughout the territory of Cuba and freedom to depart and reenter the country, and to refrain from continuing to implement the restrictions described above.

38. Decree No. 217 of 1997 on Regulations on Internal Migration to the City of Havana and infractions thereof, originally intended to control the movement of persons to Havana and thereby diminish the very effects of overpopulation in terms of access to housing, stable employment, urban transport, and supply of water, electricity, and fuel, restricted the possibility of becoming domiciled, residing, or living with others on a permanent basis in a dwelling located in the City of Havana.³⁰ That decree was amended by Decree No. 293 of 2011, which provides for some exceptions.³¹

39. The IACHR continues to receive information about restrictions on Cuban persons’ departure from the country –including human rights defenders, activists, journalists and broadcasters– when they attempted to attend international conferences and events on the subject of human rights, as well as restrictions on movement within the country.³² In this regard, at the close of its 167th Regular Session in Colombia, the Commission publically condemned the Cuban State for prohibiting the departure from the country of members of organizations who were to participate in the hearing on the *Situation of Children’s and Adolescents’ Human Rights in Cuba*.³³ According to information collected by the IACHR, at the time of the drafting of this report, the

²⁷ IACHR, Annual Report 2014, 2015, 2016, Chapter IV, Cuba.

²⁸ IACHR, *Situación de los derechos humanos en Cuba. Séptimo informe*, [‘Situation of Human Rights in Cuba, Seventh Report’], OEA/Ser.L/V/II.61. Doc.29 rev. 1, December 4, 1983.

²⁹ *Declaración Americana de los Derechos y Deberes del Hombre*, American Declaration of the Rights and Duties of Man, approved at the Ninth International Conference of American States, Bogota, Colombia, 1948, Article VIII.

³⁰ Decree No 217 of 1997 establishes that persons who intend to be domiciled, reside or live [with someone] on a permanent basis in a residence located in the City of Havana, or who live in other municipalities of the City of Havana, but intend to be domiciled, reside or live with someone on a permanent basis in a house located in the municipalities of Old Havana (Habana Vieja), Centro Habana, Cerro and Diez de Octubre, must obtain a permit from the President of the Council of the Municipal Administration, after fulfilling certain requirements, under punishment of being fined or being returned to their location of origin (Decree No. 217, Internal Migratory Regulations for the City of Havana and the infractions thereof, April 22, 1997, available at: <http://www.gacetaoficial.cu/html/regulacionesmigratoriasparaC.H.html>).

³¹ Decree No. 293, Amending Decree No. 297, “Internal Migratory Regulations for the City of Havana and infractions thereof, April 22, 1997,” published in Special Official Gazette No. 39 of November 16, 2011, available at: http://www.cubadebate.cu/wp-content/uploads/2011/11/go_x_039_2011.pdf.

³² According to information provided to the IACHR, Cuban authorities prohibited travels of human rights defenders, including: Dora Leonor Mesa Crespo, Kirenia Yalit Núñez Pérez, Jacqueline Madrazo Luna, José Ernesto Morales Estrada (to Bogota, Colombia, in order to participate at a thematic hearing before the IACHR); Jimmy Roque to Lima, Peru in order to participate in civil society activities during the Summit of the Americas; Juan Antonio Madrazo Luna and Norberto Mesa Carbonell were banned from traveling to Geneva in order to participate as representatives of civil society during the Cuba review by the Committee on the Elimination of Racial Discrimination (CERD). Information submitted by Race and Equality, Instituto Internacional sobre Raza, Igualdad y Derechos Humanos, to the Inter-American Commission on Human Rights, August 10, 2018. Unpublished document.

³³ IACHR, Press Release N° 041/2018: *CIDH culmina 167 Período de Sesiones en Colombia*, [‘IACHR Wraps up 167th Session in Colombia’], March 2, 2018.

Commission had counted 112 cases (54 men and 58 women) of arbitrary restrictions on departures from Cuba in 2018.³⁴

• **Minimum Due Process Guarantees**

40. The IACHR continues to be concerned about the death penalty remaining on the books as a punishment for a significant number of criminal offenses in Cuba.³⁵ Capital punishment is prescribed especially for crimes against the security of the State, which are described with broad or vague language, for which the imposition would be permitted in summary proceedings,³⁶ wherein the necessary minimum guarantees for the defendant to exercise his right to an adequate legal defense are not provided for. Based on the information available to the Commission, the last time that the death penalty was imposed in Cuba was in 2003. In any case, the IACHR finds that the fact that it is in force in domestic legislation and can be potentially applied constitutes a latent threat. Accordingly, the Commission reiterates its appeal to the Cuban State to abolish the death penalty, inasmuch as this is the trend throughout the hemisphere.³⁷

41. Likewise, the Commission has noticed similar vagueness in the description of “Dangerous state,” (*estado peligroso*), as set forth in Article 72 of the Criminal Code and the following articles.³⁸ As laid out therein, ‘dangerous state’ can be deduced from a special proclivity of the individual to commit criminal offenses, given the observed “manifest contradiction with the norms of socialist morality,” which is demonstrated when any of the “indications of dangerousness,” are present, which are: habitual intoxication and dipsomania, narcomania, and antisocial conduct; the latter is understood as a person who habitually breaks the rules of social interaction by acts of violence, or by other provocative acts, violates the rights of others or by his or her behavior in general undermines the rules of interaction or disturbs the order of the community or lives, as a social parasite, off other people’s work or exploits or engages in socially reprehensible vices.³⁹

³⁴ IACHR, Matrix/Table of monitoring of arbitrary restrictions on departures in Cuba, December 20, 2018 [in IACHR archives].

³⁵ The maximum punishment of death is provided for under the categories of crimes against the security of the State; peace and international law; public health; life and corporal integrity; normal course of sexual relations; normal development of childhood and youth and against proprietary rights. Under the category of crimes against the security of the State, the criminal offenses which are subject to the death penalty as the maximum punishment are as follows: Acts against the independence or the Territorial Integrity of the State; Promotion of Armed Action against Cuba; Armed Service against the State; Aiding the Enemy; Espionage; Rebellion; Sedition; Usurping Political or Military Command; Sabotage; Terrorism; Hostile Acts against a Foreign State; Genocide; Piracy; Mercenarism; Crime of Apartheid and; other acts against the security of the State. Additionally, the law provides for punishment by the death penalty with the following criminal offenses: Production, Sale, Demand, Trafficking, Distribution and Illicit Possession of Drugs, Narcotics, Psychotropic Substances and Other Ones of Similar Effects; Murder; Rape; Pederasty with Violence; Corruption of Minors; Robbery with Violence or Intimidation on Persons. Likewise, the death penalty remains on the books as punishment for a significant number of broad or vague criminal offenses, such as “State of Dangerousness.”

³⁶ The Law of Criminal Procedure provides for summary proceedings under Articles 479 and 480 thereof: **Article 479:** In the event that exceptional circumstances so warrant, the Attorney General of the Republic may request of the President of the People’s Supreme Court, and the latter decides, that the criminal acts of the jurisdiction of the Courts of Justice shall be adjudicated through summary proceeding, except for those that are the jurisdiction of the People’s Municipal Courts; **Article 480:** At a summary proceeding, to extent that the competent Court deems necessary, the terms [periods of time] that this Law establishes for the processing of preliminary investigations, the oral trial proceeding and motions and appeals process are reduced. Law of Criminal Procedure. Special Proceedings. Title X. Summary Proceeding. Articles 479 and 480.

³⁷ IACHR, *La pena de muerte en el Sistema Interamericano de Derechos Humanos: De restricciones a abolición*, [‘The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition’], OEA.Ser.L/V/II. Doc. 68, December 31, 2011.

³⁸ Law No. 62, Criminal Code, December 29, 1987, available at: http://oig.cepal.org/sites/default/files/1987_codigopenal_cuba.pdf, in Articles 72 to 74 thereof:

Article 72. Dangerous state is understood as a special proclivity of a person to commit criminal offenses, as demonstrated by the conduct observed, in manifest contradiction to the norms of socialist morality; Article 73. 1. Dangerous state is manifested when any of the following indications of dangerousness appears in the individual: a) habitual intoxication and dipsomania; b) narcomania; c) antisocial conduct. 2. A person who habitually breaks the rules of social interaction by acts of violence, or by other provocative acts, violates the rights of others or due to his behavior in general undermines the rules of interaction or disturbs community order or lives, as a social parasite, off other people’s work or exploits or engages in socially reprehensible vices, is considered in a dangerous state.

Article 74. The state of mental derangement and of persons with delayed mental development is also considered a dangerous state, if for this reason, they do not possess the faculty to grasp the scope of their actions or of controlling their conduct, when it poses a threat to the security of persons or the social order.

³⁹ Law No. 62, Criminal Code, December 29, 1987, available at: <http://www.parlamentocubano.cu/index.php/documento/codigo-penal/>.

42. As provided in Decree-Law No. 128 of June 18, 1991, in Article 415 thereof and the following articles,⁴⁰ a declaration of pre-criminal dangerousness of antisocial conduct also is issued through summary proceeding, and can lead to arbitrary deprivation of personal liberty through trial proceedings that do not have the minimum judicial guarantees set forth in the American Declaration of the Rights and Duties of Man. In this regard, the bodies of the Inter-American human rights system have concurred that “ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.”⁴¹

43. As for military jurisdiction, the Committee on Enforced Disappearance noted with concern the competence of military courts in criminal proceedings where a member of the armed forces was the accused, even when the participants or the victim are civilians, or the events were committed on military premises, regardless of the status of civilian or military that the participants in those acts may have. In this regard, the Committee stressed that:

While note is taken that the military courts have the power to decline jurisdiction and refer matters to the regular courts, the Committee recalls its position that, in principle, military courts do not offer the guarantees of independence and impartiality required by the Convention to hear cases of enforced disappearance (Articles 11 and 12).⁴²

44. Accordingly, the Committee recommended to the Cuban State that it adopt the measures necessary to ensure expressly that the military jurisdiction not have the authority to investigate or prosecute any cases of forced disappearances.

C. Topics of Special Concern and Priority Groups for the IACHR

1. Freedom of Expression⁴³

45. In 2018, the situation of the right to freedom of expression in Cuba did not change in any substantial way and continued to be subjected to repression and State control. Of particular concern is the persistence of selective and deliberate persecution of independent journalists, media outlets, human rights defenders, political dissidents and organizations, who disseminate information and views on topics of public interest, which the State deems to be at odds with official discourse.

46. In fact, it is still common in Cuba for criminal proceedings to be opened as a means of having a chilling effect on or punishing speech or positions criticizing the official government line. It is also habitual for threatening police summons to be issued or police visits to occur, for pressure to be exerted on family members and for restrictions to be placed on the travels of journalists, human rights defenders, activists and political dissidents. Likewise, the Cuban State uses arbitrary arrests –usually for short periods of time– as a method of harassment of independent journalists, among others.

47. Notwithstanding, the regime introduced for debate this year a constitutional reform to establish the general obligation of the State to recognize, respect and guarantee freedom of thought, conscience and expression, even though the 1976 Constitution does not provide for anything of the kind. However, the IACHR and its Special Rapporteurship notice that said draft does not include any guarantees for effective

⁴⁰ Official Gazette No. 7 Special Issue, Law Decree No. 128, June 18, 1991, available at: <https://www.gacetaoficial.gob.cu>.

⁴¹ IA Court of HR. *Case of Castillo Petruzzi et al v. Peru*, Judgment of May 30, 1999, Series C. N° 52, par. 121.

⁴² UN, Committee on Enforced Disappearance, Concluding observations on the report submitted by Cuba under Article 29, paragraph 1, of the Convention, CED/C/CUB/CO/1, April 19, 2017.

⁴³ The IACHR tasked the Office of the Special Rapporteur for Freedom of Expression with drafting this section. This section is an abridged version of the Report on the Situation of Freedom of Expression in Cuba, issued by the IACHR Office of the Special Rapporteur for Freedom of Expression.

judicial protection of fundamental rights, keeps in place the single party regime and continues to make it impossible to establish media outlets, all of which impedes the functioning of a pluralistic society.

• ***Violence for Exercising freedom of Expression and Situation of Impunity***

48. In 2018, non-governmental organizations reported the continuation of a policy of the security agencies of the State harassing journalists, human rights defenders, activists and political dissidents. According to these organizations, there has been “increased repression” in Cuba since 2017, when the government set into motion the process of general elections. According to available information, in order to prevent these individuals from freely practicing their professions, the Cuban State used arbitrary arrests –generally for short periods of time – the criminal justice system as a tool to prosecute them (‘criminalize’ them, that is, charge them on bogus criminal charges), internal deportations, summonses to police facilities, raids of their homes and family pressure, travel restrictions, and confiscation of the tools of their trade and work materials. The information received indicates that those affected are intercepted on the street, State agents often conduct “confiscations” during raid and search operations of their homes, their family is intimidated and the journalist is arrested. In these cases, the authorities have refused to return the confiscated items to the owners and, according to reports, when the work materials and equipment are seized, the police refuse to provide a copy of the list of these items.⁴⁴

49. In addition, there were reports of restrictions on the right to demonstrate, for example, through the use of pretrial detention in order to prevent the individual from taking part in protests, excessive use of force in this context and impunity in such cases. The IACHR has also become aware that independent journalists are often interrogated for purposes of intimidation. According to reports, these journalists were directly threatened by agents of the State with being deprived of liberty or other acts of retaliation for practicing journalism. According to one testimony, “the more critical [the media outlet] was, the harsher they would be [referring to the State security agents] in their treatment.”⁴⁵

50. The procedures used for summoning journalists are irregular⁴⁶ and, often, State Security uses non-police facilities or offices to interrogate journalists. Complaints of these practices were filed by Ileana Álvarez, Adriana Zamora and Ernesto Carralero, who were summoned to the offices of Immigration and Foreign Residency, where political police agents were waiting for them.⁴⁷ According to the statements of the Mr. Carralero, when he arrived in Immigration and Foreign Residency, he was received by two officials who introduced themselves as the State Security Lieutenant who handles *Diario de Cuba*, in charge of “confronting of that platform specifically” and the Chief of the Section of Confronting Digital Platforms of State Security. A similar situation happened to journalists Rafael Gordo Núñez and Laura Rodríguez Fuentes, who claimed to be summons to Immigration, but were interrogated and threatened by agents of State Security. Gordo Núñez contended that he was threatened with, among other things, being held in custody “for up to 30 years” and State Security had gained access to his private conversations.⁴⁸

⁴⁴ Diario de Cuba. May 9, 2018. *Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la 'huella legal'* [‘Activists and independent journalists denounce to the IACHR repressive practices that get around [leaving] “legal footprints”’]

⁴⁵ Testimony of Diario de Cuba journalist Ernesto Carralero Burgos. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica*. [‘About freedom of expression in Cuba: repression without a legal footprint’], Diario de Cuba. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁶ According to the testimony of Ernesto Carralero Burgos, he was summoned to be interviewed the next day at the Department of Immigration and Foreign Residency. He claimed that the summons had been dropped off by police agents dressed in plain clothes and was not directly delivered to him, but instead was delivered through the president of the committee for the defense of the revolution of his building. Testimony of Diario de Cuba journalist Ernesto Carralero Burgos. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica*. [‘About freedom of expression in Cuba: repression without a legal footprint’], Diario de Cuba. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁷ Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica*. [‘About freedom of expression in Cuba: repression without a legal footprint’], Diario de Cuba. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁸ Diario de Cuba. July 8, 2018. *‘No queremos que estés del lado equivocado’, dice la Seguridad del Estado a un periodista independiente* [‘“We don’t want you to be on the wrong side,” says the State Security to an independent journalist’]; CiberCuba. Undated.

51. Another practice involved interrogations and acts of harassment of women journalists by male officers. Iris Mariño, for example, claimed that she tallied a total of 22 cases of harassment against her, interrogations where no female officer was present. According to her claims, one of these instances took place on May 1, 2018, when she was allegedly arrested for attempting to take a photograph on the street.⁴⁹ Previously, in February 2018, State Security agents are alleged to have threatened Adriana Zamora, *Diario de Cuba* (DDC) journalist, with making her lose her child in her pregnancy. According to reports, during the police summons, she was told “to think about having another child.”⁵⁰ According to the claims of Carralero, it was asserted that “anything can happen in the maternity room, the wrong medication can be given to you and there you stay.”⁵¹ Such a threat, made by an official with the ability to act, is of great concern, considering that in Cuba the health care system is exclusively under State control.

52. The IACHR and its Special Rapporteurship also learned of several cases of independent journalists in Cuba, whose homes were raided, and their tools of journalism were confiscated from them by agents of the State. Thus, for example, in January, Eliécer Palma Pupo, collaborating journalist of *Diario de Cuba*, was allegedly arrested and held for 72 hours. Likewise, his home was searched, and at that time his work tools were confiscated from him, around 100 books – which the agents considered “subversive material” – and documents.⁵² Other journalists of the daily newspaper *Diario de Cuba*, who were allegedly arrested and held in custody or threatened, are: Osmel Ramírez of Holguín;⁵³ Maykel González Vivero of Villa Clara;⁵⁴ Frank Correa of Havana;⁵⁵ and Manuel Alejandro León of Guantánamo.⁵⁶ Additionally, in February, immigration officials allegedly prevented Jorge Enrique Rodríguez from traveling overseas, arguing that a “restriction on departure overseas” was supposedly in effect for him.⁵⁷ Moreover, several independent journalists have been expelled

¿Cruzada contra los medios independientes? Policía detiene a varios periodistas cubanos esta semana [‘Crusade against the independent media? Police arrest several Cuban journalists this week’].

⁴⁹ *Diario de Cuba*. May 1, 2018. *Una periodista independiente es detenida en Camagüey al intentar hacer una foto del Primero de Mayo* [‘An independent journalist is arrested in Camagüey when he attempts to take a photograph of May First’]; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica*. [‘About freedom of expression in Cuba: repression without a legal footprint’], *Diario de Cuba*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁰ *Diario de Cuba*. February 2, 2018. *‘Tu embarazo depende de ti’, amenaza la Seguridad del Estado a la periodista de DDC Adriana Zamora*. [‘Your pregnancy depends on you,’ State Security threatens DDC journalist Adriana Zamora’]; Civicus. February 16, 2018. *Journalists, human rights defenders and artists persecuted and harassed in Cuba*; Cuba en Miami. February 2, 2018. *La Seguridad del Estado amenaza a una periodista gestante de 11 semanas: “Tu embarazo depende de ti”, le dicen los agentes* [‘State Security threatens an 11 month pregnant journalist: “Your pregnancy depends on you,” the agents told her’].

⁵¹ *Diario de Cuba*, February 2, 2018. *‘Tu embarazo depende de ti’, amenaza la Seguridad del Estado a la periodista de Diario de Cuba Adriana Zamora* [‘Your pregnancy depends on you,’ State Security threatens *Diario de Cuba* journalist Adriana Zamora’].

⁵² *Diario de Cuba*. January 26, 2018. *El régimen detiene a Eliécer Palma Pupo, colaborador de DIARIO DE CUBA* [‘The regime arrests Eliécer Palma Pupo, collaborator of *Diario de Cuba*’]; Martí Noticias. January 30, 2018. *Confiscan “material subversivo” a periodista y activista de derechos humanos en Cuba* [‘“Subversive material” confiscated from journalist and human rights activist in Cuba’].

⁵³ *Diario de Cuba*. June 23, 2018. *Liberado el periodista de DDC Osmel Ramírez tras ‘72 horas de injusta prisión’* [‘DDC journalist Osmel Ramírez released after “72 hours of wrongful imprisonment”’]; *Diario de Cuba*. January 30, 2018. *La Seguridad del Estado libera bajo ‘amenazas’ al colaborador de DDC Eliécer Palma Pupo* [‘State Security releases under ‘threats’ DDC collaborator Eliécer Palma Pupo’]; Knight Center for Journalism in the Americas. June 26, 2018. *Periodistas cubanos informan sobre el aumento de detenciones y otros abusos de poder por parte de las autoridades* [‘Cuban journalists report on increased arrests and other abuses of power by authorities’].

⁵⁴ *Diario de Cuba*. January 30, 2018. *La Seguridad del Estado libera bajo ‘amenazas’ al colaborador de DDC Eliécer Palma Pupo* [‘State Security releases DDC collaborator Eliécer Palma Pupo under ‘threats’]; Martí Noticias. January 30, 2018. *Confiscan “material subversivo” a periodista y activista de derechos humanos en Cuba* [‘“Subversive material” confiscated from journalist and human rights activist in Cuba’].

⁵⁵ *Diario de Cuba*. January 30, 2018. *La Seguridad del Estado libera bajo ‘amenazas’ al colaborador de DDC Eliécer Palma Pupo* [‘State Security releases DDC collaborator Eliécer Palma Pupo under ‘threats’]; Martí Noticias. January 30, 2018. *Confiscan “material subversivo” a periodista y activista de derechos humanos en Cuba* [‘“Subversive material” confiscated from journalist and human rights activist in Cuba’].

⁵⁶ *Diario de Cuba*. January 30, 2018. *La Seguridad del Estado libera bajo ‘amenazas’ al colaborador de DDC Eliécer Palma Pupo* [‘State Security releases DDC collaborator Eliécer Palma Pupo under ‘threats’]; Martí Noticias. January 30, 2018. *Confiscan “material subversivo” a periodista y activista de derechos humanos en Cuba* [‘“Subversive material” confiscated from journalist and human rights activist in Cuba’].

⁵⁷ *Diario de Cuba*. February 19, 2018. *El régimen impide viajar al periodista de DDC Jorge Enrique Rodríguez* [‘The regime prevents DDC journalist Jorge Enrique Rodríguez from traveling’].

from their State jobs or office. This is the case of Iris Mariño, who lost her job as a professor at an art school in Camagüey and, of Aimara Peña, who was allegedly expelled from the university.⁵⁸

53. According to available information, repression continues in Cuba against the senior officers and journalists of the Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). On this score, in January the ICLEP executive Raúl Velázquez was allegedly arrested and held for 24 hours when he was traveling from Artemisa to Pinar del Río.⁵⁹ On June 25, ICLEP denounced that over the past 6 days, its community media outlets and journalists were subjected to “abuse of power and theft” by political police, which seized journalists’ equipment and raided several homes. It further claimed that ten journalists “have suffered different types of aggression that range from interrogations, arbitrary detentions and physical and psychological assault.” Reported cases include those of Martha Liset Sánchez,⁶⁰ Liset Sánchez⁶¹ and Alberto Corzo.⁶²

54. In 2018, detained journalists included: Roberto de Jesús Quiñones – who posts work on the website *Cubanet*;⁶³ Manuel Alejandro León Velázquez – a journalist of *Diario de Cuba* and member of the audiovisual agency *Palenque Visión*;⁶⁴ and Eider Frómeto Allen.⁶⁵ In particular, it was reported that in August 2018 alone, at least 13 journalists were allegedly arbitrarily arrested in different parts of Cuba.⁶⁶

55. In 2018, acts of retaliation and harassment and arrests of journalists, activists and human rights defenders, who exposed the situation of freedom of expression in Cuba at international forums, continued to take place. In this regard, it was reported that members of the Asociación Pro Libertad de Prensa (APLP) – Odalina Guerrero Lara, Manuel Morejón, Amarilis Cortina Rey, Miriam Herrera Calvo – were allegedly

⁵⁸ Diario de Cuba. May 9, 2018. *Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la 'huella legal'* [‘Activists and independent journalists denounce to the IACHR repressive practices that get around [leaving] a “legal footprint”’], Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica*. [‘About freedom of expression in Cuba: repression without a legal footprint’], Diario de Cuba.

⁵⁹ Martí Noticias. February 7, 2018. *Periodista Raúl Velázquez había sido detenido por la Seguridad del Estado* [‘Journalist Raúl Velázquez had been arrested by State Security’]; Inter-American Press Association/ Sociedad Interamericana de Prensa (IAPA/SIP). February 6, 2018. *La SIP pide investigar la desaparición del periodista cubano Raúl Velázquez* [‘IAPA calls for investigation into the disappearance of Cuban journalist Raúl Velázquez’]; Knight Center for Journalism in the Americas. February 7, 2018. *Director de organización cubana de libertad de prensa desaparece en medio de amenazas a periodistas independientes* [‘Director of Cuban freedom of the press organization disappears amidst threats to independent journalists’].

⁶⁰ Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). June 25, 2018. *NOTA DE PRENSA #4: Cuando pensábamos que terminaba, la ola represiva contra los periodistas del ICLEP se extendió a Matanzas* [‘When we thought that it was ending, the repressive wave against ICLEP journalists expanded to Matanzas’]; Knight Center for Journalism in the Americas. June 26, 2018. *Periodistas cubanos informan sobre el aumento de detenciones y otros abusos de poder por parte de las autoridades* [‘Cuban journalists report on increased arrests and other abuses of power by authorities’].

⁶¹ Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). February 7, 2018. *NOTA DE PRENSA: Aumenta represión contra directivos del ICLEP* [‘PRESS CLIPPING: increased repression against ICLEP senior officers’].

⁶² Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). February 7, 2018. *NOTA DE PRENSA: Aumenta represión contra directivos del ICLEP* [‘PRESS CLIPPING: increased repression against ICLEP senior officers’]; Inter-American Press Association (IAPA). March 2, 2018. *Cuba: Detenciones y amenazas a la orden del día* [‘Cuba: Arrests and threats, the order of the day’].

⁶³ CCDHRN. July 4, 2018. *Detienen al periodista independiente Roberto de Jesús Quiñones* [‘Independent journalist Roberto de Jesús Quiñones arrested’]; Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). *Detenido abogado y periodista independiente cubano* [‘Cuban attorney and independent journalist arrested’], July 5, 2018; Diario de Cuba. July 7, 2018. *La Seguridad del Estado amenaza a otro periodista independiente: ‘Vas a saber lo que es represión’* [‘State Security threatens another independent journalist: ‘You’re going to find out what repression is’’].

⁶⁴ Diario de Cuba. July 8, 2018. *El régimen detiene al periodista de DIARIO DE CUBA Manuel Alejandro León Vázquez* [‘The regime arrests DIARIO DE CUBA journalist Manuel Alejandro León Vázquez’], CiberCuba. Undated. *¿Cruzada contra los medios independientes? Policía detiene a varios periodistas cubanos esta semana* [‘Crusade against the independent media? Police arrest several Cuban journalists this week’].

⁶⁵ Diario de Cuba. July 8, 2018. *El régimen detiene al periodista de DIARIO DE CUBA Manuel Alejandro León Vázquez* [‘The regime arrests DIARIO DE CUBA journalist Manuel Alejandro León Vázquez’].

⁶⁶ The detained journalists included Mario Echeverría Driggs, of the Dos Mundos agency; Osniel Carmona Breijo, of Cubamedia Press; Adriana Zamora and Ernesto Corralero, and Borís González Arenas, collaborators of Diario de Cuba; Henry Constantín and Iris Mariño, of La Hora de Cuba; Dagoberto Valdés, director of the project and magazine Convivencia; Alejandro Hernández Cepero, Roberto Rodríguez Cardona and Luis Cino Álvarez, of Cubanet; Oscar Padilla Suárez, of Red de Periodistas Comunitarios; Odalina Guerrero Lara, legal counsel of APLP, and José Antonio Fornaris Ramos, journalist of APLP. Cubanet. September 17, 2018. *Denuncian “terrorismo de estado” contra periodistas independientes en Cuba* [‘“State terrorism” against independent journalists in Cuba decried’], Asociación Pro Libertad de Prensa (APLP). August 2018. Available at: <https://www.cubanet.org/wp-content/uploads/2018/09/Agresiones-a-periodistas-agosto-2018.pdf>

interrogated by State Security after submitting a report on the situation of freedom of expression in Cuba to the UN Human Rights Council with a view toward the Universal Periodic Review (UPR); as well as after its Director José Antonio Fornaris and Guerrero Lara participated in December 2017 in an event in Geneva. Additionally, in February, four of its members were allegedly prevented from departing the country to participate in a journalism workshop in Trinidad and Tobago. Later, in May, the APLP main office was searched by police and on that occasion Fornaris was arrested. The agents also expropriated his personal property and several pieces of work equipment. According to a report by Amarilis Cortina Rey, DSE officers explained to her that the reason for the search was “to gather information about the activities of the APLP.”⁶⁷

56. During the current year, the organization Ladies in White (Damas de Blanco) decried that it continued to be subjected to aggression, harassment and arrests. In this regard, cases were reported for members of the Ladies in White Marta Sánchez,⁶⁸ Leticia Ramos Herrería,⁶⁹ Marisol Fernandez Socorro,⁷⁰ Micaela Roll Gibert and Aimara Nieto Muñoz.⁷¹ At least 24 Ladies in White were also allegedly detained on May 1.⁷² Additionally, in June, the police arrested Ramos Herrería’s son, Randy Montes de Oca Ramos, charging him with “disobedience, resistance and disrespecting a public official [*desacato*].” According to Ramos Herrería, “this is further retaliation” against her, so she will leave the country and the Ladies in White.⁷³

57. Several journalists reported that criminal proceedings were instituted against them for the alleged crime of usurpation of public functions.⁷⁴ Henry Constantín Ferreiro, Iris Mariño García and Sol García Basulto, journalists from *La Hora de Cuba*, were allegedly charged with this criminal offense.⁷⁵ Also reported were cases against Eliecer Góngora Izaguirre, member of the Unión Patriótica de Cuba (UNPACU);⁷⁶ and Zaqueo Báez, Isamel Boris Reñí and Maria Josefa Acón Sardiñas.⁷⁷ Isamel Boris Reñí had previously served a year in jail from 2016 to 2017 for distribution of discs and printed materials on the streets.⁷⁸ Likewise, in June, Claudio

⁶⁷ CubaNet. May 30, 2018. *Policía registra la sede de la Asociación Pro Libertad de Prensa en Cuba* [‘Police search the offices of APLP in Cuba’], 14yMedio. May 30, 2018. *La policía incauta los implementos de trabajo de la APLP tras un registro en su sede* [‘Police seize work tools of APLP after offices are searched’]; “Cuba La sede de la Asociación Pro Libertad de Prensa sufrió este miércoles en la mañana un registro policial, en un nuevo capítulo de represión contra la prensa independiente[e]” [‘Cuba: The offices of APLP was subjected to a police search in the morning, in a new chapter of repression against the independent press’], Official Twitter account of @yoanisanchez. May 30, 2018; Inter-American Press Association (IAPA). March 2, 2018. *Cuba: Detenciones y amenazas a la orden del día* [‘Cuba: Arrests and threats the order of the day’].

⁶⁸ Martí Noticias. April 8, 2018. *Dama de Blanco Martha Sánchez sigue detenida, policía rodea sede del grupo opositor* [‘Lady in White Martha Sánchez continues in custody, police surround the offices of the opposition group’].

⁶⁹ Infobae. April 30, 2018. *Al menos 24 Damas de Blanco detenidas en una nueva ola de arrestos y allanamientos del régimen cubano* [‘At least 24 Ladies in White arrested in a new wave of arrests and raids by the Cuban regime’]. Diario de Cuba. April 30, 2018. *4 horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco* [‘Just hours away from May First, raids and arrests of UNPACU activists and Ladies in White’].

⁷⁰ Infobae. April 30, 2018. *Al menos 24 Damas de Blanco detenidas en una nueva ola de arrestos y allanamientos del régimen cubano* [‘At least 24 Ladies in White arrested in a new wave of arrests and raids by the Cuban regime’]. Diario de Cuba. April 30, 2018. *4 horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco* [‘Just hours away from May First, raids and arrests of UNPACU activists and Ladies in White’].

⁷¹ Martí Noticias. May 9, 2018. *“Abajo Díaz-Canel”, gritan Damas de Blanco mientras las golpea la policía (VIDEO)* [‘“Down with Diaz-Canel,” shout Ladies in White while police beat them (VIDEO)’].

⁷² Infobae. April 30, 2018. *Al menos 24 Damas de Blanco detenidas en una nueva ola de arrestos y allanamientos del régimen cubano* [‘At least 24 Ladies in White arrested in a new wave of arrests and raids by the Cuban regime’].

⁷³ Diario de Cuba. June 19, 2018. *La Policía detiene al hijo de Leticia Ramos y lo acusa de ‘desobediencia, resistencia y desacato’* [‘The police arrest Leticia Ramos’s son and charge him with ‘disobedience, resistance and disrespecting a public official’]; Martí Noticias. June 19, 2018. *Detenido hijo de Dama de Blanco Leticia Ramos Herrería* [‘Lady in White Leticia Ramos Herrería’s son arrested’].

⁷⁴ Martí Noticias. June 18, 2018. *Periodismo ciudadano y redes sociales, ¿prohibidos para opositores en Cuba?* [‘Citizen journalism and social networks, banned for the opposition in Cuba?’]

⁷⁵ Martí Noticias. June 18, 2018. *Periodismo ciudadano y redes sociales, ¿prohibidos para opositores en Cuba?* [‘Citizen journalism and social networks, banned for the opposition in Cuba?’]

⁷⁶ Martí Noticias. July 5, 2018. *Distribuyó información sobre Cuba Decide y ahora paga seis meses de cárcel.* [‘Distributed information about Cuba Decide and now pays with six months in jail’]

⁷⁷ Martí Noticias. June 18, 2018. *Periodismo ciudadano y redes sociales, ¿prohibidos para opositores en Cuba?* [‘Citizen journalism and social networks, banned for the opposition in Cuba?’]

⁷⁸ Martí Noticias. June 18, 2018. *Periodismo ciudadano y redes sociales, ¿prohibidos para opositores en Cuba?* [‘Citizen journalism and social networks, banned for the opposition in Cuba?’]

Fuentes, of the independent project Estado de Sats, was held for 24 hours incommunicado at a police facility for publishing videos criticizing Miguel Díaz-Canel on social networks.⁷⁹

58. The UNPACU also reported that several of its activists had been arrested as the elections drew closer in Cuba. In February, arrested activists included Gilberto Hernández Lago, Alexander Verdecia Rodríguez, Carlos Alberto Rojas, Yuri Sollet Soto and José Antonio López Piña.⁸⁰ Subsequently, in April, Zaqueo Báez Guerrero, Ismael Boris Renhi, Alberto de Caridad Ramírez Baró, Alberto Antonio Ramírez Odio and Leonardo Ramírez Odio were arrested.⁸¹ According to José Daniel Ferrer, leader of UNPACU, in July, 55 members of the organization were being held under arrest. Ferrer noted that most of the arrested members had been charged with “public disturbance,” “pre-criminal social dangerousness” and “*desacato*” [‘disrespecting a public official’].⁸²

59. Additionally, Uruguayan journalist Fernando Ravsberg announced in July 2018 that he would shut down the blog *Cartas desde Cuba* [‘Letters from Cuba’], which he has been writing in Cuba for several years. According to reports, the Ministry of Foreign Affairs did not renew his residency permit and thus his permit to work on the island. The International Press Center, under the MINREX, announced that his accreditation simply expired. For his part, the journalist believed that it was connected UPEC officials calling into question “allowing people opposed the Revolution to criticize it” in his blog. He also denounced that, weeks before the announcement of the shutdown, he received “a thousand [cyber] attacks per day, some generated by robots, searching for our vulnerabilities.”⁸³

60. The Inter-American Commission reiterates that Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression establishes: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” In addition, as has been established by the United Nations Special Rapporteur on the right to freedom of opinion and expression and the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS), the State “has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities.”⁸⁴

- ***Freedom of Expression and Internet***

61. In recent years, the use of Internet and the development of digital media have made it possible in Cuba for spaces to open up for the circulation of information and ideas beyond government control. Thanks to these technologies, independent media outlets have emerged in the country, as have blogs, websites of activist groups, campaigns and social denunciation for people to express disapproval and to speak out against things. Notwithstanding, the IACHR and its Special Rapporteurship have received information corroborating that the Cuban people face serious obstacles to connectivity and universal access to Internet. In addition to the

⁷⁹ Martí Noticias. June 18, 2018. *Periodismo ciudadano y redes sociales, ¿prohibidos para opositores en Cuba?* [‘Citizen journalism and social networks, banned for the opposition in Cuba?’]

⁸⁰ Martí Noticias. February 12, 2018. *UNPACU denuncia alza de represión mientras se acercan elecciones en Cuba* [‘UNPACU denounces increased repression as elections draw near in Cuba’]

⁸¹ Diario de Cuba. April 30, 2018. *A horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco* [‘Hours away from May First, raids and arrests of UNPACU and Ladies in White activists’]

⁸² Martí Noticias. July 1, 2018. *Denuncian violencia contra miembros de UNPACU en prisión* [‘Violence against UNPACU members in prison decried’]

⁸³ Diario de Cuba. July 13, 2018. *‘El cerco se ha cerrado’: Fernando Ravsberg anuncia el fin de su blog ‘Cartas desde Cuba’* [‘Closing in: Fernando Ravsberg announces the end of his blog ‘Letters from Cuba’’].

⁸⁴ United Nations (UN) Rapporteur for the Protection and the Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States. September 13, 2013. *Declaración conjunta sobre violencia contra periodistas y comunicadores en el marco de manifestaciones sociales* [‘Joint declaration on violence against journalists and media workers in the context of protests’].

limited connectivity of the Cuban population, according to several sources, a portion of the content on the worldwide web is not accessible from Cuba, because it is blocked or filtered by government authorities. According to reports, the number of websites censored by the government has grown in recent years, and in order to gain access to them – such as the news sites *CiberCuba*, *14ymedio* and *Cubagnet* –, Cuban citizens have used the services of virtual private networks (VPN) or webpages that operate as anonymous proxies. In some instances, temporary blocking is involved, but in others, it has proven to be impossible to access websites, platforms or social networks, such as *Facebook*, *Twitter*, *Youtube*, *Yahoo*, *MSN* or *Hotmail*.⁸⁵ Additionally, the IACHR and its Special Rapporteurship have received information on alleged surveillance of people browsing the Internet, which would run afoul of the right to privacy and protection of data.

62. In July, it was reported that a new messaging app, ToDus, created by the Universidad de Ciencias Informáticas (UCI) and ETECSA, places users' personal data at risk of falling into the hands of the government. In particular, it was reported that the app asks "in order to connect with friends and family members, and to exchange photos and videos with them, it allows ToDus to be able to access your contacts, photos, multimedia content and files in general, [which are] stored on your device." It was also noted that, as one of the conditions of use of service, the user pledges to "not make any offensive comments or [comments] contrary to morality, as well as any [comments] that denigrate or offend governments or government policies."⁸⁶

63. Additionally, in February, the digital magazine *El Estornudo*, decried that the Cuban government had blocked access to the webpage of the magazine in Cuba. The magazine, which had the second year anniversary of its creation in March, claimed in an editorial titled "Note to Censor: Why can *El Estornudo* not be read in Cuba?" that Cuba is a "country where printed publications cannot circulate beyond State control, where access to Internet is highly limited, and where the address of your press media will then be blocked so that no one will even manage to read you even through limited access."⁸⁷ More recently, on December 4, 2018, Mayra Arevich, President of ETECSA, announced that, beginning December 6, Cuban citizens would be offered full access to Internet on cell phones. According to the announcement, on this date, Cubans would be able to start to enter into contracts for 3G service.⁸⁸

64. Pursuant to pronouncements of the rapporteurs for Freedom of Expression of the UN, the Organization for Security and Cooperation in Europe (OSCE), the OAS and the African Commission on Human and Peoples' Rights in their Joint Declaration of 2011,⁸⁹ "Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure—analogous to banning a newspaper or broadcaster—which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse." They also recalled, among other things: "Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression."

⁸⁵ Committee for the protection of journalists (CPJ). Conectar a Cuba: Más espacio para crítica, pero restricciones frenan avance libertad de prensa. ['Connecting Cuba: More space for criticism, but restrictions hold back advancement of press freedom'] 2016; Comité para la protección de los Periodistas (CPJ). Ataques a la prensa. Periodismo bajo fuego cruzado en 2013: Cuba. ['Attacks on the press. Journalism in the cross fire in 2013: Cuba']. 2013.

⁸⁶ Martí. July 5, 2018. Nueva App creada en la UCI compromete información de usuarios, alerta Yoani Sánchez ['New app created at UCI compromises users' information, Yoani Sánchez warns'], *Cubanos por el mundo*. Undated. Yoanis Sánchez advierte que el "Whatsapp cubano" compromete información de usuarios ['Yoanis Sánchez warns that the "Whatsapp cubano" compromises user information'].

⁸⁷ Revista *El Estornudo*. February 26, 2018. Nota al Censor: ¿Por qué no puede leerse *El Estornudo* en Cuba? ['Note to Censor: Why can *El Estornudo* not be read in Cuba?'].

⁸⁸ Telemundo 51. December 4, 2017. Cuba dará acceso a internet en teléfonos celulares ['Cuba will provide access to Internet on cell phones'], *The New York Times*. December 5, 2018. Cuba Will Allow Full Internet Access on Phones Starting This Week; *El Nuevo Día*. December 5, 2018. Llega el internet a los teléfonos móviles en Cuba. ['Internet comes to cellphones in Cuba'].

⁸⁹ United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe, Special Rapporteur for Freedom of Expression of the Organization of American States and the Special Rapporteur for Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights. June 1, 2011. Declaración conjunta sobre libertad de expresión e internet ['Joint statement on freedom of expression and Internet'].

65. The IACHR further recalls that respect for privacy is a guiding principle of the digital environment. The right to privacy, according to which no one may be the object of arbitrary or abusive interference with his private life, his family, his home or his correspondence, is a prerequisite for the exercise of the right to freedom of expression on-line, which must be protected by law and rigorously promoted in public policy.⁹⁰ This point is closely linked to the State's obligation to create a safe environment for the exercise of the right to freedom of expression, as violation of communication privacy has a chilling effect and hampers the full exercise of the right to communicate.⁹¹ Internet surveillance in any of its forms or nuances constitutes interference in the private lives of people and, when conducted illegally, can also affect the rights to due process and a fair trial, freedom of expression, and access to information.⁹² To protect privacy on the Internet, the confidentiality of personal online data must be guaranteed,⁹³ over any service, whether e-mail, messaging service or other ones.

66. Based on the foregoing, the IACHR reiterates that the Cuban State must expand unrestricted connectivity to Internet, thus promoting universal access to Internet to ensure effective enjoyment of the right to freedom of expression. The IACHR reiterates that the Cuban State must ensure that provisions of law regulating Internet access in the country are compatible with international standards, protect the right to freedom of expression and thought, including the right to privacy and to seek, receive and disseminate ideas and information, without unnecessary restrictions. Furthermore, the Cuban State must refrain from conducting any type of surveillance or data processing, including the storage, analysis, and disclosure of personal information, except when it has a legitimate purpose to do so or it has the informed consent of the person affected; and adopt normative measures aimed at banning these practices and establish mechanisms of effective and independent oversight.

- ***Constitutional Reform and Freedom Of Expression***

67. The IACHR and its Special Rapporteurship take note that Article 56 of the Draft Constitution, which was released for public comment, recognizes that "all persons have the right to receive from the State truthful, adequate and timely information, pursuant to established regulations."⁹⁴ The provision seems to be a step forward, given that the Constitution of 1976 does not recognize the right of access to information. Notwithstanding, the wording does not set forth to the fullest extent the scope and content of the right of access to information. According to Article IV of the American Declaration of the Rights and Duties of Man, "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."

68. Likewise, the IACHR and its Special Rapporteurship note that, in said draft, there are two other provisions, which directly address freedom of expression and of the press: Articles 59 and 60. The first one establishes the following:

ARTICLE 59. The State recognizes, respects and guarantees freedom of thought, conscience and expression.

⁹⁰ IACHR. Special Rapporteurship for Freedom of Expression. Libertad de Expresión e Internet ['Freedom of Expression and the Internet']. OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Par. 130; IACHR. Special Rapporteurship for Freedom of Expression. Estándares para una Internet libre, abierta e incluyente. ['Standards for a Free, Open and Inclusive Internet']. OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Par. 10.

⁹¹ IACHR. Special Rapporteurship for Freedom of Expression. Libertad de Expresión e Internet. ['Freedom of Expression and the Internet']. OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13 December 31, 2013. Par. 23. IACHR. Special Rapporteurship for Freedom of Expression. Estándares para una Internet libre, abierta e incluyente ['Standards for a Free, Open and Inclusive Internet']. OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Par. 10.

⁹² IACHR. Special Rapporteurship for Freedom of Expression. Estándares para una Internet libre, abierta e incluyente. ['Standards for a Free, Open and Inclusive Internet']. OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Par. 212; UN. Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, Frank La Rue, [Report of the Special Rapporteur on the Promotion and Protection of the right to Freedom of opinion and expression, Frank La Rue] A/HRC/23/40. April 17, 2013.

⁹³ IACHR. Office of the Special Rapporteur for Freedom of Expression. Estándares para una Internet libre, abierta e incluyente. ['Standards for a Free, Open and Inclusive Internet']. OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Par. 204.

⁹⁴ Proyecto de Constitución de la República de Cuba, artículo 56, [Draft Constitution of the Republic of Cuba, Article 56]

Conscientious objection may not be invoked for the purpose of evading compliance with the law or preventing someone else from complying with it or exercising their rights.⁹⁵

69. The IACHR notices that the draft establishes the State's general obligation to recognize, respect and guarantee freedom of thought, conscience and expression, while the Constitution of 1976 does not include any such provision. Nonetheless, in order for these rights to become a reality in Cuba, it is necessary to take decisive actions to make them compatible with other constitutional provisions and establish an appropriate legal framework, which does not include arbitrary restrictions on the exercise thereof, but instead becomes the framework to correct the persistent practice of persecution of journalism.

70. In this regard, it worrisome that the introduced draft constitutional reform would keep in place the main restrictions of the current body of law, with respect to freedom of expression, which render the exercise of the right illusory and could render the recognition merely rhetorical. This is connected to Article 60 of the Draft Constitution, which will replace Article 53 of the current constitutional text. This provision reads as follows:

ARTICLE 60. Citizens' freedom of the press is recognized. This right is exercised in accordance with the law.

Fundamental social communications media, in any of their supports, are the socialist property of all the people, which ensures their use at the service of all of society.

The State establishes the principles of organization and functioning for all social communications media.⁹⁶

71. According to this wording, even though freedom of the press would no longer be subject to the "purposes of socialist society," it seems to leave in place the impediment to there being any other media than State media outlets. As the provision expressly sets forth, the media "are the socialist property of all the people." It is even more worrisome considering that the aforementioned Article 5, which designates the PCC (Cuban Communist Party) as the highest governing body, also remains in the text. The Commission and its Rapporteurship recall that the IACHR's Declaration of Principles on Freedom of Expression establishes that "monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information." "The State should not have monopoly control over the media and should promote plurality of the media," General comment No. 34 of the United Nations Human Rights Committee sets forth, and has also been cited in several decisions of the Commission and the Inter-American Court of Human Rights.⁹⁷

72. The IACHR notes that, on the subject of the economic system, while the Draft Constitution maintains as essential principles socialist ownership by all of the people over fundamental media and planning, it adds the recognition of the role of the market and of new forms of non-State ownership.⁹⁸ In this vein of openness, one priority area where private property should to be permitted is the communications media, because of their close link to the enjoyment of a broad range of rights and freedoms. Maintaining the state monopoly over the media is also at odds with the provisions of this draft, which defines Cuba as a democratic State of law.⁹⁹ In other words, you cannot speak of the existence of a democratic system without full respect for

⁹⁵ Proyecto de Constitución de la República de Cuba, artículo 59, [Draft Constitution of the Republic of Cuba, Article 59]

⁹⁶ Proyecto de Constitución de la República de Cuba, artículo 60, [Draft Constitution of the Republic of Cuba, Article 60]

⁹⁷ UN. Human Rights Committee. General comment No. 34. Article 19: Freedom of opinion and expression. CCPR/C/GC/34. September 12, 2011. par. 40. IA Court of HR. Case of Granier et al (Radio Caracas Televisión) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293. Par. 143. IACHR. Special Rapporteurship for Freedom of Expression. Zonas silenciadas: Regiones de alta peligrosidad para ejercer la libertad de expresión ['Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression']. OEA/Ser.L/V/II. CIDH/RELE/INF.16/17. March 15, 2017. par. 153. IACHR. Special Rapporteurship. Estándares para una Internet libre, abierta e incluyente. ['Standards for a Free, Open and Inclusive Internet'], OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017.

⁹⁸ Proyecto de Constitución de la República de Cuba, ['Draft Constitution of the Republic of Cuba']

⁹⁹ Different provisions address the democratic nature of the Cuban State, in particular, Article 96 of the draft reads: The organs of the State are formed and carry out their activity on the basis of the principles of socialist democracy, which are expressed in the following

freedom of expression and for the ability of the people to exchange information, ideas and opinions from a variety of sources without interference.

73. There is no adequate regulation either fulfilling the requirements of freedom of expression in terms of audiovisual communication, regarding both the resources needed to create media outlets (granting, renewal and revocation of licenses to operate radio and television frequencies), and the essential guarantees for media to be virtually open to everyone without discrimination, which is an inherent requirement for the media to function, as held by the Inter-American Court.¹⁰⁰ As for Internet, the draft under consideration does not include any provisions related to guaranteeing accessible, open and neutral Internet.

74. Based on the foregoing, the IACHR urges the Cuban State to bring the “Draft Constitution of the Republic of Cuba” in line with the above-cited standards in the areas of human rights and freedom of expression.

- ***Other Relevant Situations***

75. Recent information indicates that many artists – such as theater directors, musical groups, writers, among other categories- continue to be severely harassed in order to prevent them from expressing their social and political concerns through art. Additionally, Council of Ministers’ Decree No. 349 of April 20, 2018, recently established sanctions for non-compliance with cultural policy. This policy requires, in general terms, that Cuban artists must be deemed qualified by the State in order to practice their profession. Only artists registered in the Registry of the Creator of Fine and Applied Arts can make presentations, provide services in public or have spaces to market their works. They are forced to establish ties with an institution of the State in order to be paid for their work, and only institutions authorized by the Ministry of Culture or the ICRT are permitted to establish working or commercial relationships with artists. They are unable to enjoy productions and shows or develop or exhibit their skills in public without authorization of the State. State officials are empowered to decide whether a work complies with ethical and cultural values or with other broad criteria. In cases of non-compliance, applicable measures range from fines or seizure of property, to immediate suspension of the performance or cancellation of the authorization to practice.

76. On this score, one of the major concerns about this regulation is the limitation it places on equal access to dignified work for all persons regardless of political opinion. It also establishes a system of prior censorship for cultural activities, the arts and other forms of artistic expression, which is at odds with freedom of expression.¹⁰¹ Additionally, it establishes restrictions that are not based on a legitimate purpose, nor are they strictly necessary in a democratic society. Enabling agents of the State to decide, at their discretion, whether any artistic manifestation promotes values, that are considered contrary to the regime, is also worrisome.¹⁰² According to available information, the Decree was supposed to come into force on December 7, and would be “applied on a ‘consensual basis’ and ‘gradually.’”¹⁰³

77. On December 5, 2018, artist Tania Bruguera was arrested as she headed to a protest in front of the Ministry of Culture against Decree No. 349. This was the third time in one week that Bruguera had been arrested. According to available information, State Security had “warned her that, if she went outside, she would be arrested.” Previously, she had been arrested on December 3 as she left her home and on December 4,

rules: (...) g) freedom of discussion, the exercise of criticism and self-criticism and the subordination of the minority to the majority govern in all collegial state organs. Proyecto de Constitución de la República de Cuba. [“Draft Constitution of the Republic of Cuba”]

¹⁰⁰ IA Court of HR, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights). Advisory Opinion 5/85 of November 13, 1985. Series A No. 5 par. 34.

¹⁰¹ IA Court of HR. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Pars. 71-73.

¹⁰² Cubalex. August 15, 2018. La relación entre el Decreto 349 y la política cultural del Estado cubano en 7 puntos. [“The relationship between Decree 349 and the Cuban State cultural policy in 7 points”]

¹⁰³ 14yMedio. December 8, 2018. El Gobierno frena la aplicación total del Decreto 349 y propone que sea gradual. [“The government halts total application of Decree 349 and proposes that it (its application) be gradual”]

when she participated in a protest across from the Ministry of Culture.¹⁰⁴ Other artists who had reportedly been arrested on December 3 were Luis Manuel Otero Alcántara, Yanelys Núñez Leyva, Amaury Pacheco and Michel Matos.¹⁰⁵

78. Additionally, in the current year, it was reported that the Political Police had prevented a literary event called “*Palabras excluidas*” (‘excluded words’), among other events that year as well, from being held. The event, scheduled to be held on February 3, 2018 at the Museum of Dissidence, was not held because State Security had prevented several of the writers from arriving in the venue, such as writer Ángel Santiesteban. According to reports, Santiesteban was arrested as he left his residence to head to the literary event.¹⁰⁶ The IACHR and its Special Rapporteurship take note that this happened to Ángel Santiesteban, despite the fact that he and his son are beneficiaries of precautionary measures granted by the IACHR in September 2014.¹⁰⁷

79. Additionally, in February 2018, painter Luis Trápaga and activist Lía Villares, artists of the El Círculo gallery, were detained for 24 hours. Villares was also interrogated about her links to the distribution of documents and stickers about the “*Cuba Decide*” (‘Cuba decides’) campaign. The residence where the gallery operated was reportedly raided and searched and the police seized USB memories, computers, cell phones, video cameras and photos, and hard drives, where all the interviews that Villares had conducted of different censored artists were stored. Said material was to be used for the documentary film she was making titled “Free Art vs. Totalitarian Censorship.” According to reports, in late 2017, the El Círculo gallery was the subject of several episodes of censorship, which included the arrest of the artists themselves.¹⁰⁸ Other artists who were reportedly the subjects of censorship in Cuba are writer and journalist Jorge Enrique Rodríguez, director of the television project *Lente cubano*, Iliana Hernández, and Luis Manuel Otero Alcántara.¹⁰⁹ Based on available information, as of September 24, 2018, rap music singer Maikel Castillo Pérez, *Mc El Osorbo*, was being held in custody after holding a concert on September 21, 2018 in Havana, during which he urged several rap music artists to speak out against Decree No. 349.¹¹⁰

2. Afrodescendant Persons

80. The Commission recognizes certain progress against ethno-racial discrimination in the context of the debate on the draft Constitution of the Republic, which was approved by the National Assembly in 2018. In particular, the IACHR welcomes the inclusion of attributes that expand the legal definition of the principle of equality, preventing discrimination based on sex, gender, sexual orientation, gender identity, ethnic

¹⁰⁴ AFP. December 5, 2018. *Artista Tania Bruguera detenida en Cuba por protestar contra decreto oficial* [‘Artist Tania Bruguera arrested in Cuba for protesting against official decree’]; El Nuevo Herald/AFP. December 5, 2018. *Tania Bruguera detenida por tercera vez en Cuba por protestar contra un decreto oficial* [‘Third arrest of Tania Bruguera for protesting against official decree’]; The Guardian. December 6, 2018. *Cuban artists fear crackdown after Tania Bruguera arrest*.

¹⁰⁵ 14yMedio. December 3, 2018. *Arrestados varios activistas que protestaban en el Ministerio de Cultura contra el Decreto 349* [‘Several activists who were protesting Decree 349 at the Ministry of Culture arrested’]; 14yMedio. December 5, 2018. *“La lucha contra el Decreto 349 continúa”, asegura Amaury Pacheco tras ser liberado* [‘The struggle against Decree 349 continues, announces Amaury Pacheco after being released’].

¹⁰⁶ Diario de Cuba. February 4, 2018. *La Seguridad del Estado impide la celebración de un evento literario con escritores censurados* [‘State Security prevents a literary event with censored writers from being held’]; Martí Noticias. February 4, 2018. *Política política reprime evento literario contra la censura en Cuba* [‘Political police crack down on literary event against censorship in Cuba’].

¹⁰⁷ IACHR. Precautionary Measure Resolution *Resolución 26/2014*, MC 206-13. *Matter Ángel Lázaro Santiesteban Prats with respect to Cuba*, September 26, 2014.

¹⁰⁸ 14yMedio. February 4, 2018. *La policía detiene durante 24 horas a los artistas de la galería El Círculo* [‘Police detain for 24 hours the artists of El Círculo gallery’].

¹⁰⁹ Diario de Cuba. May 13, 2018. *#00Bienal: el régimen responde al arte independiente con represión* [‘regime responds to independent art with repression’]; Martí Noticias. February 27, 2018. *Creadores buscan espacios fuera de la UNEAC y las instituciones oficiales de Cuba* [‘Creators seek spaces outside of UNEAC and official institutions of Cuba’].

¹¹⁰ Diario de Cuba. September 29, 2018. *Detenido el rapero Maikel Castillo Pérez tras un concierto contra el Decreto Ley 349* [‘Rapper Maikel Castillo Pérez arrested after concert against Law Decree 349’]; 14yMedio. December 11, 2018. *Crece la preocupación por la salud de rapero en huelga de hambre* [‘Growing concern over the health of rapper on hunger strike’].

origin, skin color, religious belief, disability or national origin.¹¹¹ Likewise, the IACHR recognizes the creation of the José Antonio Aponte Commission to combat racism and discrimination, which promotes activities of dissemination of history, discussion about the struggle against racism and discrimination.¹¹²

81. Notwithstanding, the IACHR notes with concern the State's refusal to adopt and use of the term "Afrodescendant," in accordance with the guidelines of the Durban Declaration and Programme of Action,¹¹³ given that the impacts of prejudice and discrimination, as well as economic and social disparities affecting Afrodescendant persons, persists in societies where historic processes of racial mixing (*mestizaje*) are pervasive. In this regard, the Commission is concerned about the lack of disaggregated statistical information in detention/arrest records, to identify Afrodescendant people being held in prison facilities and correctional institutions.¹¹⁴

82. The IACHR has detected some progress in the area of participation of Afrodescendants in decision-making positions; in fact, three of the six Vice Presidents of the Council of State are Afro Cubans, including First Vice President Salvador Valdés Mesa, and two women, Ines María Chapman and Beatris Jhonson Urrutia. In addition, 53.22% of the deputies to the ANPP are women and Afro and mestizo representation has reached 40.49%.

83. The IACHR concurs with the assertion of the Committee on the Elimination of Racial Discrimination that the Cuban Afrodescendant population continues to be the victim of racism and structural discrimination, due to a equality gap in terms of the exercise of economic, social, cultural rights, in comparison with the rest of the population.¹¹⁵ Lastly, the Commission also reaffirms the concern of the Committee on the Elimination of Racial Discrimination as to the failure to include a gender approach in policies against racial discrimination to address different types of discrimination affecting Afrodescendant women.¹¹⁶

3. Children and Adolescents

84. As for the human rights of children and adolescents in Cuba, at a hearing held during the 167th Regular Session, the IACHR received information from civil society organizations that Cuba still does not have a national child protection system that provides for the full institutional framework set forth in Inter-American standards.¹¹⁷ The Commission recognizes the appointment of the First Vice President as the national authority responsible for the rights of the child¹¹⁸ and understands that while the designation of a high-ranking authority is important, it is insufficient to address the other dimensions that are viewed as essential to the effectiveness of a protection system.¹¹⁹ The Commission recalls that the State has the obligation to build the full institutional

¹¹¹ National Assembly of the People's Power of the Republic of Cuba, Introducción al análisis del Proyecto de Constitución de la República durante la consulta popular ['Introduction to the analysis of the Draft Constitution of the Republic during the public comment'], 2018.

¹¹² Cuba, Informe Nacional de la República de Cuba al examen periódico universal del consejo de derechos humanos ['National report of the Republic of Cuba to the universal periodic review of the human rights council'], 2018.

¹¹³ ECLAC, Cuba: Informe a la Tercera Reunión de la Conferencia Regional sobre Población y Desarrollo de América Latina y el Caribe ['Cuba: Report to the Third Meeting of the Regional Conference on Population and Development of Latin American and the Caribbean'], Lima, Peru, August 2018.

¹¹⁴ *Id.*

¹¹⁵ Committee on the Elimination of Racial Discrimination, Observaciones finales sobre los informes periódicos 19º a 21º combinados de Cuba ['Concluding observations on combined periodic reports 19 to 21 of Cuba, September 20, 2018].

¹¹⁶ *Id.*

¹¹⁷ IACHR, Hearing on the *Situation of the rights of children and adolescents in Cuba*, 167th Session, February 28, 2018.

¹¹⁸ United Nations Human Rights Council, Working Group on the Universal Periodic Review, Informe del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre Cuba. A/HRC/WG.6/30/CUB/2, ['Report of the United Nations High Commission for Human Rights on Cuba'], March 16, 2018.

¹¹⁹ The IACHR considers three essential dimensions: normative, programmatic and institutional [dimensions]. IACHR, Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección ['Toward Effective Fulfillment of Children's Rights: National Protection Systems'], November 30, 2017, pars. 56-58.

framework to implement policies and strategies to comply with the State's general obligation to adopt special measures of protection of the child, in accordance with the provisions of different international instruments.¹²⁰

85. As was noted in the freedom of expression and Internet section, the Commission regards as concerning the restrictions on access to online information, which violates the right to education and curtails the enjoyment of children's and adolescents' right to freedom of expression. In accordance with the report published last year by Amnesty International,¹²¹ and based on tests conducted by the Open Observatory of Network Interference, access to 41 websites were identified as blocked in Cuba. The IACHR recalls that access to information and ideas, regardless of borders, is a right expressly set forth in Article 13 of the Convention on the Rights of the Child (CRC). Thus, pursuant to the aforementioned article of the CRC, it is the State's duty to facilitate access to open-source information, be it oral or written, online or in print, in artistic form or any other media to ensure the right of children and adolescents to information.¹²²

86. The Commission recognizes the efforts of the State to maintain universal coverage of elementary and secondary school education. In particular, the Commission commends Cuba for achieving 100% literacy among adolescents and youth between ages 15 and 24.¹²³ However, the Commission expresses concern over the shortage of teachers and the news that the government plans to address this problem by training adolescents as educators.¹²⁴ Based on the potential effects on the development of the participating adolescents in the training program, the IACHR reiterates that this public policy proposal should undergo a detailed review in light of the principle of the best interests of the child.

87. As for child marriages in Cuba, the Commission voices concern over the statistics released by UNICEF reporting a trend of 26% of marriages before to age 18 years of age.¹²⁵ Even though the statutory minimum age for marriage under Cuban law is consistent with the age set forth under the Convention on the Rights of the Child, domestic law establishes that parents may provide consent for marriage between adolescents.¹²⁶ The Commission stresses that the State must take every measure, including of a legislative nature, to avoid the ability of adolescents to marry.

88. The IACHR recognizes the initiatives of the State with regards to disaster reduction, mainly in light of the natural disaster risk to which the country is exposed, as well as the vulnerability of children and adolescents in this context. The IACHR welcomes the release of the guide to "Cuban Best Practices for the protection of children and adolescents in disaster situations"¹²⁷ which, among other things, highlights the principle of special protection set forth in Article 40 of the Constitution of the Republic of Cuba.¹²⁸ Additionally, community preparedness actions, with broad participation of children and adolescents through tailored procedures and language, is an initiative that serves as an example to replicate in other countries of the region.¹²⁹

¹²⁰ IACHR, [Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección](#), [Toward Effective Fulfillment of Children's Rights: National Protection Systems], November 30, 2017, par. 55.

¹²¹ Amnesty International, [Informe 2017/18: la situación de los derechos humanos en el mundo](#), 2017/18 Report: Human Rights Situation in the World], September 22, 2018, pg. 170.

¹²² IACHR, [Acceso a la información en materia reproductiva desde una perspectiva de derechos humanos](#), [Access to information on Reproductive Health from a Human Rights Perspective] November 22, 2011, par. 85.

¹²³ UNICEF, [The State of the World's Children](#), December 2017.

¹²⁴ IACHR, Hearing on *Situation of the rights of children and adolescents in Cuba*], 167th Session, February 28, 2018.

¹²⁵ UNICEF, [The State of the World's Children](#), December 2017.

¹²⁶ UOL, [América Latina avanza em proteção a crianças proibindo casamento infantil](#) [Latin America progresses in child protection by banning child marriage], August 23, 2017.

¹²⁷ Cuba and UNICEF, [Buenas prácticas cubanas para la protección de niños, niñas y adolescentes en situaciones de desastres](#), [Cuban best practices for the protection of children and adolescents in disaster situations], May 2018.

¹²⁸ Cuba y UNICEF, [Buenas prácticas cubanas para la protección de niños, niñas y adolescentes en situaciones de desastres](#), [Cuban best practices for the protection of children and adolescents in disaster situations], May 2018, pg. 5.

¹²⁹ Cuba y UNICEF, [Buenas prácticas cubanas para la protección de niños, niñas y adolescentes en situaciones de desastres](#), [Cuban best practices for the protection of children and adolescents in disaster situations], May 2018, pg. 16. See also: [Cuba Ahora, Cuba por la reducción de riesgo de desastres](#), [Cuba Now, Cuba for the reduction of disaster risk], October 15, 2017.

4. LGTBI Persons

89. The Commission notices that, in the proposed constitutional reform in Cuba, Article 68 thereof defined marriage as “the consensual union between two persons,” without placing any restriction with respect to the gender of the persons. This new wording, in the view of the IACHR, constituted an important advancement for the recognition of the rights of same sex couples.¹³⁰ The Constitution adopted by referendum on February 24, 2019 does not include this article.

90. In addition, the Commission obtained information about anti-rights conservative groups in Cuba, who appear to oppose an inclusive reading of the institution of marriage.¹³¹ In this regard, the Commission reiterates that recognition and protection of human rights cannot be conditioned upon social acceptance by majorities; on the contrary, in keeping with the principles of equality and non-discrimination, States must guarantee the same rights and duties for all persons under their jurisdiction.

91. As for access to medical services, the IACHR obtained information that since 2007, 39 sex reassignment surgeries have been performed on trans persons in Cuba, authorized by the Ministry of Health after fulfilling prerequisites, such as minimum age, submission of medical and psychological finding, as well as detailed review of medical protocols for sex affirmation surgeries.¹³²

92. The IACHR received information about a case of violence and discrimination against LGBTI persons in Cuba, such as the case of Joan Cristian Campos Guevara, a gay young man, who was murdered in the province of Villa Clara.¹³³ The Commission also takes note that violence against LGBTI human rights defenders is still present in Cuba.¹³⁴

93. The Inter-American Commission urges the Cuban State to promote laws and policies to ensure LGBTI persons’ human rights to equality and non-discrimination, while moving forward in building more inclusive, egalitarian societies free of every type of violence, discrimination and prejudice. Likewise, it reminds the State of its specific obligation to progressively change social and cultural patterns of behavior in order to counteract prejudice, customs and practices that are harmful to persons of diverse gender identity. The IACHR also calls on Cuba to carry out thorough and impartial investigations into cases of violence against LGBTI persons, adopting effective measures to prosecute, punish and redress cases of violence against those persons.

5. Persons Deprived of Liberty

94. The Commission has received information describing the persistence of poor conditions of detention and serious human rights violations faced by persons deprived of liberty in Cuba. In particular, this population faces prison overcrowding, deplorable conditions of detention, mistreatment and acts of violence. With relation to the number of persons deprived of liberty in Cuban jails, the Commission expresses concern over the lack of recent figures. In this regard, the latest official statistics available date back to 2012 and report a total of 57,337 imprisoned persons.¹³⁵ With a national population estimated at 11.25 million as of May 2012, this figure makes Cuba the nation with the sixth highest prison population per capita in the world (510 persons

¹³⁰ The Guardian, [Cuba’s new constitution paves way for same-sex marriage](#), July 22, 2018.

¹³¹ El Mundo, [Cuba abre la consulta popular de su proyecto de nueva Constitución](#), [‘Cuba opens the draft new Constitution to public comment’], August 13, 2018; 14yMedio, [Varias Iglesias evangélicas apelan al Gobierno y a la Revolución para impedir el matrimonio igualitario](#) [‘Several evangelical churches appeal to government and to the revolution to prevent marriage equality’], July 6, 2018.

¹³² La Vanguardia, [Cirujanos cubanos practican cambios de sexo entrenados por españoles](#) [‘Cuban surgeons trained by Spaniards’ perform sex changes’], in June 29, 2018.

¹³³ Diario de Cuba, [¿Crimen de odio?, un joven homosexual es apuñalado por la espalda en Villa Clara](#), [‘Hate crime?, a young homosexual male was stabbed in the back in Villa Clara’], September 10, 2018.

¹³⁴ The Independent, [Inside Cuba’s LGBT revolution: How the island’s attitudes to sexuality and gender were transformed](#), January 4, 2018; The Washington Blade, [Cuban LGBT activist faces growing persecution](#), May 25, 2017.

¹³⁵ Sergio Alejandro Gomez, [“Respeto a la dignidad y al mejoramiento humano”](#) [‘Respect for dignity and human improvement’], Granma, año 16, No. 140, May 22, 2012.

detained per 100,000 inhabitants).¹³⁶ Nonetheless, civil society organizations estimate the current total number of persons deprived of liberty to range from 60,000 to 70,000 persons.¹³⁷

95. In light of this situation, the Commission recalls that overcrowding generates a series of conditions that are contrary to the very purpose of imprisonment as a penalty¹³⁸ and could even amount to, in and of itself, a form of cruel, inhuman or degrading treatment. In this regard, when a prison system collapses or a particular prison facility is materially unable to offer dignified conditions to the inmate population, the State must not continue to increase the number of people deprived of liberty. Should it do so, it is subjecting these persons to a situation that clearly violates their human rights.¹³⁹

96. With respect to the negligent medical care, the Commission notes that cases publically reported in 2018 reflect the lack of provision of medications¹⁴⁰ and delays or total lack of medical assistance.¹⁴¹ In this regard, one of the well-known cases is that of Yosvany Maragaña, who reported that she was not provided medication for the tuberculosis she suffers from.¹⁴² Also reported was the case of Reidel García Otero, who died in the Valle Grande prison from an alleged lack of medical assistance.¹⁴³ As for food and access to potable water, the Commission notices that because of constant short supply, persons deprived of liberty depend on their family members providing them with food and water, or must pay other detainees or the prison guards to eat and drink.¹⁴⁴ Likewise, the IACHR learned that the conditions of the cells housing foreigners are allegedly in worse shape, in terms of overcrowding and lack of potable water.¹⁴⁵

97. In view of these conditions of detention and the lack of mechanisms to file complaints, it is of particular concern to the Commission that persons deprived of liberty continually resort to protesting the violation of rights, to hunger strikes, inoculation themselves with viruses such as HIV and self-assault.¹⁴⁶ In this context, the Commission reminds the Cuban State that, as a guarantor of the rights of persons under its custody, it has the special duty to respect and ensure their lives and safety; and consequently, it must ensure the existence of minimum conditions that are compatible with their dignity. The fact that the persons in the custody

¹³⁶ Institute for Criminal Policy Research, Highest to Lowest- Prison Population Rate, Birkbeck, 2017. Also see, Institute for Criminal Policy Research, World Prison Brief data-Cuba, Birkbeck, 2017.

¹³⁷ Radio Television Marti, “Cuba, número 6 en mayor población carcelaria relativa del mundo” [‘Cuba, number 6 in highest prison population in the world’], May 11, 2018; Foundation for Human Rights in Cuba, Las prisiones en Cuba. El ‘Gulag’ cubano: horror a denunciar [‘Prisons in Cuba. The Cuban “Gulag”: horror to be denounced’], 2018.

¹³⁸ In particular, the IACHR has written that overcrowding increases friction and outbreaks of violence between inmates, fosters the spread of disease, hinders access to basic services and health services of the prisons, increases the risk factor for the occurrence of fires and other disasters, and prevents access to rehabilitation programs, among other serious effects. IACHR, Informe sobre los Derechos Humanos de las Personas Privadas de Libertad en las Américas, [‘Report on the Human Rights of Persons Deprived of Liberty in the Americas’], OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 21.

¹³⁹ IACHR, Informe sobre el uso de la prisión preventiva en las Américas, [‘Report on the use of pre-trial detention in the Americas’], OEA/Ser.L/V/II, Doc. 46/13, Washington DC, December 30, 2013, par. 290.

¹⁴⁰ Marti Noticias, Celular por pabellón, chantaje de un oficial de prisiones a esposa de recluso [‘Cell phone for cell block, bribery by a prison official of inmate’s wife’], February 12, 2018; Cubalex, Informe sobre los Derechos Humanos de las Personas Privadas de Libertad en Cuba [‘Report on the Human Rights of Persons Deprived of Liberty in Cuba’], 2018.

¹⁴¹ CiberCuba, “Maltrato carcelario en Cuba: sacan a un hombre de prisión en estado de coma” [‘Prisoner mistreatment in Cuba: man taken from prison in a comatose state’], September 10, 2018; CiberCuba, “Prisionero diabético pierde un pie en una cárcel de Cuba por falta de atención médica” [‘Diabetic prisoner loses a foot in a Cuban prison due to lack of medical care’], October 10, 2018.

¹⁴² CiberCuba, “Niegan atención médica a reos con tuberculosis en una prisión de La Habana” [‘Medical care denied to convicts with tuberculosis in a Havana prison’], September 4, 2018.

¹⁴³ Cubanet, “Así perdí a mi hijo” [‘That’s how I lost my son’], February 9, 2018.

¹⁴⁴ Cubalex, Informe sobre los Derechos Humanos de las Personas Privadas de Libertad en Cuba [‘Report on the Human Rights of Persons Deprived of Liberty in Cuba’], 2018.

¹⁴⁵ Cubanet, “SOS: en Cuba dejan morir a los presos extranjeros” [‘SOS: in Cuba foreign prisoners are left to die’], November 26, 2018.

¹⁴⁶ Hablemos Press, Prisiones cubanas siguen siendo campos de concentración [‘Cuban prisons continue to be concentration camps’] 2018; Cubalex, Informe sobre los Derechos Humanos de las Personas Privadas de Libertad en Cuba [‘Report on the Human Rights of Persons Deprived of Liberty in Cuba’], 2018; CiberCuba, “Sale de prisión Marienys Pavó, la abogada cubana que denunció irregularidades en su condena” [‘Marienys Pavó, Cuban attorney who denounced irregularities in her conviction leaves prison’], October 22, 2018.

of the State are in a situation of special vulnerability, together with the lack of adequate public policies on the subject matter, is tantamount to a systematic violation of the human rights of these persons.¹⁴⁷

98. Lastly, the IACHR has consistently received reports that persons deprived of liberty are subjected to mistreatment by the officials guarding them. This mistreatment includes beating, humiliation, judicial retaliation and arbitrary transfers.¹⁴⁸ In this regard, one illustrative case took place in August 2018, when Alejandro Pupo Echemendía, who lost his life while in custody,¹⁴⁹ and whose body, according to his next of kin, presented signs of torture on his corpse.¹⁵⁰ Because international law demands that the State ensure the rights of the persons under their custody, the IACHR reaffirms that one of the most important duties in this regard is to care for the lives and physical and psychological integrity of persons deprived of liberty.¹⁵¹ The Commission finds that even though every person in any circumstance is entitled to the right to humane treatment, the absolute prohibition of torture and cruel, inhuman and degrading treatment is especially relevant in order to protect persons deprived of liberty, who are also totally defenseless vis-à-vis the agents of the State.¹⁵²

6. Persons with Disabilities

99. Regarding the situation of the human rights of persons with disabilities, the IACHR notes that the draft reform of the Political Constitution includes a ban on discrimination based on disability.¹⁵³ This represents a significant advance in the recognition of the rights of the population group, which thus far, continues to face many forms of discrimination in Cuba.¹⁵⁴

100. With respect to the political rights of persons with disabilities, on August 10, 2018, the Commission sent the Cuban State a letter requesting information about the right to vote of persons with disabilities in the context of the elections held on April 19, 2018, pursuant to Article 18 of the Rules of Procedure, granting a one-month period for the response. The State did not respond.¹⁵⁵

101. The Commission reminds the Cuban State that persons with disabilities are entitled to the full exercise of all of their human rights without any discrimination. Constitutional recognition of the ban on discrimination based on disability is the first step that must be taken by the State. This step must be followed by institutional and intersectional plans of action to make full inclusion of persons with disabilities in Cuban society a reality. These plans must provide for the participation of persons with disabilities in the political life

¹⁴⁷ IACHR, Informe sobre los Derechos Humanos de las Personas Privadas de Libertad en las Américas [Report on the Human Rights of Persons Deprived of Liberty in the Americas], OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 5.

¹⁴⁸ Jorge Enrique Rodríguez, “Si está preso por algo será y merece que se violen sus derechos” [‘If he’s in jail, it must be for something and he deserves his rights to be violated’], Diario de Cuba, January 17, 2018; YouTube, Horrores en la cárcel [‘Horror in jail’], April 19, 2017.

¹⁴⁹ ABC Internacional, “Muertes bajo custodia policial, el secreto más oscuro del régimen cubano” [‘Deaths under police custody, the darkest secret of the Cuban regime’], September 5, 2018.

¹⁵⁰ CiberCuba, “Ola de denuncias por muertes bajo custodia policial en Cuba” [‘Wave of reports of deaths under police custody in Cuba’], September 5, 2018.

¹⁵¹ IACHR, Informe sobre las Graves violaciones a los derechos humanos en el marco de las protestas sociales en Nicaragua [‘Report on serious human rights violations in the context of social protests in Nicaragua’], OEA/Ser.L/V/II. Doc. 86, June 21, 2018, par. 190. Also see, IACHR, Informe sobre los derechos humanos de las personas privadas de libertad en las Américas [‘Report on the Human Rights of Persons Deprived of Liberty in the Americas’], OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 30.

¹⁵² IACHR, Informe sobre las Graves violaciones a los derechos humanos en el marco de las protestas sociales en Nicaragua [‘Report on serious human rights violations in the context of social protests in Nicaragua’], OEA/Ser.L/V/II. Doc. 86, June 21, 2018, par. 190. In this regard, IACHR, Informe sobre los derechos humanos de las personas privadas de libertad en las Américas, [‘Report on the Human Rights of Persons Deprived of Liberty in the Americas’], OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 343. Also see, UN, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment, Report submitted to the Human Rights Commission (today the Council), E/CN.4/2006/6, adopted on December 16, 2005, par. 40.

¹⁵³ BBC, Cuba to recognise private property under new constitution, July 15, 2018.

¹⁵⁴ CiberCuba, Cuba excluye a un talentoso niño del equipo de béisbol por una discapacidad [‘Cuba excludes a talented boy from a baseball team because of a disability’], December 7, 2018; Cubano con dos manos amputadas no recibe protección de la Seguridad Social [‘Cuban two hand amputee does not receive social security protection’], November 1, 2018; Denuncian a chofer de guagua en Cuba no dejó subir a una joven minúscula [‘Complaint of bus driver in Cuba who did not let a young disabled girl get on (his bus)’], October 18, 2018.

¹⁵⁵ Letter of request for information sent to Cuba on August 10, 2018, pursuant to Article 18 of the Statute of the Inter-American Commission on Human Rights.

of the country, so that they can jointly draw up adequate public policies for the population with disabilities in Cuba.

7. Older Persons

102. According to figures from the Economic Commission for Latin American and the Caribbean (ECLAC), Cuba ranks number one in the region for the most aging economy. In 2017, it was observed that persons 60 years of age and older accounted for 20% of the total population. Said figure will rise dramatically by 2060 when it is expected to reach 41% of the population.

103. The main issues identified include the way in which homes for the care of older adults function. According to available public information, existing elder care homes in the country face problems of supply of inputs to ensure the wellbeing of the persons admitted to them. That means that as more and more people grow older, the number of homes for the care of older adults has been decreasing, and those already existing do not operate at optimal levels. It should be noted that, in accordance with General Economy Instruction No. 178 of October 23, 1984, from the Ministry of Public Health, older adults are required to hand over almost their entire pension to cover the expenses for the services provided by the home.

8. Women

104. The Commission recognizes that Cuban legislation grants equal rights to women and men and has taken note of the information provided by the state in the framework of its Universal Periodic Review, taking into account the efforts made to adjust legal and state mechanisms for the benefit of equality between women and men; to enhance women's participation in all spheres of the country's economic, political, and social development; and to draw up policies and programs aimed at promoting their autonomy and economic, social, and political empowerment.

105. Nevertheless, the Commission recalls that Cuba's legal framework has not mainstreamed into its legislation a general definition of discrimination against women and that there continues to a legislative loophole in terms of laws on violence and discrimination against women, especially with respect to classifying domestic violence as a crime. Likewise, although Cuba has signed and ratified various universal and regional women's rights instruments, it is still not party to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention), which is the principal inter-American instrument to defend and guarantee women's rights in the region, gives the IACHR the authority to receive individual petitions on the basis of its provisions, and requires states parties to submit follow-up reports to regional bodies.

106. As for gender-based violence against women in Cuba, the Commission observes that there are no up-to-date figures or statistical information about complaints or cases brought to court because of crimes related to violence against women. Despite this, the IACHR has taken note of some cases of gender-based violence that have been reported in the media, such as the brutal killing of Misleydis González García, who was hacked with an axe after having filed various complaints to the authorities in Ciego de Avila in the center of the island; the double killing of Tomasa Causse Fabat and her daughter, Daylín Najarro Causse, who was three months pregnant when her former partner slashed her throat in Cienfuegos; or the case of the woman known as "La China," who was stabbed seven times in the street when she was heading to the police state in Centro Habana to report the threats by her assailant. The Commission recalls that the absence of consolidated, updated, and duly disaggregated data prevents a comprehensive review of the phenomenon of gender-based violence against women in the country, thus concealing additional factors of vulnerability such as ethnic and racial origin, sexual orientation, or gender identity and contributing to the perpetuation of impunity for these crimes in a context of deeply rooted discriminatory gender-based stereotypes and structural discrimination against women.

107. Likewise, the Commission observes with concern the situation of sexual exploitation on the island and its impact on women, girls, and adolescents. In her report on human trafficking, the United Nations

Special Rapporteur indicated that Cuba is a country of origin and transit for human trafficking, whose victims are mostly women, girls, and adolescents. The Commission observes that the recent authorization for the creation of non-state micro-enterprises in the tourism sector may be contributing to increasingly severe risks of women being sexually exploited on the island. Meanwhile, an adequate legal framework to prevent and combat human trafficking for sexual exploitation, aligned with the Protocol against Trafficking in Persons, continues to be missing. Regarding this, the Commission recognizes the efforts made by the Cuban state to address this kind of violence, in particular by adopting the National Plan of Action to Prevent and Combat Trafficking in Persons and to Protect Victims (2017-2020) adopted in February 2017. The Commission calls upon the Cuban state to boost its efforts to prevent and eradicate sexual violence against women, girls, and adolescents, including sexual exploitation, by reviewing its legal framework and establishing mechanisms for investigation, punishment, and reparations to victims.

9. Economic, Social, Cultural and Environmental Rights (ESCR)

108. The IACHR notes that for this year the unemployment rate in Cuba is 1.3%, in other words, a situation of full employment. In 2014, a labor law reform was carried out to increase opportunity for freelance work. Notwithstanding, there are reports of violations of the freedom to organize, engage in collective bargaining, of protection of salaries and violations of the ban on forced labor. Even though the law guarantees the right for independent unions to form, only entities linked to Central de Trabajadores de Cuba (Central Workers of Cuba) have permission to act.¹⁵⁶

109. In June 2018, the Committee on Freedom of Association of the International Labour Organization (ILO) examined the complaint filed by the Asociación Sindical Independiente de Cuba (ASIC). The ASIC denounced the practice of attacks, harassment and persecution through detentions, assaults, and dismissals of independent union members, among other acts of discrimination and anti-union interference by public authorities, as well as official recognition of a single central union controlled by the State and the non-existence of collective bargaining and of legal recognition of the right to strike. The Association cited violation of the Conventions on Freedom of Association and Protection of the Right to Organise (Co87), on the Right to Organise and Collective Bargaining (Co98) and the Workers' Representatives Convention (Co135), all of which were ratified by Cuba.¹⁵⁷ After examining the case, the Committee issued its conclusions and the following recommendations: (i) that the Government guarantee recognition of the ASIC and its free functioning; (ii) that the Government conduct an investigation into all of the allegations of anti-union discrimination raised in the complaint, which if proven to be grounded in fact, impose deterrent sanctions and compensatory measures and provide the Committee detailed information in this regard and about the result of the administrative and judicial proceedings carried out in relation to the allegations.¹⁵⁸ In that same month, the ILO Governing Body adopted the recommendations of the Committee.¹⁵⁹ According to the Comisión Cubana de Derechos Humanos y Reconciliación Nacional (CCDHRN), it was the first time that the ILO examined a complaint of a non-governmental association of Cuba.¹⁶⁰

110. With respect to the right to education, Cuba focused efforts on offering effective and continuous training through teacher, social worker and artist training courses. For example, the TV program

¹⁵⁶ UNITED NATIONS. Summary of communications from interested parties about Cuba. March 2018. Available at: https://www.upr-info.org/sites/default/files/document/cuba/session_30_-_mai_2018/a_hrc_wg.6_30_cub_3_es.pdf. Access at: Dec. 13, 2018; HUMAN RIGHTS WATCH. Informe mundial 2018 [2018 World Report] January 2018. Available at: <https://www.hrw.org/es/world-report/2018/country-chapters/313306>. Access at: Dec 13, 2018.

¹⁵⁷ INTERNATIONAL LABOUR OFFICE – GOVERNING BODY. 386th Report of the Committee on Freedom of Association. June 2018. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_631906.pdf.

¹⁵⁸ *Id.* Ibid.

¹⁵⁹ INTERNATIONAL LABOUR OFFICE – GOVERNING BODY. Decisions adopted by the Governing Body as its 333rd Session (June 2018) and outcomes of the discussions. June 2018. Available at: https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_632642.pdf.

¹⁶⁰ RIGHTS CUBA – CCDHRN. The ILO accepts the declaration of the Cuban non-governmental association. June 2018. Available at: <http://ccdhrn.org/la-oit-acepta-declaracion-de-asociacion-no-gubernamental-cubana/>.

“para ti, Maestro” is broadcast over the educational television channel and proposes methods for class preparation and professional development of teachers.¹⁶¹

111. It must be noted that the Committee on the Elimination of Discrimination against Women recommended Cuba to ensure equal access of children and women to secondary and tertiary education levels of schooling, including minority and disadvantaged groups. The Committee also recommended Cuba to encourage more women to seek higher-grade positions in the teaching sector. It further brought to the attention of the Committee on the Rights of the Child that children as young as 14 years of age were allowed to sign up in military academies and that the minimum age for entering the superior military training academy was 17 years old.¹⁶²

112. As to the right to health, the IACHR notes that Cuba has international solidarity and cooperation programs for the promotion of the rights to education, health, culture and sport. We can highlight the dispatching of medical missions and implementing of adult literacy programs in many countries, and assistance provided to other countries, where natural disasters had hit and epidemics had broken out.¹⁶³

10. Human Rights Defenders

113. The IACHR notes that, in 2018, as was mentioned in the section on violence in response to the exercise of freedom of expression and the situation of impunity, the actual situation of human rights defenders on the ground did not substantially change as compared to previous years. According to the information received¹⁶⁴ and the monitoring conducted by this Commission, those who defend human rights in the country continue to face arbitrary violations of the right of free movement, liberty, security and personal integrity, and the guarantees of due process and judicial protection, among other ones. Likewise, the Commission notes with concern the heightened process of criminalization, that is, charging defenders with bogus criminal offenses for simply practicing their profession.

114. As for the right to free movement, as was noted above, the Commission has seen that the State of Cuba has refused on many occasions to allow the departure from the country of members of civil society organizations, who were going to participate in different human rights forums or events. The Commission notices that these denials are used to prevent human rights defenders from participating at different regional and international human rights forums.

115. In this regard, the IACHR has received information about the specific situation of Madelyn Rodríguez Martín, law school graduate and human rights defender belonging to the organization Consejería Jurídica e Instrucción Cívica and the Corriente Agramontista de Abogados independientes de Cuba who, as of February 20, 2018 to the present date, has been under permanent threat and violently treated by officers of State Security, as a result of the human rights activities she engages in on the island. Said infringements have become more intense since she has been participating in human rights training courses outside of Cuba.

116. In this regard, on May 11, 2018, the OACNUDH indicated in a press release to have received complaints about impediments for several human rights defenders and civil society leaders to travel to meetings overseas, under the guise of requiring further identity controls. In this release, it is noted that these

¹⁶¹ UNESCO. Universal periodic review (30th sesión – Apr-May 2018). May 2018.

¹⁶² United Nations Human Rights Council, Informe de la Oficinas del Alto Comisionado de las naciones unidas para los Derechos Humanos dentro del proceso de Examen periódico Universal [‘Report of the United Nations Office of the High Commissioner for Human Rights within the process of Universal Periodic Review’], March 16, 2018.

¹⁶³ UNITED NATIONS. Summary of the communications of the interested parties about Cuba. March 2018. Available at: https://www.upr-info.org/sites/default/files/document/cuba/session_30_-_mai_2018/a_hrc_wg.6_30_cub_3_es.pdf

¹⁶⁴ Communication sent to the IACHR, About the situation of human rights defenders in Cuba, 2018. [In IACHR archives].

cases suggest that additional reviews are being used deliberately as a form of intimidation, pressure and harassment of certain individuals and civil society organizations.¹⁶⁵

117. The Commission also notes that the process of criminalization of human rights defenders, social leaders and activists has escalated. As has been mentioned earlier in this chapter, and based on information provided by the civil society organizations, the Cuban State uses criminal and administrative law to criminalize activists and human rights defenders, by charging them with common criminal offenses such as attack (*atentado*), disrespecting a public official (*desacato*), dangerousness and pre-criminal social dangerousness, failure to pay fines, public disturbance and resistance or rebellion.¹⁶⁶

118. Other cases that the Commission has been monitoring include the situation of environmental defender Ariel Ruiz Urquiola.¹⁶⁷ The Commission notes that, according to the information it received, on May 3, 2018, two officials from the Forest Rangers Corps of the Ministry of the Interior came to his farm and asked him for his certificates of authorization to work the land. After the environmental defender asked the forest rangers to show him their identification, they refused and went away. The next day, Mr. Urquiola was summoned and detained by the police and five days later, convicted in a summary proceeding and sentenced to a one-year prison term for the offense of disrespecting a public official (*desacato*) because he had insulted the agents of the forest rangers corps when he referred to them as “rural guards,” a term that has a negative connotation in the country.¹⁶⁸ In June 2018, Ariel Ruiz Urquiola began a hunger and thirst strike as a form of protest and a few days later he was transferred to a hospital because his health had seriously deteriorated. On July 3, 2018, Mr. Ruiz Urquiola was released under extra-penal leave.¹⁶⁹ The Commission notices that in the past, in 2016, Ruiz Urquiola had been expelled from the Center for Marine Research (CIM) of the University of Havana allegedly for his political opinions and for having spoken out at an academic event in 2008, through the results of his doctoral research, that the government allowed the capture of endangered sea turtles.¹⁷⁰

119. In view of this information, the Inter-American Commission understands that the situation of human rights defenders, as compared to the situation reflected in the 2017 Annual Report, has not substantially changed. Therefore, it is essential for the State to adopt measures aimed at ensuring and respecting the human rights of defenders, activists, journalists and other social leaders. The IACHR recalls that it is the obligation of States to prevent threats, assaults and harassment against these groups, and take the necessary measures to safeguard and bring about the conditions to make it possible for them to practice their profession.

IV. CONCLUSIONS AND RECOMMENDATIONS

120. The IACHR reiterates its interest in conducting its first country visit to Cuba in order to reach out and open a respectful dialogue with the Cuban State, and thus provide any technical support in the area of human rights that may be required, in the interest of promoting respect and guarantee of human rights on the island.

121. Additionally, the IACHR again recognizes and appreciates the actions taken to foster rights in Cuba and highlights the international cooperation that is offered by the Cuban people to the countries of the region in the fields of health, education, culture, among other ones.

¹⁶⁵ United Nations. Preocupa el bloqueo y acoso a los defensores de los derechos humanos en Cuba [‘Blockade and harassment of human rights defenders in Cuba worrisome’]. May 11, 2018.

¹⁶⁶ Race and Equality, Consejería Jurídica de Derechos Humanos, Diario de Cuba, Request for thematic hearing about the criminalization of independent activists in Cuba, July 17, 2018.

¹⁶⁷ IACHR, Press Release R152/18, La Relatoría Especial manifiesta preocupación por condenas penales por desacato en Cuba, [‘The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for *desacato* laws in Cuba’], July 17, 2018.

¹⁶⁸ BBC, Quién es Ariel Ruiz Urquiola, el científico cubano sentenciado a un año de cárcel por criticar a las autoridades, [‘Who is Ariel Ruiz Urquiola, the Cuban scientist sentenced to a year in jail for criticizing the authorities’], July 6, 2018.

¹⁶⁹ Diario de Cuba, Ariel Ruiz Urquiola: ‘Estoy vivo’, dispuesto a ‘continuar peleando por los derechos de la naturaleza’ [‘I’m alive,’ ready to ‘continue fighting for the rights of nature’], July 3, 2018.

¹⁷⁰ IACHR, Press Release R152/18, La Relatoría Especial manifiesta preocupación por condenas penales por desacato en Cuba, [‘The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for *desacato* laws in Cuba’], July 17, 2018.

122. However, the IACHR notes with great concern that, in view of the recommendations issued in Chapter IV of the Annual Reports of previous years and in light of the information collected in 2018, the Commission does not observe any improvement in aspects such as violations of the rights to liberty and personal integrity, arbitrary restrictions on the right to vote and to participation in government, freedom of expression and the dissemination of ideas, violations of the due process guarantees, unlawful limitations on the right of residence and movement, among other ones. Moreover, the IACHR finds it unfortunate that the official information available is so limited, and also laments the history of the State distancing itself from this regional human rights body. Therefore, pursuant to its mandate, the Commission urges the Cuban State to:

As regards the right to vote and to participate in government:

1. Adopt the legislative and other measures necessary to ensure an electoral system that is inclusive and guarantees the free circulation of ideas and thought, making possible the free political participation of all Cuban citizens on an equal basis.

As regards the independence of the Judicial Branch:

2. Adopt the measures necessary to ensure the full independence of the Judicial Branch from the other branches of government.

As regards activists and dissidents:

3. Adopt adequate prevention mechanisms to prevent acts of harassment, threats, assaults, stigmatization, persecution and criminalization committed by State authorities, or with their acquiescence, to the detriment of dissidents, activists, human rights defenders, journalists, and other media workers. The following measures are considered necessary: it is recommended that education and training of public officials and especially of police and security force officials include public condemnation of any act of aggression; take the measures necessary to prevent violence in the context of public demonstrations; establish reasonable limits, governed by the principles of legality, necessity, and proportionality, to ensure their peaceful development, as well as undertake serious, impartial and effective investigations into the assaults, threats, and acts of intimidation committed to the detriment of the persons mentioned above;
4. Ensure that in the exercise of the right to movement, human rights defenders, activists, journalists, and social leaders are not subjected to unjustified obstacles, refraining from confiscating or destroying their materials and tools of work;
5. Abolish the death penalty in the Criminal Code and all related provisions, or at least impose a moratorium on its application, and in the meantime adopt the legislative and other measures necessary for ensuring that the death penalty not be imposed in case proceedings in which due process guarantees are not observed and in which no fair trial is held before a competent, independent and impartial court, previously established by law, and on the basis of the alleged commission of criminally punishable conduct as prescribed in ambiguous and vague legal provisions;
6. Eliminate the references to “dangerousness” and “special proclivity of a person to commit crimes,” as set forth in the Criminal Code; and
7. Bring procedural laws in line with applicable international standards on due process, so that persons who come before the courts for a determination of their rights and responsibilities can have minimum legal guarantees for mounting their defense, such as the right to the presumption of innocence; to have a defense; to pursue effective remedies; to learn the

charges or accusation leveled against them; to know the evidence and have the possibility to refute it, among other things.

As regards the right to freedom of expression:

8. Adopt the measures necessary for guaranteeing the free exercise of journalism and the security of those subject to a special risk because of exercising their right to freedom of expression, whether the threats come from state agents or private individuals. Additionally, besides guaranteeing diligent, impartial and effective investigations will be conducted into the events set forth above, the IACHR urges the State of Cuba to guarantee that those responsible be tried by impartial and independent courts, removing the legal obstacles to investigating and punishing such offenses;
9. Promote the repeal of the laws that enshrine the offense of disrespect of public officials (*desacato*), whatever form they take, as such laws are contrary to Inter-American standards and restrict public debate, which is an essential element for the functioning of a democracy. Furthermore, amend criminal defamation statutes that aim to protect reputation and honor when information is disseminated on matters of public interest, on public officials, or on candidates for public office; encourage democratic debate through declarations, practices, and public policies that promote tolerance and respect for all persons, in equal conditions, whatever their thinking or ideas may be;
10. Expand connectivity to the Internet without restrictions, thereby promoting universal access to Internet to ensure the effective enjoyment of the right to freedom of expression. The IACHR also reiterates to the Cuban government that it should guarantee that the provisions that regulate access to the Internet in the country observe international provisions protecting the right to freedom of expression and thought, including the right to privacy and the right to seek, receive and disseminate ideas and information without unnecessary restrictions. The Cuban State should also refrain from conducting any type of surveillance or data processing, including the storage, analysis and dissemination of personal data, except when it has a legitimate basis to do so or it has the informed consent of the person affected; and adopt normative measures aimed at banning these practices and establish mechanisms of effective and independent oversight.
11. Make the “Draft Constitution of the Republic of Cuba” compatible with standards on human rights and freedom of expression.

As regards Afrodescendant persons:

12. Adopt programs aimed at collecting disaggregated statistics, broken down by gender, sexual orientation, age, with respect to the Afrodescendant population, not only through census surveys, but also at all government offices, including those of the police, justice, health and education systems.
13. Adopt the mechanisms necessary to promote self-identification of the Afrodescendant population, especially, through the inclusion of the choice “Afro descentence” on all public records and specifically on the population census and household surveys.
14. Carry out sensitization campaigns for civil society and training for census workers, in order to create the necessary conditions to enable all Afrodescendants to be able to identify themselves as such.
15. Adopt effective measures to prevent and combat the stigmatization and criminalization of human rights defenders, in particular when said stigmatization or criminalization may be of a discriminatory nature from an ethno-racial viewpoint.

16. Adopt urgent measures, with a gender-based approach, aimed at overcoming the situation of structural discrimination that affects the Afrodescendant population, as well as positive measures to eliminate racial discrimination and ensure that Afrodescendant persons can exercise their rights on an equal basis with the rest of the population;

As regards children and adolescents:

17. Implement a national child protection system providing for the legal, programmatic and institutional dimensions, while adopting a national children's policy and building the appropriate institutional framework;
18. Eliminate barriers to children's and adolescents' access to every type of open-source information, without consideration of national borders, whether oral or written, online or printed, in artistic form or through any other means;
19. Examine the public policy proposal to train adolescents as educators, taking into consideration their best interests;
20. Adopt a legal framework that is compatible with the Convention on the Rights of the Child to prevent marriage of persons under 18 years of age;

As regards LGBTI persons:

21. Adopt anti-discrimination legislation or amend existing legislation with a view toward banning all forms of discrimination based on sexual orientation, gender identity and expression, or sexual characteristics;
22. Avoid making the recognition and protection of the human rights of LGBTI persons contingent upon social acceptance;
23. Adopt legislative, administrative and policy measures aimed at addressing the underlying causes of violence against LGBTI persons;
24. Conduct thorough and impartial investigations into the cases of violence against LGBTI persons, adopting effective measures to prosecute, punish and redress the violence endured by these persons;
25. Adopt comprehensive measures to ensure that the defenders of LGBTI persons' rights are able to freely practice their profession of defending and promoting the human rights of lesbian, gay, bisexual, transsexual and intersex persons;

As regards persons deprived of liberty:

26. Establish an up-to-date, public, readily accessible register of persons deprived of liberty, updating it on an ongoing basis. In particular, said register should at least include the following information: a) number of persons deprived of liberty at the respective detention facility; b) procedural status or situation; c) gender and age. Specifically, factors such as race, ethnic group, age, sexual orientation, gender identity and expression, interculturality, intersectionality, as well as conditions of disability, should be included.
27. Guarantee dignified treatment of persons under the custody of the State. In particular, ensure that persons held in detention receive the medical assistance they require based on their particular health status, sufficient and high nutritional value food, and are held in sanitary conditions. Additionally, the Cuban State should implement measures with a differential approach in order to be able to guarantee the rights of persons who, in the context of deprivation of liberty, are in a special situation of risk, such as foreign persons.

28. Open ex officio and immediately, effective criminal and administrative investigations to make it possible to identify, try and punish those persons responsible for mistreatment. These investigations must be carried out through all legal means available, aimed at uncovering the truth, and conducted within a reasonable period of time. Likewise, the investigations must be governed by the principles of independence, impartiality, competence, diligence and urgency.

As regards persons with disability:

29. Ban discrimination based on disability in the Constitution and conduct a systematic review of domestic law in order to bring it into line with international principles on the subject matter.
30. Ensure freedom of assembly, association, expression and discussion of ideas for persons with disability, as well as establish mechanisms to ensure their political participation in the design, execution and evaluation of public policies intended for them.
31. Adopt all measures necessary to ensure full accessibility to the health care system, without any discrimination.

As regards older persons:

32. Design, execute and evaluate intersectorial legislative, administrative and policy measures aimed at improving the quality of life of older persons, with a human rights approach.
33. Foster active aging and the development of social services to support older persons, strengthening their participation in society.
34. Coordinate service networks for older persons in situation of vulnerability and/or dependence, while strengthening the pension system.

As regards women:

35. Sign and ratify the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the Belém do Pará Convention.
36. Adopt a general legal definition of all forms of discrimination against women that includes direct and indirect discrimination, in conformity with inter-American and universal standards on the issue.
37. Adopt a specific legal framework that covers gender-based violence against women in the household and domestic sphere, including effective mechanisms for access to justice.
38. Produce complete statistics on violence and discrimination against women, periodically and with information disaggregated by gender, age, race, ethnic group, socioeconomic status, disability, sexual orientation, and gender identity at least, as well as the place where the incident occurred in order to build an accurate picture of the specific ways that violence and discrimination impact women.
39. Officially publish and disseminate the statistics that are produced.
40. Consolidate efforts to prevent and eradicate sexual violence, including human trafficking for sexual exploitation, against women, girls, and adolescents, including sexual exploitation, by reviewing its legal framework and the establishment of mechanisms for investigation, punishment, and reparations to victims.

Economic, social, cultural and environmental rights (ESCR):

41. Continue implementing measures to promote economic, social, cultural and environmental rights, paying particular attention to individuals and groups in especially vulnerable situations, and also consider the possibility of ratifying treaties in this area to which Cuba is still not a party.

As regards human rights defenders:

42. Refrain from imposing arbitrary restrictions on the right to free movement of human rights defenders, allowing them to freely exercise their right to freedom of movement on Cuban territory, as well as to depart and return to the country;
43. Make sure that statutory descriptions of criminal offenses are drafted in a way that is consistent with the principle of legality and, in this regard, revise descriptions of criminal offense that address the protection of public order, disrespect of public officials, social dangerousness or peace or national security, in an effort to narrow their scope of application so that they are not applicable to the legitimate work of human rights defenders in the country.
44. Refrain from arbitrarily depriving of their liberty human rights defenders, who perform their legitimate work of human rights defense in the country.